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# A BILL FOR AN ACT

RELATING TO CROWDFUNDING.

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

1           SECTION 1. Section 485A-202, Hawaii Revised Statutes, is  
2 amended by amending subsections (a) to read as follows:

3           "(a) The following transactions are exempt from the  
4 requirements of sections 485A-301 to 485A-305 and 485A-504:

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

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

14          (A) The issuer of the security is engaged in  
15          business, the issuer is not in the organizational  
16          stage or in bankruptcy or receivership, and the  
17          issuer is not a blank check, blind pool, or shell



1            company that has no specific business plan or  
2            purpose or has indicated that its primary  
3            business plan is to engage in a merger or  
4            combination of the business with, or an  
5            acquisition of, an unidentified person;

6            (B) The security is sold at a price reasonably  
7            related to its current market price;

8            (C) The security does not constitute the whole or  
9            part of an unsold allotment to, or a subscription  
10           or participation by, the broker-dealer as an  
11           underwriter of the security or a redistribution;

12           (D) A nationally recognized securities manual or its  
13           electronic equivalent designated by rule adopted  
14           or order issued under this chapter or a record  
15           filed with the Securities and Exchange Commission  
16           that is publicly available and contains:

17           (i) A description of the business and operations  
18           of the issuer;

19           (ii) The names of the issuer's executive officers  
20           and the names of the issuer's directors, if  
21           any;



- 1 (iii) An audited balance sheet of the issuer as of
- 2 a date within eighteen months before the
- 3 date of the transaction or, in the case of a
- 4 reorganization or merger when the parties to
- 5 the reorganization or merger each had an
- 6 audited balance sheet, a pro forma balance
- 7 sheet for the combined organization; and
- 8 (iv) An audited income statement for each of the
- 9 issuer's two immediate previous fiscal years
- 10 or for the period of existence of the
- 11 issuer, whichever is shorter, or, in the
- 12 case of a reorganization or merger when each
- 13 party to the reorganization or merger had
- 14 audited income statements, a pro forma
- 15 income statement; and
- 16 (E) Any one of the following requirements is met:
- 17 (i) The issuer of the security has a class of
- 18 equity securities listed on a national
- 19 securities exchange registered under section
- 20 6 of the Securities Exchange Act of 1934 or
- 21 designated for trading on the National



1 Association of Securities Dealers' Automated  
2 Quotation System;

3 (ii) The issuer of the security is a unit  
4 investment trust registered under the  
5 Investment Company Act of 1940;

6 (iii) The issuer of the security, including its  
7 predecessors, has been engaged in continuous  
8 business for at least three years; or

9 (iv) The issuer of the security has total assets  
10 of at least \$2,000,000 based on an audited  
11 balance sheet as of a date within eighteen  
12 months before the date of the transaction  
13 or, in the case of a reorganization or  
14 merger when the parties to the  
15 reorganization or merger each had such an  
16 audited balance sheet, a pro forma balance  
17 sheet for the combined organization;

18 (3) A nonissuer transaction by or through a broker-dealer  
19 registered or exempt from registration under this  
20 chapter in a security of a foreign issuer that is a  
21 margin security defined in regulations or rules



- 1           adopted by the Board of Governors of the Federal  
2           Reserve System;
- 3           (4) A nonissuer transaction by or through a broker-dealer  
4           registered or exempt from registration under this  
5           chapter in an outstanding security if the guarantor of,  
6           the security files reports with the Securities and  
7           Exchange Commission under the reporting requirements  
8           of section 13 or 15(d) of the Securities Exchange Act  
9           of 1934 (15 U.S.C. 78m or 78o(d));
- 10          (5) A nonissuer transaction by or through a broker-dealer  
11          registered or exempt from registration under this  
12          chapter in a security that:
- 13           (A) Is rated at the time of the transaction by a  
14           nationally recognized statistical rating  
15           organization in one of its four highest rating  
16           categories; or
- 17           (B) Has a fixed maturity or a fixed interest or  
18           dividend, if:
- 19           (i) A default has not occurred during the  
20           current fiscal year or within the three  
21           previous fiscal years or during the



1                   existence of the issuer and any predecessor  
2                   if less than three fiscal years, in the  
3                   payment of principal, interest, or dividends  
4                   on the security; and

