

By: Johnson

H.B. No. 2580

A BILL TO BE ENTITLED

AN ACT

relating to crowdfunding portal regulations.

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

SECTION 1. The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) is amended by adding Section 44 to read as follows:

Sec. 44. CROWDFUNDING. (a) The Board shall adopt rules to regulate and facilitate online intrastate crowdfunding.

(b) The rules adopted by the Board under Subsection (a) of this section must:

(1) prohibit offerings made by businesses whose organization substantially limits the owner's liability;

(2) require each offering to disclose the minimum amount to be raised that will be sufficient to execute a business plan and dedicate a certain amount of funds to a specific business plan;

(3) require each offering to set a date by which all funds be raised;

(4) require the portal to refund all funds to investors if the minimum investment amount is not raised by the date set by the issuer;

(5) define "control person" to include any person who has de facto control or has equivalent powers;

(6) authorize crowdfunding portals to:

1           (A) be founded and administered by entities  
2 outside of this state;

3           (B) use an account in any Texas bank for any  
4 required escrow account; and

5           (C) engage in general solicitation or  
6 advertising of the offering if:

7                   (i) the solicitation and advertising are  
8 directed only to residents of this state;

9                   (ii) securities are purchased only through  
10 the Texas crowdfunding website; and

11                   (iii) all solicitation and advertising is  
12 accompanied by a notice stating that the offering is limited to  
13 Texas residents;

14           (7) prohibit crowdfunding portals from:

15                   (A) compensating employees, agents, or other  
16 persons in a manner that takes into account the volume of  
17 securities sold through its Texas crowdfunding website, unless the  
18 persons are registered with the Commissioner and are permitted to  
19 receive such compensation; or

20                   (B) offering investment advice or  
21 recommendations, unless the portal is a registered investment  
22 adviser;

23           (8) prohibit issuers from:

24                   (A) accepting more than the greater of \$5,000 or  
25 five percent of a person's annual income from any single purchaser  
26 unless the issuer has a reasonable basis for believing that the  
27 purchaser of a security under this section is a resident of this

1 state and:

2 (i) is an accredited investor described by  
3 Section 1152.110, Insurance Code; or

4 (ii) is an individual who:

5 (a) had an income of at least \$75,000  
6 for each of the two most recent years and expects to have an income  
7 of at least \$75,000 during the current year; and

8 (b) is a licensed attorney or a  
9 licensed certified public accountant or is registered with the  
10 Financial Industry Regulatory Authority or a successor  
11 association; or

12 (B) raising more than \$2 million in an offering  
13 as determined under 17 C.F.R. Section 230.502(a); and

14 (9) prohibit issuers from accepting funds from a  
15 purchaser who is not a resident of this state.

16 (c) The Board by rule must require crowdfunding portal  
17 websites to disclose to prospective investors, for each Texas  
18 crowdfunding offering, not later than the 21st day before an  
19 investor may purchase the securities offered:

20 (1) the name of the issuer;

21 (2) the name and age of each individual who:

22 (A) is a director, general partner, manager,  
23 managing member, or executive officer of the issuer;

24 (B) owns at least five percent of any class of  
25 securities of the issuer, other than pure debt securities;

26 (C) has the power to execute non-ministerial  
27 contracts on behalf of the issuer; or

1                   (D) has the right, in any capacity, to exercise  
2 significant management control over the issuer;

3                   (3) the business experience and current occupation of  
4 each control person;

5                   (4) a statement of whether any control person or any  
6 entity in which a control person acted as a control person has been  
7 a debtor in bankruptcy or similar proceedings within the last seven  
8 years;

9                   (5) the amount being raised in the offering, and the  
10 minimum offering amount;

11                   (6) the manner in which the proceeds of the offering  
12 will be spent;

13                   (7) the business purpose of the offering, including a  
14 description of the projects for which the proceeds of the offering  
15 will be used;

16                   (8) a description of the securities being offered,  
17 including voting rights and rights to distributions, and whether  
18 those rights are superior or subordinate to the rights of other  
19 securities of the issuer;

20                   (9) a statement of whether the interests of investors  
21 may be diluted;

22                   (10) a statement showing the total capital to be  
23 invested in the projects for which the proceeds of the offering will  
24 be used, and the sources of the capital;

25                   (11) a description of any other securities of the  
26 issuer currently outstanding, or into which outstanding securities  
27 may be converted;

1           (12) a table showing the ownership of the issuer  
2 immediately following the offering, if all of the securities  
3 offered in the offering are sold;

4           (13) a description of any litigation pending or  
5 threatened against the issuer;

6           (14) any significant conflicts of interest associated  
7 with the offering;

8           (15) all compensation to be paid in connection with  
9 the offering;

10          (16) the business performance record, during the  
11 preceding five years, of the issuer and each control person;

12          (17) financial statements of the issuer, including:

13               (A) a profit and loss statement for the most  
14 recent fiscal year; and

15               (B) a balance sheet dated not earlier than the  
16 91st day before the date of the offering that is:

17                       (i) audited or prepared in accordance with  
18 generally accepted accounting principles; or

19                       (ii) certified by the chief executive  
20 officer of the issuer as reflecting all material transactions of  
21 the issuer, if any audited or reviewed financial statements of the  
22 issuer prepared within the last three years are provided;

23          (18) a statement of the relationship between the  
24 issuer and the issuer's Texas crowdfunding portal, including any  
25 compensation paid to the portal;

26          (19) a statement of the material risks associated with  
27 investing in the offering;

1           (20) a statement determined by the commission, that  
2 these investments are not guaranteed and that the entire investment  
3 may be lost, and the statement shall require the affirmative  
4 agreement of the purchaser before funds are transferred; and

5           (21) other information as the Commissioner may require  
6 by rule.

7           (e) The portal is not considered to be offering investment  
8 advice or recommendations as restricted under a rule adopted under  
9 Subsection (b)(5)(B) of this section solely because the portal:

10           (1) selects or performs due diligence with respect to  
11 an issuer or offering to be listed; or

12           (2) provides generally applicable educational  
13 materials.

14           (f) A portal may not be:

15           (1) an entity precluded from engaging as an issuer in  
16 an offering described by 17 C.F.R. Section 230.506(d)(1) by reason  
17 of a conviction, order, judgment, decree, suspension, expulsion,  
18 or bar that was issued after September 1, 2015; or

19           (2) an individual who, for an entity described by  
20 Subdivision (1) of this subsection:

21           (A) is a director, general partner, manager,  
22 managing member, or executive officer of the issuer;

23           (B) owns at least five percent of any class of  
24 securities of the issuer, other than pure debt securities;

25           (C) has the power to execute non-ministerial  
26 contracts on behalf of such entity; or

27           (D) has the right, in any capacity, to exercise

1 significant management control over the issuer.

2 (g) The Board shall adopt rules and procedures necessary for  
3 the administration of this Act.

4 SECTION 2. This Act takes effect September 1, 2015.