
A BILL FOR AN ACT

RELATING TO CROWDFUNDING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that crowdfunding is an
2 emerging alternative means of raising capital that allows the
3 general public the opportunity to diversify investments through
4 encouraging partial ownership of local small businesses.
5 Traditionally only institutional or accredited wealthy investors
6 could participate in equity funding of small startup companies.
7 Since the introduction of the United States Jobs Act and
8 subsequent adoption of rules by the Securities and Exchange
9 Commission, states may now allow the general public to invest in
10 startup companies, provided certain investor safeguards are in
11 place. The legislature further finds that crowdfunding will
12 place Hawaii on the forefront of innovation by accelerating the
13 growth of local companies through engagement of the general
14 public in crowdfunding utilizing internet based funding portals
15 and registered broker-dealers.

16 The purpose of this Act is to establish a crowdfunding
17 exemption and funding portal for limited intrastate investments



1 between Hawaii residents and Hawaii businesses, not to exceed
2 \$1,000,000 raised over a twelve month period or \$100,000 per
3 investor.

4 SECTION 2. Section 485A-102, Hawaii Revised Statutes, is
5 amended by adding a new definition to be appropriately inserted
6 and to read as follows:

7 "Crowdfunding portal" means an internet website utilized
8 to offer and sell securities exempt for the purposes of
9 crowdfunding that shall be an entity incorporated or organized
10 under the laws of Hawaii, authorized to do business in Hawaii,
11 engaged exclusively in intrastate offers and sales of securities
12 in Hawaii, and does not operate or facilitate a secondary market
13 in securities.

14 "Registered broker-dealer" means an intermediary that is
15 registered with the Securities and Exchange Commission for the
16 purpose of buying or selling securities for startups and
17 businesses."

18 SECTION 3. Section 485A-202, Hawaii Revised Statutes, is
19 amended by amending subsections (a) and (b) to read as follows:



1 "§485A-202 Exempt transactions. (a) The following
2 transactions are exempt from the requirements of sections 485A-
3 301 to 485A-305 and 485A-504:

4 (1) An isolated nonissuer transaction, whether or not
5 effected by or through a broker-dealer;

6 (2) A nonissuer transaction by or through a broker-dealer
7 registered or exempt from registration under this
8 chapter, and a resale transaction by a sponsor of a
9 unit investment trust registered under the Investment
10 Company Act of 1940, in a security of a class that has
11 been outstanding in the hands of the public for at
12 least ninety days, if, at the date of the transaction:

13 (A) The issuer of the security is engaged in
14 business, the issuer is not in the organizational
15 stage or in bankruptcy or receivership, and the
16 issuer is not a blank check, blind pool, or shell
17 company that has no specific business plan or
18 purpose or has indicated that its primary
19 business plan is to engage in a merger or
20 combination of the business with, or an
21 acquisition of, an unidentified person;



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- 1 (B) The security is sold at a price reasonably
- 2 related to its current market price;
- 3 (C) The security does not constitute the whole or
- 4 part of an unsold allotment to, or a subscription
- 5 or participation by, the broker-dealer as an
- 6 underwriter of the security or a redistribution;
- 7 (D) A nationally recognized securities manual or its
- 8 electronic equivalent designated by rule adopted
- 9 or order issued under this chapter or a record
- 10 filed with the Securities and Exchange Commission
- 11 that is publicly available and contains:
- 12 (i) A description of the business and operations
- 13 of the issuer;
- 14 (ii) The names of the issuer's executive officers
- 15 and the names of the issuer's directors, if
- 16 any;
- 17 (iii) An audited balance sheet of the issuer as of
- 18 a date within eighteen months before the
- 19 date of the transaction or, in the case of a
- 20 reorganization or merger when the parties to
- 21 the reorganization or merger each had an



1 audited balance sheet, a pro forma balance
2 sheet for the combined organization; and
3 (iv) An audited income statement for each of the
4 issuer's two immediate previous fiscal years
5 or for the period of existence of the
6 issuer, whichever is shorter, or, in the
7 case of a reorganization or merger when each
8 party to the reorganization or merger had
9 audited income statements, a pro forma
10 income statement; and

11 (E) Any one of the following requirements is met:

12 (i) The issuer of the security has a class of
13 equity securities listed on a national
14 securities exchange registered under section
15 6 of the Securities Exchange Act of 1934 or
16 designated for trading on the National
17 Association of Securities Dealers' Automated
18 Quotation System;

19 (ii) The issuer of the security is a unit
20 investment trust registered under the
21 Investment Company Act of 1940;



