

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

REREVISED

This Version Includes All Amendments

Adopted in the Second House

LLS NO. 15-0494.02 Thomas Morris x4218

HOUSE BILL 15-1246

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A BILL FOR AN ACT

101 **CONCERNING THE AUTHORIZATION OF CROWDFUNDING OF**
102 **INTRASTATE SECURITIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Current securities law restricts businesses' ability to raise capital through crowdfunding, which is the raising of money on-line through small contributions from a large number of investors. The bill enacts the "Colorado Crowdfunding Act" to facilitate crowdfunding by authorizing on-line intermediaries to match a Colorado investor with a Colorado business that wishes to sell securities (an "issuer") pursuant to a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
March 30, 2015

SENATE
2nd Reading Unamended
March 27, 2015

HOUSE
3rd Reading Unamended
March 17, 2015

HOUSE
2nd Reading Unamended
March 16, 2015

simplified regulatory regime, including the following:

- ! During any 12-month period:
 - ! The aggregate amount sold to any single investor cannot exceed \$5,000 unless the investor is an "accredited investor" as defined by the federal securities and exchange commission; and
 - ! The sum of all consideration paid for an issuer's securities cannot exceed \$1 million unless the issuer submits audited financial statements to the securities commissioner, in which case the cap is \$2 million;
- ! Issuers must:
 - ! Inform investors, in plain, nontechnical language, that the securities have not been registered pursuant to federal or state securities law and that the securities are subject to limitations on resale, and the investor must acknowledge the risks associated with the purchase; and
 - ! Provide a free quarterly report to investors that includes an analysis of the business operations and financial condition of the issuer and compensation to officers and directors, which report can simply be posted on the on-line intermediary's web site;
- ! On-line intermediaries cannot offer investment advice or handle investor funds or securities, and must:
 - ! Maintain records of securities transactions, which are subject to inspection by the division of securities; and
 - ! Be compensated only by a fixed amount for each offering, a variable amount based on the length of time that the securities are offered by the on-line intermediary, or a combination of the fixed and variable amounts.

Crowdfunding cannot begin until the securities commissioner adopts rules to implement the Act.

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

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

4 **11-51-308.5. Crowdfunding - intrastate offering of securities**
5 **- on-line intermediaries - rules - fees - short title - legislative**

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

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

4 (a) FINDS THAT:

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

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

11 (b) DETERMINES THAT:

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

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

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

20 (c) DECLARES THAT:

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

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

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

27 (C) THE ISSUER INTENDS TO USE AND USES AT LEAST EIGHTY

1 PERCENT OF THE PROCEEDS OF THE SALE OF SECURITIES IN COLORADO;
2 AND

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

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

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

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

1 REQUIREMENTS OF SUBSECTION (d) OF THE SECURITIES AND EXCHANGE
2 COMMISSION'S RULE 147, 17 CFR 230.147 (d).

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

10 (III) THE AGGREGATE AMOUNT SOLD TO ANY PURCHASER DURING
11 THE TWELVE-MONTH PERIOD PRECEDING THE DATE OF THE SALE MUST NOT
12 EXCEED FIVE THOUSAND DOLLARS UNLESS THE PURCHASER IS AN
13 ACCREDITED INVESTOR AS DEFINED BY THE SECURITIES AND EXCHANGE
14 COMMISSION'S RULE 501 OF REGULATION D, 17 CFR 230.501.

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

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

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

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

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

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

21 (F) ESTABLISH BOTH A MINIMUM AND A MAXIMUM OFFERING
22 AMOUNT, AND DEPOSIT ALL FUNDS RAISED FROM PURCHASERS PURSUANT
23 TO THE EXEMPTION PROVIDED BY THIS SECTION INTO AN ESCROW ACCOUNT
24 ESTABLISHED PURSUANT TO SUB-SUBPARAGRAPH (D) OF THIS
25 SUBPARAGRAPH (IV). THE MINIMUM ESTABLISHED MUST BE NOT LESS
26 THAN ONE-HALF OF THE MAXIMUM OFFERING AMOUNT. THE MAXIMUM
27 AMOUNT MUST NOT EXCEED THE LIMITATIONS SET FORTH IN

1 SUBPARAGRAPH (II) OF THIS PARAGRAPH (a). THE ISSUER SHALL NOT
2 ACCESS THE ESCROW FUNDS UNTIL THE AGGREGATE FUNDS RAISED FROM
3 ALL PURCHASERS EQUALS OR EXCEEDS THE MINIMUM AMOUNT. THE
4 ISSUER SHALL USE ALL FUNDS IN ACCORDANCE WITH REPRESENTATIONS
5 MADE TO PURCHASERS.

