House Engrossed

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 53

HOUSE BILL 2302

AN ACT

AMENDING SECTION 44-1844, ARIZONA REVISED STATUTES; RELATING TO SECURITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 44-1844, Arizona Revised Statutes, is amended to read:

44-1844. Exempt transactions

A. Except as provided in subsections B and C of this section, sections 44-1841 and 44-1842, section 44-1843.02, subsections B and C and sections 44-3321 and 44-3325 do not apply to any of the following classes of transactions:

1. Transactions by an issuer not involving any public offering.

2. The sale of securities by an executor, administrator, guardian or conservator or by a bank the business of which is supervised and regulated by an agency of this state or of the United States, as trustee under a will or trust agreement, or by a receiver or trustee in insolvency or bankruptcy approved by a court of competent jurisdiction of this state or the United States.

3. The sale in good faith and not for the purpose of avoiding the provisions of this chapter by a pledgee of securities pledged for a bona fide debt.

4. The sale in good faith and not for the purpose of avoiding the provisions of this chapter of securities by the bona fide owner of such securities, other than an issuer or underwriter, in an isolated transaction, in which the securities are sold either directly or through a dealer as agent for the owner but where the sales are not made in the course of repeated or successive transactions of similar character by the owner and are not made directly or indirectly for the benefit of the issuer or an underwriter of the securities.

5. The distribution by a corporation of capital stock or other securities to its stockholders or other security holders as a stock dividend or other distribution out of retained earnings.

6. Any transaction or series of transactions incident to a statutory or judicially approved reorganization, merger, triangular merger, consolidation, or sale of assets, incident to a vote by securities holders pursuant to the articles of incorporation, the applicable corporate statute or other controlling statute, a partnership agreement or the controlling agreement among securities holders.

7. The exchange of securities by an issuer with its existing security holders exclusively, where no commission or remuneration is paid or given, directly or indirectly, for soliciting the exchange, if such exchange has been duly authorized and has been approved by the holders of not less than a majority of the outstanding securities of each class affected by the exchange.

8. An offer or sale of securities to a bank, a savings institution, a trust company, an insurance company, an investment company as defined in the investment company act of 1940, a pension or profit sharing trust or other

financial institution or institutional buyer or a dealer whether the purchaser is acting for itself or in a fiduciary capacity.

9. The issuance and delivery of securities in exchange for other securities of the same issuer pursuant to a right of conversion entitling the holder of the securities surrendered in exchange to make such conversion.

10. The issuance and delivery of securities of a corporation to the original incorporators, not exceeding ten in number, where the securities are not acquired by the incorporators for the purpose of sale to others and are not directly or indirectly sold to a third party within twenty-four months unless an incorporator experiences a bona fide change of financial circumstances within such time period, providing original incorporators are notified of their right pursuant to title 10 to review the financial books and records of the corporation at reasonable times.

11. A nonissuer transaction in an outstanding security, including the sale by a dealer, including an underwriter no longer acting as an underwriter in respect to the securities involved, of securities sold and distributed to the public, but not including securities constituting an unsold allotment to or subscription by the dealer as a participant in the distribution of the securities by the issuer or by or through an underwriter, if the class of security has been outstanding in the hands of the public for not less than ninety days preceding the date of the transaction and a recognized manual of securities designated by the commission by rule or order at the time of sale contains the names of the issuer's officers and directors, a statement of financial condition of the issuer as of a date within eighteen months of the date of the sale and a statement of income or operations for each of the two fiscal years next before the date of the statement of financial condition or for the period from the commencement of the issuer's existence to the date of the statement of financial condition if the period is less than two years.

12. The sale by a dealer, including an underwriter no longer acting as an underwriter in respect to the securities involved, of securities of an issue sold and distributed to the public, but not including securities constituting an unsold allotment to or subscription by the dealer as a participant in the distribution of the securities by the issuer or by or through an underwriter, if securities of such issue have been registered by description under sections 44-1871 through 44-1875 or registered by qualification under sections 44-1891 through 44-1902.