- 1 (iii) The issuer of the security, including its
- 2 predecessors, has been engaged in continuous
- 3 business for at least three years; or
- 4 (iv) The issuer of the security has total assets
- 5 of at least \$2,000,000 based on an audited
- 6 balance sheet as of a date within eighteen
- 7 months before the date of the transaction
- 8 or, in the case of a reorganization or
- 9 merger when the parties to the
- 10 reorganization or merger each had such an
- 11 audited balance sheet, a pro forma balance
- 12 sheet for the combined organization;
- 13 (3) A nonissuer transaction by or through a broker-dealer
- 14 registered or exempt from registration under this
- 15 chapter in a security of a foreign issuer that is a
- 16 margin security defined in regulations or rules
- 17 adopted by the Board of Governors of the Federal
- 18 Reserve System;
- 19 (4) A nonissuer transaction by or through a broker-dealer
- 20 registered or exempt from registration under this
- 21 chapter in an outstanding security if the guarantor of



1 the security files reports with the Securities and
2 Exchange Commission under the reporting requirements
3 of section 13 or 15(d) of the Securities Exchange Act
4 of 1934 (15 U.S.C. 78m or 78o(d));

5 (5) A nonissuer transaction by or through a broker-dealer
6 registered or exempt from registration under this
7 chapter in a security that:

8 (A) Is rated at the time of the transaction by a
9 nationally recognized statistical rating
10 organization in one of its four highest rating
11 categories; or

12 (B) Has a fixed maturity or a fixed interest or
13 dividend, if:

14 (i) A default has not occurred during the
15 current fiscal year or within the three
16 previous fiscal years or during the
17 existence of the issuer and any predecessor
18 if less than three fiscal years, in the
19 payment of principal, interest, or dividends
20 on the security; and



- 1 (ii) The issuer is engaged in business, is not in
2 the organizational stage or in bankruptcy or
3 receivership, and is not and has not been
4 within the previous twelve months a blank
5 check, blind pool, or shell company that has
6 no specific business plan or purpose or has
7 indicated that its primary business plan is
8 to engage in a merger or combination of the
9 business with, or an acquisition of, an
10 unidentified person;
- 11 (6) A nonissuer transaction by or through a broker-dealer
12 registered or exempt from registration under this
13 chapter effecting an unsolicited order or offer to
14 purchase;
- 15 (7) A nonissuer transaction executed by a bona fide
16 pledgee without the purpose of evading this chapter;
- 17 (8) A nonissuer transaction by a federal covered
18 investment adviser with investments under management
19 in excess of \$100,000,000, acting in the exercise of
20 discretionary authority in a signed record for the
21 account of others;



- 1 (9) A transaction between the issuer or other person on
- 2 whose behalf the offering is made and an underwriter,
- 3 or among underwriters;
- 4 (10) A transaction in a note, bond, debenture, or other
- 5 evidence of indebtedness secured by a mortgage or
- 6 other security agreement if:
- 7 (A) The note, bond, debenture, or other evidence of
- 8 indebtedness is offered and sold with the
- 9 mortgage or other security agreement as a unit;
- 10 (B) A general solicitation or general advertisement
- 11 of the transaction is not made; and
- 12 (C) A commission or other remuneration is not paid or
- 13 given, directly or indirectly, to a person not
- 14 registered under this chapter as a broker-dealer
- 15 or as an agent;
- 16 (11) A transaction by an executor, administrator of an
- 17 estate, personal representative, sheriff, marshal,
- 18 receiver, trustee in bankruptcy, guardian, or
- 19 conservator;
- 20 (12) A sale or offer to sell to:
- 21 (A) An institutional investor;



- 1 (B) A federal covered investment adviser; or
- 2 (C) Any other person exempted by rule adopted or
- 3 order issued under this chapter;
- 4 (13) Any transaction pursuant to a sale or an offer to sell
- 5 securities of an issuer, if the transaction is part of
- 6 an issue in which:
 - 7 (A) There are no more than twenty-five purchasers
 - 8 (other than those designated in paragraph (12)),
 - 9 wherever located, during any twelve consecutive
 - 10 months;
 - 11 (B) The issuer reasonably believes that all
 - 12 purchasers (other than those designated in
 - 13 paragraph (12)), wherever located, are purchasing
 - 14 for investment purposes and not with the view to,
 - 15 or for sales in connection with, a distribution
 - 16 of the security. The purchase shall be presumed
 - 17 to be made with a view to distribute and not to
 - 18 invest if any resale of a security sold in
 - 19 reliance on this exemption is within twelve
 - 20 months of sale, except a resale pursuant to a
 - 21 registration statement effective under section