5                   (ii) The issuer is engaged in business, is not in  
6                   the organizational stage or in bankruptcy or  
7                   receivership, and is not and has not been  
8                   within the previous twelve months a blank  
9                   check, blind pool, or shell company that has  
10                  no specific business plan or purpose or has  
11                  indicated that its primary business plan is  
12                  to engage in a merger or combination of the  
13                  business with, or an acquisition of, an  
14                  unidentified person;

15                  (6) A nonissuer transaction by or through a broker-dealer  
16                  registered or exempt from registration under this  
17                  chapter effecting an unsolicited order or offer to  
18                  purchase;

19                  (7) A nonissuer transaction executed by a bona fide  
20                  pledgee without the purpose of evading this chapter;



- 1 (8) A nonissuer transaction by a federal covered  
2 investment adviser with investments under management  
3 in excess of \$100,000,000, acting in the exercise of  
4 discretionary authority in a signed record for the  
5 account of others;
- 6 (9) A transaction between the issuer or other person on  
7 whose behalf the offering is made and an underwriter,  
8 or among underwriters;
- 9 (10) A transaction in a note, bond, debenture, or other  
10 evidence of indebtedness secured by a mortgage or  
11 other security agreement if:
- 12 (A) The note, bond, debenture, or other evidence of  
13 indebtedness is offered and sold with the  
14 mortgage or other security agreement as a unit;
- 15 (B) A general solicitation or general advertisement  
16 of the transaction is not made; and
- 17 (C) A commission or other remuneration is not paid or  
18 given, directly or indirectly, to a person not  
19 registered under this chapter as a broker-dealer  
20 or as an agent;



- 1       (11) A transaction by an executor, administrator of an  
2           estate, personal representative, sheriff, marshal,  
3           receiver, trustee in bankruptcy, guardian, or  
4           conservator;
- 5       (12) A sale or offer to sell to:
- 6           (A) An institutional investor;
- 7           (B) A federal covered investment adviser; or
- 8           (C) Any other person exempted by rule adopted or  
9           order issued under this chapter;
- 10       (13) Any transaction pursuant to a sale or an offer to sell  
11           securities of an issuer, if the transaction is part of  
12           an issue in which:
- 13           (A) There are no more than twenty-five purchasers  
14                (other than those designated in paragraph (12)),  
15           wherever located, during any twelve consecutive  
16           months;
- 17           (B) The issuer reasonably believes that all  
18           purchasers (other than those designated in  
19           paragraph (12)), wherever located, are purchasing  
20           for investment purposes and not with the view to,  
21           or for sales in connection with, a distribution





1 of the security. The purchase shall be presumed  
 2 to be made with a view to distribute and not to  
 3 invest if any resale of a security sold in  
 4 reliance on this exemption is within twelve  
 5 months of sale, except a resale pursuant to a  
 6 registration statement effective under section  
 7 485A-301, or to an accredited investor pursuant  
 8 to an exemption available under this chapter;

9 (C) No commission, discount, or other remuneration is  
 10 paid or given, directly or indirectly, to a  
 11 person, other than a broker-dealer or agent  
 12 registered under this chapter, for soliciting a  
 13 prospective purchaser in this State; and

14 (D) The securities of the issuer are not offered or  
 15 sold by general solicitation or any general  
 16 advertisement or other advertising medium;

17 (14) A transaction under an offer to existing security  
 18 holders of the issuer, including persons who at the  
 19 date of the transaction are holders of convertible  
 20 securities, options, or warrants, if a commission or  
 21 other remuneration, other than a standby commission,



1 is not paid or given, directly or indirectly, for  
2 soliciting a security holder in this State;

3 (15) (A) A transaction involving the offer or sale of a  
4 security by an issuer to an accredited investor  
5 that meets the following requirements:

6 (i) The issuer reasonably believes that the sale  
7 is to persons who are accredited investors;

8 (ii) The issuer is not in the development stage,  
9 without specific business plan or purpose;

10 (iii) The issuer has not indicated that the  
11 issuer's business plan is to engage in a  
12 merger or acquisition with an unidentified  
13 company or companies, or other entity or  
14 person; and

15 (iv) The issuer reasonably believes that all  
16 purchasers are purchasing for investment  
17 purposes and not with the view to, or for  
18 sales in connection with, a distribution of  
19 the security. The purchase shall be  
20 presumed to be made with a view to  
21 distribute and not to invest if any resale