13. The sale of commodity investment contracts traded on a commodities exchange recognized by the commission at the time of sale.

14. The sale or issuance of any investment contract or other security in connection with an employee's pension, profit sharing, stock purchase, stock bonus, savings, thrift, stock option or other similar employee benefit plan that meets the requirements for qualification under the United States internal revenue code.

15. Transactions within the exclusive jurisdiction of the commodity futures trading commission as granted under the commodity exchange act.

16. Transactions involving the purchase of one or more precious metals THAT require, and under which the purchaser receives, within seven calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased by such payment. For the purposes of this paragraph, physical delivery is deemed to have occurred if, within such seven day period, the quantity of precious metals purchased by such payment is delivered, whether in specifically segregated or fungible bulk form, into the possession of a depository other than the seller which is a financial institution, a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission or a storage facility licensed or regulated by the United States or any agency of the United States and such depository or other person that qualifies as a depository issues and the purchaser receives a certificate, document of title, confirmation or other instrument evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, that have previously been disclosed to the purchaser. For the purposes of this paragraph, "financial institution" means a bank, savings institution or trust company organized under, or supervised pursuant to, the laws of the United States or of this state.

17. Transactions involving a commodity investment contract solely between persons engaged in producing, processing, using commercially or handling as merchants each commodity subject to the contract or any by-product.

18. A nonissuer transaction in an outstanding security, including the sale by a dealer, including an underwriter no longer acting as an underwriter in respect to the securities involved, of securities sold and distributed to the public, but not including securities constituting an unsold allotment to or subscription by the dealer as a participant in the distribution of the securities by the issuer or by or through an underwriter if both of the following apply:

(a) The class of security has been outstanding in the hands of the public for not less than ninety days preceding the date of the transaction.

(b) The securities are listed on an automated quotation system of a national securities association registered under the securities exchange act of 1934.

19. Transactions involving the sale of securities to persons who are not residents of this state and are not present in this state if all of the following conditions are met:

(a) The securities being offered are not blind pool offerings.

(b) At least ten days before the offering date:

(i) The issuer certifies that the securities being offered will be offered and sold in compliance with the securities act of 1933 and the laws and regulations of those states in which the offers and sales will be made.

(ii) The issuer files as a notice filing one copy of any offering materials that may be required by the SEC or the laws and rules of those states in which the offers and sales will be made.

(iii) The issuer submits a filing fee of two hundred dollars.

(c) Within ten working days of completion of the offering the issuer files a description of the actions taken as to compliance with the securities act of 1933 and the laws and rules of those states in which the offers and sales were made.

(d) The transaction complies with any rule adopted by the commission further restricting the exemption created by this paragraph to prevent any fraudulent practices.

20. Transactions involving offers or sales of one or more promissory notes directly secured by a first lien on a single parcel of real estate on which is located a dwelling or other residential or commercial structure and participation interest in those notes that are exempt under section 4(5) of the securities act of 1933.

B. Subsection A, paragraph 11 of this section does not apply to either of the following:

1. Sales by a dealer or salesman who is not registered in this state.

2. Solicited sales to or purchases from a resident of this state by a dealer who does not have, before the initial solicitation, a written new account form signed by the resident or a customer agreement signed by the resident and a previous sale or purchase of a security with the resident.

C. The commission may by order revoke or suspend the exemption under subsection A, paragraph 11 or 18 of this section with respect to any securities or the use of the exemption under subsection A, paragraph 11 of this section by any dealer if it finds that the further sale in this state of the securities or by the dealer would work, or tend to work, a fraud or deceit on the purchaser.

D. Sections 44-1841 and 44-1842, section 44-1843.02, subsections B and C and sections 44-3321 and 44-3325 do not apply to the offer or sale of a security by the issuer of the security if all of the following apply:

1. The issuer of the security is:

(a) A business entity organized under the laws of this state.

(b) Authorized to do business in this state.

(c) Doing business in this state pursuant to the securities act of 1933, 17 Code of Federal Regulations section 230.147(c).