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- 1 485A-301, or to an accredited investor pursuant
2 to an exemption available under this chapter;
- 3 (C) No commission, discount, or other remuneration is
4 paid or given, directly or indirectly, to a
5 person, other than a broker-dealer or agent
6 registered under this chapter, for soliciting a
7 prospective purchaser in this State; and
- 8 (D) The securities of the issuer are not offered or
9 sold by general solicitation or any general
10 advertisement or other advertising medium;
- 11 (14) A transaction under an offer to existing security
12 holders of the issuer, including persons who at the
13 date of the transaction are holders of convertible
14 securities, options, or warrants, if a commission or
15 other remuneration, other than a standby commission,
16 is not paid or given, directly or indirectly, for
17 soliciting a security holder in this State;
- 18 (15) (A) A transaction involving the offer or sale of a
19 security by an issuer to an accredited investor
20 that meets the following requirements:



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- 1 (i) The issuer reasonably believes that the sale
- 2 is to persons who are accredited investors;
- 3 (ii) The issuer is not in the development stage,
- 4 without specific business plan or purpose;
- 5 (iii) The issuer has not indicated that the
- 6 issuer's business plan is to engage in a
- 7 merger or acquisition with an unidentified
- 8 company or companies, or other entity or
- 9 person; and
- 10 (iv) The issuer reasonably believes that all
- 11 purchasers are purchasing for investment
- 12 purposes and not with the view to, or for
- 13 sales in connection with, a distribution of
- 14 the security. The purchase shall be
- 15 presumed to be made with a view to
- 16 distribute and not to invest if any resale
- 17 of a security sold in reliance on this
- 18 exemption is within twelve months of sale,
- 19 except a resale pursuant to a registration
- 20 statement effective under section 485A-301,



1 or to an accredited investor pursuant to an
2 exemption available under this chapter;

3 (B) The exemption under this paragraph shall not
4 apply to an issuer if the issuer; any affiliated
5 issuer; any beneficial owner of ten per cent or
6 more of any class of the issuer's equity
7 securities; any issuer's predecessor, director,
8 officer, general partner, or promoter presently
9 connected in any capacity with the issuer; and
10 any underwriter or partner, director, or officer
11 of the underwriter of the securities to be
12 offered:

13 (i) Within the last five years has filed a
14 registration statement that is the subject
15 of a currently effective registration stop
16 order entered by any state securities
17 administrator or the Securities and Exchange
18 Commission;

19 (ii) Within the last five years has been
20 convicted of any criminal offense in
21 connection with the offer, purchase, or sale



1 of any security, or involving fraud or
2 deceit;

3 (iii) Is currently subject to any state or federal
4 administrative enforcement order or judgment
5 entered within the last five years, finding
6 fraud or deceit in connection with the
7 purchase or sale of any security; or

8 (iv) Is currently subject to any order, judgment,
9 or decree of any court of competent
10 jurisdiction, entered within the last five
11 years, temporarily, preliminarily, or
12 permanently restraining or enjoining such
13 party from engaging in or continuing to
14 engage in any conduct or practice involving
15 fraud or deceit in connection with the
16 purchase or sale of any security;

17 (C) Subparagraph (B) shall not apply if:

18 (i) The party subject to the disqualification is
19 licensed or registered to conduct
20 securities-related business in the state in
21 which the order, judgment, or decree



1 creating the disqualification was entered
2 against such party;

3 (ii) Before the first offer under this exemption,
4 the commissioner, or the court or regulatory
5 authority that entered the order, judgment,
6 or decree waives the disqualifications; or

7 (iii) The issuer establishes that the issuer did
8 not know and in the exercise of reasonable
9 care, based on a factual inquiry, could not
10 have known that a disqualification existed
11 under this paragraph; and

12 (D) An issuer claiming the exemption under this
13 paragraph, no later than fifteen days after the
14 first sale in this State, shall file with the
15 commissioner a notice of transaction, a consent
16 to service of process, a copy of the offering
17 circular or similar document provided to the
18 accredited investor and a \$200 filing fee.