6 (V) THE ISSUER MUST NOT BE, EITHER BEFORE OR AS A RESULT OF
7 THE OFFERING, AN INVESTMENT COMPANY, AS DEFINED IN SECTION 3 OF
8 THE FEDERAL "INVESTMENT COMPANY ACT OF 1940", 15 U.S.C. SEC.
9 80a-3, AN ENTITY THAT WOULD BE AN INVESTMENT COMPANY BUT FOR
10 THE EXCLUSIONS PROVIDED IN SECTION 3 (c) OF THE FEDERAL
11 "INVESTMENT COMPANY ACT OF 1940", 15 U.S.C. SEC. 80a-3 (c), OR
12 SUBJECT TO THE REPORTING REQUIREMENTS OF SECTION 13 OR 15 (d) OF
13 THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934", 15 U.S.C. SEC. 78m
14 OR 78o (d).

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

25 THESE SECURITIES HAVE NOT BEEN REGISTERED
26 WITH, APPROVED BY, OR RECOMMENDED BY
27 ANY FEDERAL OR STATE AGENCY. IN MAKING AN

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

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

3 I UNDERSTAND AND ACKNOWLEDGE THAT I AM INVESTING
4 IN A HIGH-RISK, SPECULATIVE BUSINESS VENTURE. I MAY
5 LOSE ALL OF MY INVESTMENT, OR UNDER SOME
6 CIRCUMSTANCES MORE THAN MY INVESTMENT, AND I CAN
7 AFFORD THIS LOSS. THIS OFFERING HAS NOT BEEN REVIEWED
8 OR APPROVED BY ANY STATE OR FEDERAL SECURITIES
9 COMMISSION OR DIVISION OR OTHER REGULATORY
10 AUTHORITY AND NO SUCH PERSON OR AUTHORITY HAS
11 CONFIRMED THE ACCURACY OR DETERMINED THE
12 ADEQUACY OF ANY DISCLOSURE MADE TO ME RELATING TO
13 THIS OFFERING. THE SECURITIES I AM ACQUIRING IN THIS
14 OFFERING CANNOT BE READILY SOLD, ARE ILLIQUID, THERE
15 IS NO READY MARKET FOR THE SALE OF SUCH SECURITIES, IT
16 MAY BE DIFFICULT OR IMPOSSIBLE FOR ME TO SELL OR
17 OTHERWISE DISPOSE OF THIS INVESTMENT, AND,
18 ACCORDINGLY, I MAY BE REQUIRED TO HOLD THIS
19 INVESTMENT INDEFINITELY. I MAY BE SUBJECT TO TAX ON
20 MY SHARE OF THE TAXABLE INCOME AND LOSSES OF THE
21 COMPANY, WHETHER OR NOT I HAVE SOLD OR OTHERWISE
22 DISPOSED OF MY INVESTMENT OR RECEIVED ANY DIVIDENDS
23 OR OTHER DISTRIBUTIONS FROM THE COMPANY.

24 (VIII) THE ISSUER MUST OBTAIN FROM EACH PURCHASER OF A
25 SECURITY OFFERED PURSUANT TO THE EXEMPTION PROVIDED BY THIS
26 SECTION EVIDENCE THAT THE PURCHASER IS A RESIDENT OF COLORADO
27 OR, IF THE PURCHASER IS AN ENTITY, IS ORGANIZED PURSUANT TO THE

1 LAWS OF COLORADO AND, IF APPLICABLE, IS AN ACCREDITED INVESTOR.

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

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

15 (XI) ALL SALES PURSUANT TO AN OFFERING OR SINGLE PLAN OF
16 FINANCING PURSUANT TO THE EXEMPTION PROVIDED BY THIS SECTION
17 MUST MEET ALL OF THE TERMS AND CONDITIONS OF THIS SECTION. THE
18 EXEMPTION PROVIDED BY THIS SECTION SHALL NOT BE USED IN
19 CONJUNCTION WITH ANY OTHER EXEMPTION PURSUANT TO SECTION
20 11-51-307, 11-51-308, OR 11-51-309 DURING THE IMMEDIATELY
21 PRECEDING TWELVE-MONTH PERIOD.

22 (XII) THE EXEMPTION PROVIDED BY THIS SECTION IS NOT
23 AVAILABLE IF AN ISSUER OR A PERSON AFFILIATED WITH THE ISSUER OR
24 OFFERING IS SUBJECT TO DISQUALIFICATION ESTABLISHED BY THE
25 SECURITIES COMMISSIONER BY RULE OR CONTAINED IN THE SECURITIES
26 AND EXCHANGE COMMISSION'S RULE 506 (d) ADOPTED PURSUANT TO THE
27 FEDERAL "SECURITIES ACT OF 1933", 17 CFR 230.506 (d).