2. The transaction meets the requirement of the federal exemption for intrastate offerings in the securities act of 1933 (15 United States Code section 77c(a)(11)) and 17 Code of Federal Regulations section 230.147.

3. The aggregate offering price of the securities complies with the following:

(a) If the issuer has not undergone and made available to each prospective purchaser and the commission the opinion letter and applicable documentation resulting from a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, the sum of all cash and other consideration to be received for all sales of securities in reliance on this exemption may not exceed one million dollars in a twelve-month period.

(b) If the issuer has undergone and made available to each prospective purchaser and the commission the opinion letter and applicable documentation resulting from a financial audit of its most recently completed fiscal year that complies with generally accepted accounting principles, the sum of all cash and other consideration to be received for all sales of securities in reliance on this exemption may not exceed two million five hundred thousand dollars in a twelve-month period.

(c) An offer or sale to an officer, director, partner, trustee or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent or more of the outstanding shares of any class or classes of securities of the issuer ~~may~~ DOES not count toward the monetary limitations prescribed in this paragraph.

4. All sales that are part of the same offering, made in reliance on this exemption, meet all of the terms and conditions of this exemption. Offers and sales that are made more than six months before the start of an offering or are made more than six months after completion of an offering may not be considered part of the offering if during those six-month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under this exemption, other than offers and sales to individuals identified in the disclosure document.

5. The issuer does not accept more than ten thousand dollars from any single purchaser unless the purchaser is an accredited investor as defined by the securities act of 1933, 17 Code of Federal Regulations section 230.501.

6. Unless waived by written consent of the director, not less than ten days before the commencement of an offering of securities, pursuant to this exemption, the issuer submits all of the following to the commission:

(a) A notice filing on a form prescribed by the commission.

(b) A copy of the disclosure document to be provided to prospective purchasers pursuant to paragraph 16 of this subsection.

(c) A copy of the escrow agreement entered into pursuant to paragraph 7 of this subsection.

(d) Any other documents or information the commission may require to administer and enforce this exemption.

7. All cash and other consideration paid for securities sold pursuant to an offering pursuant to this exemption are directed to and deposited into

a single escrow account maintained by a bank, credit union or other depository financial institution in this state that is authorized to do business in this state and that maintains deposit or share insurance on its deposits or shares. The escrow agent for the escrow account shall maintain the records necessary to obtain pass-through insurance for the escrowed funds. The commission may request information from the financial institution necessary to ensure compliance with this paragraph. Any information received by the commission is confidential and not subject to disclosure, unless the director authorizes the disclosure of the information as not contrary to the public interest. The bank, regulated trust company or corporate fiduciary, savings bank, savings and loan association or credit union in which the investor monies are deposited is only responsible to act at the direction of the party establishing the escrow agreement and does not have any duty or liability, contractual or otherwise, to any investor or other person.

8. Offers made pursuant to this exemption state a target offering amount and an offering deadline. The offering deadline may not be less than twenty-one days and not more than one year from the date the offer is made.

9. The sum of all cash and other consideration received and held in escrow, as required by paragraph 7 of this subsection, may not be less than eighty percent of the target offering amount on expiration of the offering deadline or the early closing of the offering, pursuant to paragraph 11 of this subsection, and if this requirement is not met the transaction is void and the escrow agent shall return all funds deposited into the escrow account to the purchasers.

10. A purchaser is permitted to cancel the purchaser's commitment to invest at any time before forty-eight hours before expiration of the offering deadline if notice of cancellation is delivered electronically or physically in writing to the individual or addresses identified in the disclosure document. If a purchaser is given notice of an early closing, pursuant to paragraph 11 of this subsection, the purchaser may cancel the commitment within seventy-two hours of delivery of the notice.

11. If an issuer closes an offering before the offering deadline, the issuer delivers notice of the closing to each purchaser pursuant to the notice provisions set forth in the disclosure document prescribed by paragraph 16 of this subsection and posts the notice conspicuously on each internet website on which the offer was posted, at least five days before the early closing.

12. Before or as a result of the offering, the issuer is not any of the following:

(a) An investment company, as defined by the investment company act of 1940 (15 United States Code section 80a-3~~(c)~~(a)).