19 For the purposes of this paragraph, "accredited
20 investor" shall have the same meaning as provided in



1 rule 501(a) adopted under the Securities Act of 1933
2 (17 C.F.R. 230.501(a));

3 (16) An offer to sell, but not a sale, of a security not
4 exempt from registration under the Securities Act of
5 1933 if:

6 (A) A registration or offering statement or similar
7 record as required under the Securities Act of
8 1933 has been filed, but is not effective, or the
9 offer is made in compliance with Rule 165 adopted
10 under the Securities Act of 1933 (17 C.F.R.
11 230.165); and

12 (B) A stop order of which the offeror is aware has
13 not been issued against the offeror by the
14 commissioner or the Securities and Exchange
15 Commission, and an audit, inspection, or
16 proceeding that is public and that may culminate
17 in a stop order is not known by the offeror to be
18 pending;

19 (17) An offer to sell, but not a sale, of a security exempt
20 from registration under the Securities Act of 1933 if:



- 1 (A) A registration statement has been filed under
- 2 this chapter, but is not effective;
- 3 (B) A solicitation of interest is provided in a
- 4 record to offerees in compliance with a rule
- 5 adopted by the commissioner under this chapter;
- 6 and
- 7 (C) A stop order of which the offeror is aware has
- 8 not been issued by the commissioner under this
- 9 chapter and an audit, inspection, or proceeding
- 10 that may culminate in a stop order is not known
- 11 by the offeror to be pending;
- 12 (18) A transaction involving the distribution of the
- 13 securities of an issuer to the security holders of
- 14 another person in connection with a merger,
- 15 consolidation, exchange of securities, sale of assets,
- 16 or other reorganization to which the issuer, or its
- 17 parent or subsidiary and the other person, or its
- 18 parent or subsidiary, are parties;
- 19 (19) A rescission offer, sale, or purchase under section
- 20 485A-510;



1 (20) An offer or sale of a security to a person not a
2 resident of this State and not present in this State
3 if the offer or sale does not constitute a violation
4 of the laws of the state or foreign jurisdiction in
5 which the offeree or purchaser is present and is not
6 part of an unlawful plan or scheme to evade this
7 chapter;

8 (21) Employees' stock purchase, savings, option, profit-
9 sharing, pension, or similar employees' benefit plan,
10 including any securities, plan interests, and
11 guarantees issued under a compensatory benefit plan or
12 compensation contract, contained in a record,
13 established by the issuer, its parents, its majority-
14 owned subsidiaries, or the majority-owned subsidiaries
15 of the issuer's parent for the participation of their
16 employees, including offers or sales of such
17 securities to:

18 (A) Directors; general partners; trustees, if the
19 issuer is a business trust; officers;
20 consultants; and advisors;



1 (B) Family members who acquire the securities from
2 those persons through gifts or domestic relations
3 orders;

4 (C) Former employees, directors, general partners,
5 trustees, officers, consultants, and advisors if
6 those individuals were employed by or providing
7 services to the issuer when the securities were
8 offered; and

9 (D) Insurance agents who are exclusive insurance
10 agents of the issuer, or the issuer's
11 subsidiaries or parents, or who derive more than
12 fifty per cent of their annual income from those
13 organizations;

14 (22) A transaction involving:

15 (A) A stock dividend or equivalent equity
16 distribution, whether or not the corporation or
17 other business organization distributing the
18 dividend or equivalent equity distribution is the
19 issuer, if nothing of value is given by
20 stockholders or other equity holders for the
21 dividend or equivalent equity distribution other



1 than the surrender of a right to a cash or
2 property dividend if each stockholder or other
3 equity holder may elect to take the dividend or
4 equivalent equity distribution in cash, property,
5 or stock;

6 (B) An act incident to a judicially approved
7 reorganization in which a security is issued in
8 exchange for one or more outstanding securities,
9 claims, or property interests, or partly in such
10 exchange and partly for cash; or

11 (C) The solicitation of tenders of securities by an
12 offeror in a tender offer in compliance with Rule
13 162 adopted under the Securities Act of 1933 (17
14 C.F.R. 230.162);

15 (23) A nonissuer transaction in an outstanding security by
16 or through a broker-dealer registered or exempt from
17 registration under this chapter, if the issuer is a
18 reporting issuer in a foreign jurisdiction designated
19 by this paragraph or by rule adopted or order issued
20 under this chapter; has been subject to continuous
21 reporting requirements in the foreign jurisdiction for



1 not less than one hundred eighty days before the
2 transaction; and the security is listed on the foreign
3 jurisdiction's securities exchange that has been
4 designated by this paragraph or by rule adopted or
5 order issued under this chapter, or is a security of
6 the same issuer that is of senior or substantially
7 equal rank to the listed security or is a warrant or
8 right to purchase or subscribe to any of the
9 foregoing. For purposes of this paragraph, Canada,
10 together with its provinces and territories, is a
11 designated foreign jurisdiction and the Toronto Stock
12 Exchange, Inc., is a designated securities exchange.
13 After an administrative hearing in accordance with
14 chapter 91, the commissioner, by rule adopted or order
15 issued under this chapter, may revoke the designation
16 of a securities exchange under this paragraph, if the
17 commissioner finds that revocation is necessary or
18 appropriate in the public interest and for the
19 protection of investors;