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

14 (A) COMPENSATION RECEIVED BY EACH DIRECTOR AND EXECUTIVE
15 OFFICER, INCLUDING CASH COMPENSATION EARNED SINCE THE PREVIOUS
16 REPORT AND ON AN ANNUAL BASIS AND ANY BONUSES, STOCK OPTIONS,
17 OTHER RIGHTS TO RECEIVE SECURITIES OF THE ISSUER OR ANY AFFILIATE
18 OF THE ISSUER, OR OTHER COMPENSATION RECEIVED; AND

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

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

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

27 (B) A LINK DIRECTING THE POTENTIAL INVESTOR TO THE ON-LINE

1 INTERMEDIARY'S OR BROKER-DEALER'S WEB SITE.

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

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

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

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

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

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

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

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

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

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

4 (II) AN ON-LINE INTERMEDIARY SHALL MAINTAIN RECORDS OF ALL
5 OFFERS OF SECURITIES EFFECTED THROUGH ITS WEB SITE AND SHALL
6 PROVIDE READY ACCESS TO THE RECORDS TO THE DIVISION, UPON
7 REQUEST. THE RECORDS OF AN ON-LINE INTERMEDIARY REQUIRED
8 PURSUANT TO THIS SUBPARAGRAPH (II) ARE SUBJECT TO THE REASONABLE
9 PERIODIC, SPECIAL, OR OTHER EXAMINATION OR INSPECTION BY A
10 REPRESENTATIVE OF THE SECURITIES COMMISSIONER, IN OR OUTSIDE
11 COLORADO, AS THE SECURITIES COMMISSIONER CONSIDERS NECESSARY OR
12 APPROPRIATE IN THE PUBLIC INTEREST AND FOR THE PROTECTION OF
13 PURCHASERS. AN EXAMINATION OR INSPECTION MAY BE MADE AT ANY
14 TIME AND WITHOUT PRIOR NOTICE. THE SECURITIES COMMISSIONER MAY
15 COPY, AND REMOVE FOR EXAMINATION OR INSPECTION COPIES OF, ALL
16 RECORDS THAT THE SECURITIES COMMISSIONER REASONABLY CONSIDERS
17 NECESSARY OR APPROPRIATE TO CONDUCT THE EXAMINATION OR
18 INSPECTION. THE SECURITIES COMMISSIONER MAY ASSESS A REASONABLE
19 CHARGE FOR CONDUCTING AN EXAMINATION OR INSPECTION PURSUANT TO
20 THIS SUBPARAGRAPH (II). THE SECURITIES COMMISSIONER MAY BY RULE
21 REQUIRE AN ON-LINE INTERMEDIARY TO:

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

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

27 (C) ESTABLISH WRITTEN SUPERVISORY PROCEDURES AND A

1 SYSTEM FOR APPLYING SUCH PROCEDURES THAT IS REASONABLY
2 EXPECTED TO PREVENT AND DETECT VIOLATIONS OF THIS ARTICLE.

3 (III) AN ON-LINE INTERMEDIARY SHALL:

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

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

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

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

19 (A) A FIXED AMOUNT FOR EACH OFFERING;

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

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

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

26 (VI) AN ON-LINE INTERMEDIARY SHALL NOT ENGAGE IN ANY
27 OTHER ACTIVITIES THAT THE SECURITIES COMMISSIONER, BY RULE,

1 DETERMINES ARE PROHIBITED BY THE ON-LINE INTERMEDIARY.

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

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

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

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

16 **SECTION 2.** In Colorado Revised Statutes, 11-51-201, **add**
17 (11.5) as follows:

18 **11-51-201. Definitions.** As used in this article, unless the context
19 otherwise requires:

20 (11.5) "ON-LINE INTERMEDIARY" MEANS A PERSON:

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

24 (b) WHO DOES NOT:

25 (I) OFFER INVESTMENT ADVICE OR RECOMMENDATIONS;

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

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

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

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

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

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

13 **11-51-402. Exempt broker-dealers, sales representatives -**
14 **sanctions - exempt investment advisers and investment adviser**
15 **representatives.** (1) The following broker-dealers are exempt from the
16 license requirement of SECTION 11-51-401 (1):

17 (a) A broker-dealer who is registered as a broker-dealer under the
18 federal "Securities Exchange Act of 1934" and has no place of business
19 in this state if the business transacted in this state as a broker-dealer is
20 exclusively with the following:

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

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

26 (c) AN ON-LINE INTERMEDIARY OPERATING PURSUANT TO SECTION
27 11-51-308.5.

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