(b) An entity that would be an investment company but for the exclusions provided in the Investment Company Act of 1940 (15 United States Code section 80a-3(c)).

(c) Subject to the reporting requirements of the securities exchange act of 1934 (15 United States Code section 78o(d)).

(d) A company that has not yet defined its business operations, that does not have a business plan or a stated investment goal for the funds being raised or that plans to engage in a merger or acquisition with an unspecified business entity.

13. The issuer informs all prospective purchasers of securities that the securities have not been registered under federal or state securities laws and that the securities are subject to limitations on resale. The issuer shall display the following notice on the cover page of the disclosure document in a conspicuous manner in at least twelve-point boldface type:

> In making an investment decision, investors shall 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 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 17 Code of Federal Regulations section 230.147(e) and the applicable state securities laws, pursuant to registration or exemption therefrom. Investors shall be aware that they will be required to bear the financial risks of this investment for an indefinite period of time.

14. The issuer requires 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 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.

15. The issuer obtains from each prospective purchaser evidence that the prospective purchaser is a resident of this state and, if applicable, is an accredited investor. A prospective purchaser's residence shall be determined in accordance with the securities act of 1933, 17 Code of Federal Regulations section 230.147(d). An affirmative representation made by an individual that the individual is a resident of this state and proof of at least one of the following is sufficient evidence that the individual is a resident of this state:

(a) A valid driver license or nonoperating identification license issued pursuant to title 28.

(b) A current voter registration for this state.

(c) General property tax records showing that the individual owns and occupies property in this state as the individual's principal residence.

16. The issuer shall provide a disclosure document to each prospective purchaser at the time the offer of securities is made that contains all of the following:

(a) A description of the company, its type of entity, the address and telephone number of its principal office, its history, its business plan and the intended use of the offering proceeds, including any amounts to be paid as compensation or otherwise to any owner, executive officer, director, managing member or other person occupying a similar status with the company or performing similar functions on behalf of the issuer.

(b) The identity of all persons owning more than ten percent of the ownership interests of any class of securities of the company.

(c) The identity of the executive officers, directors, managing members and other persons occupying a similar status or performing similar functions in the name of and on behalf of the issuer, including their titles and prior experience.

(d) The terms and conditions of the securities being offered and of any outstanding securities of the company.

(e) The offering deadline and the target offering amount.

(f) Any conditions on which the issuer may exercise its right to close an offering before the offering deadline, including the notice that will be provided to both purchasers and potential purchasers if the offering is closed before the offering deadline and the method in which the notice will be delivered.

(g) Either the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities.

(h) The price per share, unit or interest of the securities being offered.

(i) Any restrictions on transfer of the securities being offered.

(j) A disclosure of any anticipated future issuance of securities that might dilute the value of securities being offered.

(k) The identity of any person who has been or will be retained by the issuer to assist the issuer in conducting the offering and sale of the securities, including any internet website operator. This subdivision does not apply to persons acting solely as accountants, attorneys or employees whose primary job responsibilities involve operating the business of the issuer except that the identity of any person assisting the issuer in raising capital must be disclosed.

(l) A description of the consideration being paid to any person identified in subdivision (k) of this paragraph, for such assistance to the issuer.

(m) A description of any litigation, legal proceedings or pending regulatory action involving the company or its management.

(n) The names and addresses, including the uniform resource locator, of each internet website that the issuer will use to offer or sell securities pursuant to this exemption.

(o) The name of the individual and addresses to which purchasers may deliver cancellations pursuant to paragraph 10 of this subsection. Issuers shall provide the name of at least one individual with both an electronic and a physical address to which cancellations may be delivered.

(p) Current financial statements certified by the principal executive officer shall be true and complete in all material respects. If applicable, the documentation required by paragraph 3, subdivision (b) of this subsection shall also be provided.

(q) Any additional information material to the offering including, if appropriate, a written statement of significant factors that make the offering speculative or risky. This statement shall be concise and organized logically and shall not be limited to risks that could apply to any issuer or any offering.