20 (24) Any offer or sale by or through a real estate broker
21 or real estate salesperson licensed under the laws of



1 this State, of a security issued on or after July 1,
2 1961, by a corporation organized under the laws of
3 this State, the holder of which is entitled solely by
4 reason of the holder's ownership thereof, to occupy
5 for dwelling purposes a house, or an apartment in a
6 building, owned or leased by such corporation;
7 provided that the issuer of the security shall apply
8 for the exemption to the commissioner on such form and
9 containing such information as the commissioner may
10 prescribe. If the commissioner finds that the
11 business applicant's proposed plan and the proposed
12 issuance of securities are fair, just, and equitable,
13 that the applicant intends to transact its business
14 fairly and honestly, and that the securities that the
15 applicant proposes to issue and the method to be used
16 by the applicant in issuing or disposing of the
17 securities will not, in the opinion of the
18 commissioner, work a fraud upon the purchaser thereof,
19 the commissioner shall issue to the applicant a permit
20 authorizing the applicant to issue and dispose of the
21 securities in this State in the manner provided herein



1 and in such amounts and for such consideration as the
2 commissioner may provide in the permit. Otherwise,
3 the commissioner shall deny the application and refuse
4 the permit and notify the applicant of the decision in
5 writing, subject to appeal as provided in section
6 485A-609. In any permit issued under this paragraph,
7 the commissioner may require the deposit in escrow or
8 impoundment of any or all securities, the proceeds
9 from the sale thereof, approval of advertising
10 material, and any of the conditions as set forth in
11 section 485A-304(f). The commissioner may act as
12 escrow holder for securities required to be deposited
13 in escrow by the commissioner's order or as a
14 necessary signatory on any account in which impounded
15 proceeds from the sale of escrowed securities are
16 deposited;

17 (25) Any offer or sale by or through a real estate broker
18 or real estate salesperson licensed under the laws of
19 this State of an apartment or unit in a condominium
20 project, and a rental management contract relating to
21 the apartment or unit, including an interest in a



1 partnership formed for the purpose of managing the
2 rental of apartments or units if the rental management
3 contract or the interest in the partnership is offered
4 at the same time as the apartment or unit is offered.

5 For the purposes of this paragraph, the terms
6 "apartment", "unit", "condominium", and "project"
7 shall have the meanings prescribed in section 514A-3
8 or 514B-3; and

9 (26) Any transaction not involving a public offering within
10 the meaning of section 4(2) of the Securities Act of
11 1933 (15 U.S.C. 77d), but not including any
12 transaction specified in the rules and regulations
13 thereunder.

14 (27) An offer or sale of a security by an issuer, if the
15 offer or sale meets all of the following requirements:

16 (A) The issuer of the security is an entity that is
17 incorporated or organized under the laws of this
18 State and is authorized to do business in this
19 State;

20 (B) The issuance of securities on the crowdfunding
21 portal or through a registered broker-dealer



1 meets the requirements for the federal exemption
2 for intrastate offerings under section 4(a)(6) of
3 the Securities and Exchange Act of 1933, and
4 section 12(g) of the Securities and Exchange Act
5 of 1934 including, but not limited to, the
6 requirements for determining whether an offeree
7 or purchaser is a resident of this State, and the
8 requirement that all transactions must occur
9 through either a registered broker-dealer or
10 crowdfunding portal.

11 (i) Broker-dealers and crowdfunding portals

12 shall:

13 (a) Provide investors with educational
14 materials;

15 (b) Take measures to reduce risk of fraud;

16 (c) Make information available about the
17 issuer and offering;

18 (d) Provide communication channels for
19 discussions of offerings;

20 (e) Facilitate the offer and sale of
21 securities; and



- 1 (f) Confirm Hawaii state residency
- 2 requirements for all users.
- 3 (ii) Broker dealers and crowdfunding portals
- 4 shall not:
- 5 (a) Give investment advice or
- 6 recommendations of offerings;
- 7 (b) Solicit purchases, sales, or offers;
- 8 (c) Compensate promoters; or
- 9 (d) Hold, possess or handle investor funds.
- 10 (C) For a period of twelve months from the date of
- 11 the last sale by the issuer of securities offered
- 12 in reliance on this exemption, all resales of any
- 13 part of the issue, by any person, shall be made
- 14 only to persons residing within this State and
- 15 shall be in compliance with Rule 147 adopted
- 16 under the Securities Act of 1933 (17 C.F.R.
- 17 230.147);
- 18 (D) The sum of all cash and other consideration to be
- 19 received for all sales of the security in
- 20 reliance on this exemption does not exceed
- 21 \$1,000,000, less the aggregate amount received