1 of a security sold in reliance on this  
2 exemption is within twelve months of sale,  
3 except a resale pursuant to a registration  
4 statement effective under section 485A-301,  
5 or to an accredited investor pursuant to an  
6 exemption available under this chapter;

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

17 (i) Within the last five years has filed a  
18 registration statement that is the subject  
19 of a currently effective registration stop  
20 order entered by any state securities



1 administrator or the Securities and Exchange  
2 Commission;

3 (ii) Within the last five years has been  
4 convicted of any criminal offense in  
5 connection with the offer, purchase, or sale  
6 of any security, or involving fraud or  
7 deceit;

8 (iii) Is currently subject to any state or federal  
9 administrative enforcement order or judgment  
10 entered within the last five years, finding  
11 fraud or deceit in connection with the  
12 purchase or sale of any security; or

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

- 1 (C) Subparagraph (B) shall not apply if:
  - 2 (i) The party subject to the disqualification is
  - 3 licensed or registered to conduct
  - 4 securities-related business in the state in
  - 5 which the order, judgment, or decree
  - 6 creating the disqualification was entered
  - 7 against such party;
  - 8 (ii) Before the first offer under this exemption,
  - 9 the commissioner, or the court or regulatory
  - 10 authority that entered the order, judgment,
  - 11 or decree waives the disqualifications; or
  - 12 (iii) The issuer establishes that the issuer did
  - 13 not know and in the exercise of reasonable
  - 14 care, based on a factual inquiry, could not
  - 15 have known that a disqualification existed
  - 16 under this paragraph; and
- 17 (D) An issuer claiming the exemption under this
- 18 paragraph, no later than fifteen days after the
- 19 first sale in this State, shall file with the
- 20 commissioner a notice of transaction, a consent
- 21 to service of process, a copy of the offering

1 circular or similar document provided to the  
2 accredited investor and a \$200 filing fee.

3 For the purposes of this paragraph, "accredited  
4 investor" shall have the same meaning as provided in  
5 rule 501(a) adopted under the Securities Act of 1933  
6 (17 C.F.R. 230.501(a));

7 (16) An offer to sell, but not a sale, of a security not  
8 exempt from registration under the Securities Act of  
9 1933 if:

10 (A) A registration or offering statement or similar  
11 record as required under the Securities Act of  
12 1933 has been filed, but is not effective, or the  
13 offer is made in compliance with Rule 165 adopted  
14 under the Securities Act of 1933 (17 C.F.R.  
15 230.165); and

16 (B) A stop order of which the offeror is aware has  
17 not been issued against the offeror by the  
18 commissioner or the Securities and Exchange  
19 Commission, and an audit, inspection, or  
20 proceeding that is public and that may culminate



1           in a stop order is not known by the offeror to be  
2           pending;

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

5           (A) A registration statement has been filed under  
6           this chapter, but is not effective;

7           (B) A solicitation of interest is provided in a  
8           record to offerees in compliance with a rule  
9           adopted by the commissioner under this chapter;  
10          and

11          (C) A stop order of which the offeror is aware has  
12          not been issued by the commissioner under this  
13          chapter and an audit, inspection, or proceeding  
14          that may culminate in a stop order is not known  
15          by the offeror to be pending;

16       (18) A transaction involving the distribution of the  
17       securities of an issuer to the security holders of  
18       another person in connection with a merger,  
19       consolidation, exchange of securities, sale of assets,  
20       or other reorganization to which the issuer, or its

- 1 parent or subsidiary and the other person, or its  
2 parent or subsidiary, are parties;
- 3 (19) A rescission offer, sale, or purchase under section  
4 485A-510;
- 5 (20) An offer or sale of a security to a person not a  
6 resident of this State and not present in this State  
7 if the offer or sale does not constitute a violation  
8 of the laws of the state or foreign jurisdiction in  
9 which the offeree or purchaser is present and is not  
10 part of an unlawful plan or scheme to evade this  
11 chapter;
- 12 (21) Employees' stock purchase, savings, option, profit-  
13 sharing, pension, or similar employees' benefit plan,  
14 including any securities, plan interests, and  
15 guarantees issued under a compensatory benefit plan or  
16 compensation contract, contained in a record,  
17 established by the issuer, its parents, its majority-  
18 owned subsidiaries, or the majority-owned subsidiaries  
19 of the issuer's parent for the participation of their  
20 employees, including offers or sales of such  
21 securities to:





- 1 (A) Directors; general partners; trustees, if the  
2 issuer is a business trust; officers;  
3 consultants; and advisors;
- 4 (B) Family members who acquire the securities from  
5 those persons through gifts or domestic relations  
6 orders;
- 7 (C) Former employees, directors, general partners,  
8 trustees, officers, consultants, and advisors if  
9 those individuals were employed by or providing  
10 services to the issuer when the securities were  
11 offered; and
- 12 (D) Insurance agents who are exclusive insurance  
13 agents of the issuer, or the issuer's  
14 subsidiaries or parents, or who derive more than  
15 fifty per cent of their annual income from those  
16 organizations;
- 17 (22) A transaction involving:
- 18 (A) A stock dividend or equivalent equity  
19 distribution, whether or not the corporation or  
20 other business organization distributing the  
21 dividend or equivalent equity distribution is the



1 issuer, if nothing of value is given by  
2 stockholders or other equity holders for the  
3 dividend or equivalent equity distribution other  
4 than the surrender of a right to a cash or  
5 property dividend if each stockholder or other  
6 equity holder may elect to take the dividend or  
7 equivalent equity distribution in cash, property,  
8 or stock;

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

14 (C) The solicitation of tenders of securities by an  
15 offeror in a tender offer in compliance with Rule  
16 162 adopted under the Securities Act of 1933 (17  
17 C.F.R. 230.162);

18 (23) A nonissuer transaction in an outstanding security by  
19 or through a broker-dealer registered or exempt from  
20 registration under this chapter, if the issuer is a  
21 reporting issuer in a foreign jurisdiction designated



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



1 appropriate in the public interest and for the  
2 protection of investors;

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



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

1 (25) Any offer or sale by or through a real estate broker  
 2 or real estate salesperson licensed under the laws of  
 3 this State of an apartment or unit in a condominium  
 4 project, and a rental management contract relating to  
 5 the apartment or unit, including an interest in a  
 6 partnership formed for the purpose of managing the  
 7 rental of apartments or units if the rental management  
 8 contract or the interest in the partnership is offered  
 9 at the same time as the apartment or unit is offered.

10 For the purposes of this paragraph, the terms  
 11 "apartment", "unit", "condominium", and "project"  
 12 shall have the meanings prescribed in section 514A-3  
 13 or 514B-3; [~~and~~]

14 (26) Any transaction not involving a public offering within  
 15 the meaning of section 4(2) of the Securities Act of  
 16 1933 (15 U.S.C. 77d), but not including any  
 17 transaction specified in the rules and regulations  
 18 thereunder[-]; and

19 (27) An offer or sale of a security by an issuer in  
 20 accordance with all of the following requirements:



- 1           (A) The issuer of the security shall be a business  
2           entity for profit formed under the laws of this  
3           State and registered with the director of  
4           commerce and consumer affairs;
- 5           (B) The transaction shall meet the requirements of  
6           any offer or sale pursuant to section 3(a)(11) of  
7           the Securities Act of 1933 (15 U.S.C. 77c(a)(11))  
8           and Rule 147 adopted under the Securities Act of  
9           1933 (17 CRF section 230-147);
- 10          (C) The sum of all cash and other considerations to  
11          be received in reliance on this exemption shall  
12          not exceed \$1,000,000, less the aggregate amount  
13          received for all sales and securities by the  
14          issuer within the twelve months before the first  
15          offer or sale made in reliance upon this  
16          paragraph;
- 17          (D) The issuer shall not accept, from any single  
18          purchaser, a dollar amount that exceeds an amount  
19          specified by rule adopted or order issued under  
20          this chapter;



1           (E) At least fourteen calendar days prior to any  
2           offering of securities made in reliance on this  
3           paragraph, the issuer shall file a notice with  
4           the commissioner, in writing, that contains any  
5           information specified by rule adopted or order  
6           issued under this chapter; and

7           (F) Any other requirement established by rule adopted  
8           or order issued under this chapter to carry out  
9           this section."

10           SECTION 2. Statutory material to be replaced is bracketed  
11 and stricken. New statutory material is underscored.

12           SECTION 3. This Act shall take effect on July 1, 2016.





**Report Title:**

Crowdfunding; Funding Portal; Stock; Small Business; Securities

**Description:**

Establishes exemptions from Hawaii securities law for limited intrastate investments with Hawaii businesses, not to exceed \$1,000,000 during a 12-month period. (HB2704 HD1)

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