17. The exemption is not used if an issuer or person affiliated with the issuer or offering is subject to disqualification pursuant to:

(a) This chapter.

(b) A rule or order of the commission.

(c) The securities act of 1933 (15 United States Code section 77c(a)(11)).

(d) The securities act of 1933, 17 Code of Federal Regulations section 230.262.

18. The commission may set aside disqualification if:

(a) On a showing of good cause and without prejudice to any other action by the commission, the commission determines that it is not necessary that an exemption be denied under the circumstances.

(b) The issuer establishes that it made a factual inquiry into whether any disqualification existed under this subsection but did not know and could not have known in the exercise of reasonable care that a disqualification existed. The nature and scope of the requisite inquiry will vary based on the circumstances of the subject issuer and the other offering participants.

19. The sale is made exclusively through one or more internet websites that are operated by THE ISSUER OF THE SECURITIES SOLD, a dealer who is registered pursuant to article 9 of this chapter or by a person who does not receive a commission or remuneration, directly or indirectly, for the offer or sale of the security and who makes a notice filing pursuant to paragraph 6 of this subsection. Each issuer and website operator shall comply with the following:

(a) Before any offer or sale of securities, the issuer shall provide to the website operator evidence that the issuer is organized under the laws of this state and is authorized to do business in this state.

(b) The website operator shall limit website access to the offer or sale of securities only to residents of this state.

(c) The website operator may not be a purchaser in any offering made pursuant to this exemption. THIS SUBDIVISION DOES NOT APPLY IF THE WEBSITE OPERATOR IS THE ISSUER OF THE SECURITIES OFFERED OR SOLD PURSUANT TO THIS EXEMPTION.

(d) The website operator may not hold an interest in or be affiliated with or under common control with any issuer making an offer or sale pursuant to this exemption. THIS SUBDIVISION DOES NOT APPLY IF THE WEBSITE OPERATOR IS THE ISSUER OF THE SECURITIES OFFERED OR SOLD PURSUANT TO THIS EXEMPTION.

(e) Before and throughout the term of any offering, the website operator shall give the commission access to the internet website on which any offering is made pursuant to this exemption.

(f) The issuer may distribute a limited notice stating that the issuer is conducting an offering pursuant to this exemption, the name of the website operator through which the offer is being conducted and a link directing potential purchasers to the internet website of the website operator. The notice shall contain a disclaimer that states that the offering is limited to residents of this state.

20. The issuer makes and keeps all accounts, correspondence, memoranda, papers, books and other records that the commission prescribes by rule or order. All required records shall be:

(a) Preserved for three years unless the commission prescribes otherwise for particular types of ~~record~~ RECORDS, by administrative rule or order.

(b) Maintained within this state, or at the request of the commission be made available at any time for examination by the commission in the issuer's principal office or by production of exact copies in this state.

21. The issuer provides, free of charge, a quarterly report to the issuer's purchasers until no securities issued under this exemption are outstanding. The issuer may satisfy this reporting requirement by making the information available on an internet website 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. The

1 issuer shall also provide a written copy of the report to any purchaser on
2 request. The report shall contain all of the following:
3 (a) Any compensation received by each director or executive officer,
4 including cash compensation earned since the previous report and on an annual
5 basis, any bonuses, stock options or other rights to receive securities of
6 the issuer or any affiliate of the issuer and payments that reduce personal
7 living expenses such as A company vehicle, free housing, meals or club dues.
8 (b) An analysis by the issuer's management of the business operations
9 and financial condition of the issuer.

APPROVED BY THE GOVERNOR MARCH 18, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 18, 2016.

Passed the House February 18, 2016

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

Speaker of the House

☐ Pro Tempore

Chief Clerk of the House

Passed the Senate March 16, 2016

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

18th day of March, 2016

at 11:16 o'clock P. M.

Secretary to the Governor

Approved this 18th day of

March

at 3:21 o'clock P M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 18 day of March, 2016

at 5:19 o'clock P M.

Secretary of State

H.B. 2302