1 for all sales of securities by the issuer within
2 the twelve months before the first offer or sale
3 made in reliance on this exemption;

4 (E) The aggregate amount sold to any investor by any
5 one issuer during the twelve-month period
6 preceding the date of such transaction shall not
7 exceed:

8 (i) Two thousand dollars or five percent of the
9 annual income or net worth of the investor,
10 whichever is more, if either the annual
11 income or the net worth of the investor is
12 less than one hundred thousand dollars; and

13 (ii) One hundred thousand dollars or ten percent
14 of the annual income or net worth of such
15 investor, whichever is less, if either the
16 annual income or net worth of the investor
17 is one hundred thousand dollars or more.

18 (F) At least ten days before an offer of securities
19 is made in reliance on this exemption, the issuer
20 files a notice with the commissioner, in writing



1 or in electronic form as specified by the
2 commissioner, that contains all of the following:

3 (i) A notice of claim of exemption from
4 registration, specifying that the issuer
5 intends to conduct an offering in reliance
6 on this exemption, accompanied by the filing
7 fee specified in this section;

8 (ii) A copy of the disclosure statement required
9 to be provided to each prospective purchaser
10 under subparagraph (a) (27) (G); and

11 (iii) An escrow agreement with a bank or other
12 depository institution located in this
13 state, in which the purchaser funds will be
14 deposited, that provides that all offering
15 proceeds will be released to the issuer only
16 when the aggregate capital raised from all
17 purchasers is equal to or greater than the
18 minimum target offering amount specified in
19 the disclosure statement as necessary to
20 implement the business plan and that all
21 purchasers will receive a return of their



1 subscription funds if that target offering
2 amount is not raised by the time stated in
3 the disclosure statement. The bank or other
4 depository institution may contract with the
5 issuer to collect reasonable fees for its
6 escrow services regardless of whether the
7 target offering amount is reached;

8 (G) The issuer shall provide a copy of the disclosure
9 statement provided to the commissioner under
10 subparagraph (F)(ii) to each prospective
11 purchaser at the time the offer of securities is
12 made to the prospective purchaser in connection
13 with the offering. The disclosure statements
14 shall include the following information:

15 (i) A description of the issuer, including its
16 type of entity, the address and telephone
17 number of its principal office, its
18 formation history, its business plan, and
19 the intended use of the offering proceeds,
20 including any amounts to be paid, as
21 compensation or otherwise, to any owner,



- 1 executive officer, director, managing
- 2 member, or other person occupying a similar
- 3 status or performing similar functions on
- 4 behalf of the issuer;
- 5 (ii) The identity of each person who owns more
- 6 than ten per cent of the ownership interests
- 7 of any class of securities of the issuer;
- 8 (iii) The identity of the executive officers,
- 9 directors, and managing members of the
- 10 issuer, and any other individuals who occupy
- 11 similar status or perform similar functions
- 12 in the name of and on behalf of the issuer,
- 13 including their titles and their prior
- 14 experience;
- 15 (iv) The terms and conditions of the securities
- 16 being offered and of any outstanding
- 17 securities of the issuer, the minimum and
- 18 maximum amount of securities being offered,
- 19 if any, and either the percentage ownership
- 20 of the issuer represented by the offered
- 21 securities or the valuation of the issuer



1 implied by the price of the offered
2 securities;

3 (v) The identity of any person whom the issuer
4 has retained or intends to retain to assist
5 the issuer in conducting the offering and
6 sale of the securities, including such
7 person's Financial Industry Regulatory
8 Authority, Inc., central registration
9 depository number, but excluding any person
10 acting solely as an accountant or attorney
11 and any employees whose primary job
12 responsibilities involve operating the
13 business of the issuer rather than assisting
14 the issuer in raising capital, and for each
15 person identified in response to this
16 clause, a description of the consideration
17 being paid to that person for that
18 assistance;

19 (vi) A description of any litigation or legal
20 proceedings involving the issuer or its
21 management;



- 1 (vii) The name and address of any website that the
2 issuer intends to use in connection with the
3 offering, including its uniform resource
4 locator or URL. If the issuer has not used a
5 website described in this clause at the time
6 the issuer files the disclosure statement
7 with the commissioner under this paragraph,
8 but subsequently does use a website for use
9 in connection with the offering, the issuer
10 shall provide the information described in
11 this subparagraph to the commissioner by
12 filing a supplemental notice; and
- 13 (viii) Additional information material to the
14 offering, including, a discussion of
15 significant factors that make the offering
16 speculative or risky. This discussion shall
17 be concise and organized logically and
18 should not present risks that could apply to
19 any issuer or any offering;
- 20 (H) The issuer informs each prospective purchaser
21 that the securities are not registered under



1 federal or state securities laws and that the
2 securities are subject to limitations on transfer
3 or resale and displays the following legend
4 conspicuously on the cover page of the disclosure
5 statement:

6 "IN MAKING AN INVESTMENT DECISION, PURCHASERS
7 MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER
8 AND THE TERMS OF THE OFFERING, INCLUDING THE
9 MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE
10 **NOT** BEEN RECOMMENDED BY ANY FEDERAL OR STATE
11 SECURITIES COMMISSION OR REGULATORY AUTHORITY.

12 FURTHERMORE, THE FOREGOING AUTHORITIES HAVE **NOT**
13 CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY
14 OF THIS DOCUMENT. ANY REPRESENTATION TO THE
15 CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES
16 ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY
17 AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD
18 EXCEPT AS PERMITTED BY SUBSECTION (E) OF RULE 147
19 (17 CFR 230.147(E)), AS PROMULGATED UNDER THE
20 SECURITIES ACT OF 1933, AS AMENDED, AND THE
21 APPLICABLE STATE SECURITIES LAWS, PURSUANT TO



1 REGISTRATION OR EXEMPTION THEREFROM. **PURCHASERS**
2 **SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO**
3 **BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR**
4 **AN INDEFINITE PERIOD OF TIME."**;

5 (I) The issuer requires each purchaser to certify in
6 writing, and to include as part of that
7 certification the purchaser's signature, and the
8 purchaser's initials next to each paragraph of
9 the certification, as follows:

10 "I understand and acknowledge that: **I am**
11 **investing in a high-risk, speculative business**
12 **venture. I may lose all of my investment, and I**
13 **can afford the loss of my investment. This**
14 offering has **not** been reviewed or approved by any
15 state or federal securities commission or other
16 regulatory authority and no regulatory authority
17 has confirmed the accuracy or determined the
18 adequacy of any disclosure made to me relating to
19 this offering. The securities I am acquiring in
20 this offering are illiquid, the securities are
21 subject to possible dilution, there is no ready



1 market for the sale of those securities, it may
2 be difficult or impossible for me to sell or
3 otherwise dispose of this investment, and
4 accordingly, I may be required to hold this
5 investment indefinitely. I may be subject to tax
6 on my share of the taxable income and losses of
7 the issuer, whether or not I have sold or
8 otherwise disposed of my investment or received
9 any dividends or other distributions from the
10 issuer.";

11 (J) Issuers may disseminate information through a
12 website in a manner that is in compliance with
13 section 3(a)(11) of the Securities Act of 1933
14 (15 U.S.C. 77c(a)(11)) and Rule 147 adopted under
15 the Securities Act of 1933 (17 C.F.R. 230.147);

16 (K) All payments for the purchase of securities are
17 directed to and held by the bank or depository
18 institution subject to the provisions of
19 subparagraph (a)(27)(F)(iii);

20 (L) Offers or sales of a security are not made
21 through an internet website unless the website



- 1 has filed the written notice required under
2 subparagraph (F) with the commissioner;
- 3 (M) No commission, discount, or other remuneration is
4 paid or given, directly or indirectly, to a
5 person, other than a broker-dealer or agent
6 registered under this chapter, for soliciting a
7 prospective purchaser;
- 8 (N) The term of the offering does not exceed twelve
9 months from the date of the first offer;
- 10 (O) The issuer is not, either before or as a result
11 of the offering, an investment company, as
12 defined in section 3 of the Investment Company
13 Act of 1940 (15 U.S.C 80a-3), or an entity that
14 would be an investment company but for the
15 exclusions provided in subsection (c) of that
16 section, or subject to the reporting requirements
17 of section 13 or 15(d) of the Securities Exchange
18 Act of 1934 (15 U.S.C 78m and 78o(d));
- 19 (P) The issuer shall provide a quarterly report to
20 the issuer's purchasers until none of the
21 securities issued under this paragraph are



1 outstanding. All of the following apply to the
2 quarterly report described in this subparagraph:

3 (i) The issuer shall provide the report free of
4 charge to the purchasers;

5 (ii) An issuer may satisfy the report requirement
6 under this paragraph by making the
7 information available on an internet website
8 if the information is made available within
9 forty-five days after the end of each fiscal
10 quarter and remains available until the next
11 quarterly report is issued;

12 (iii) The issuer shall file each report with the
13 commissioner and shall provide a written
14 copy of the report to any purchaser on
15 request; and

16 (iv) The report shall include the compensation
17 received by each director and executive
18 officer of the issuer, including cash
19 compensation earned since the previous
20 report and on an annual basis and any
21 bonuses, stock options, other rights to



1 receive securities of the issuer or any
2 affiliate of the issuer, or other
3 compensation received, as well as an
4 analysis by management of the issuer of the
5 business operations and financial condition
6 of the issuer, including but not limited to,
7 annual tax returns and audited financial
8 reports;

9 (Q) The exemption provided in this paragraph shall
10 not be used in conjunction with any other
11 exemption under this article, except offers and
12 sales to officers, directors, partners, trustees,
13 or other individuals who have similar status or
14 perform similar functions, of or for the issuer
15 or to persons who own ten per cent or more of the
16 outstanding shares of any class or classes of
17 securities of the issuer shall not count toward
18 the limitation in subparagraph (a) (27) (E);

19 (R) The exemption described in this section does not
20 apply if any disqualifying event described in
21 subsection (b) would apply;



1 (S) The commissioner shall charge a nonrefundable
2 filing fee of \$100 for filing an exemption notice
3 required under paragraph (F)(i). The fees paid
4 to the commissioner under this paragraph shall be
5 used to pay the costs incurred in administering
6 and enforcing this act;

7 (T) A violation of this paragraph, shall be a
8 violation of subsection 485A-501(a)(3); and

9 (U) Any other requirement established by rule adopted
10 or order issued under this chapter to carry out
11 this section.

12 (b) With respect to the [~~exemption~~] exemptions under
13 [~~paragraph (a)(13)~~] paragraphs (a)(13) and (a)(27):

14 (1) [~~The~~] Neither exemption shall not apply to an issuer
15 if the issuer; any affiliated issuer; any beneficial
16 owner of ten per cent or more of any class of the
17 issuer's equity securities; any issuer's predecessor,
18 director, officer, general partner, or promoter
19 presently connected in any capacity with the issuer;
20 and any underwriter or partner, director, or officer
21 of the underwriter of the securities to be offered:



- 1 (A) Within the last five years has filed a
- 2 registration statement that is the subject of a
- 3 currently effective registration stop order
- 4 entered by any state securities administrator or
- 5 the United States Securities and Exchange
- 6 Commission;
- 7 (B) Within the last five years has been convicted of
- 8 any criminal offense in connection with the
- 9 offer, purchase, or sale of any security, or
- 10 involving fraud or deceit;
- 11 (C) Is currently subject to any state or federal
- 12 administrative enforcement order or judgment
- 13 entered within the last five years, finding fraud
- 14 or deceit in connection with the purchase or sale
- 15 of any security; or
- 16 (D) Is currently subject to any order, judgment, or
- 17 decree of any court of competent jurisdiction,
- 18 entered within the last five years, temporarily,
- 19 preliminarily, or permanently restraining or
- 20 enjoining such party from engaging in or
- 21 continuing to engage in any conduct or practice



1 involving fraud or deceit in connection with the
2 purchase or sale of any security; and

3 (2) Paragraph (1) shall not apply if:

4 (A) The party subject to the disqualification is
5 licensed or registered to conduct securities-
6 related business in the state in which the order,
7 judgment, or decree creating the disqualification
8 was entered against such party;

9 (B) Before the first offer under this exemption, the
10 commissioner, or the court or regulatory
11 authority that entered the order, judgment, or
12 decree waives the disqualifications; or

13 (C) The issuer establishes that the issuer did not
14 know and in the exercise of reasonable care,
15 based on a factual inquiry, could not have known
16 that a disqualification existed under this
17 paragraph."

18 SECTION 4. The department of commerce and consumer affairs
19 shall adopt rules, pursuant to chapter 91, necessary for the
20 purposes of this Act.



H.B. NO. 2704

1 SECTION 5. Statutory material to be replaced is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall not be applied so as to impair
4 any contract existing as of the effective date of this Act in a
5 manner violative of either the Hawaii State Constitution or
6 Article I, section 10, of the United States Constitution.

7 SECTION 7. This Act shall take effect on July 1, 2016.
8
9

INTRODUCED BY:

Beth Lukunoh
AO

Rowen

[Signature]

JAN 27 2016



H.B. NO. 2704

Report Title:

Crowdfunding; Funding Portal; Stock; Small Business; Securities.

Description:

Establishes a crowdfunding exemption and funding portal for limited intrastate investments between Hawaii residents and Hawaii businesses, not to exceed \$1,000,000 raised over a twelve month period or \$100,000 per investor. Includes disclaimer requirements.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

