

ASSEMBLY BILL NO. 258—ASSEMBLYWOMAN
BUSTAMANTE ADAMS

MARCH 11, 2015

Referred to Committee on Judiciary

SUMMARY—Exempts certain offers or sales of securities from registration requirements for securities. (BDR 7-700)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to securities; providing for an exemption from the requirement to register for certain offerings for the sale of securities made through certain Internet websites; establishing certain requirements relating to an issuer of a security who qualifies for such an exemption; providing for the registration of certain operators of Internet websites who post offerings for the sale of securities not required to be registered; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth requirements for the registration of a security with the Securities Division of the Office of the Secretary of State before an offer to sell or a sale of such a security is made unless certain exceptions apply. (NRS 90.460-90.510) Existing law further provides for an exemption of certain securities from the registration requirement and sets forth the filing requirements necessary to qualify for the exemption. (NRS 90.520-90.565)

Section 3 of this bill provides an additional exemption from the registration requirement for securities for an offer to sell or sale of a security offered by an issuer through an Internet website, commonly known as a “crowdfunding” website, if certain filing and disclosure requirements are met. **Section 3** requires that to qualify for this exemption, the issuer of the security and the Internet website conducting the offer of the security must be business entities organized and existing in Nevada. **Section 3** also requires that any purchaser of such a security be a resident of, or a business entity organized and existing in, Nevada. The amount of the offer made pursuant to the exemption provided for in **section 3** is limited to \$1,000,000 in any consecutive 12-month period. The exemption also limits an investor's purchase to \$5,000, unless the purchaser is an accredited investor.



* A B 2 5 8 *

Section 3 further requires a depository institution to hold all investor funds in an escrow account until the issuer's crowdfunding goal is met. **Section 3** also requires the Administrator of the Division to adopt regulations to carry out the implementation of the new registration exemption.

Section 4 of this bill requires such an Internet website to register with the Division before conducting any offer or sale of a security for an issuer pursuant to the exemption provided for in **section 3**. **Section 4** also provides for certain registration exemptions for a crowdfunding Internet website if certain registration requirements are met with the Securities and Exchange Commission.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 90 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *"Accredited investor" has the meaning ascribed to it in 17 C.F.R § 230.501(a).*

Sec. 3. 1. *A transaction involving the offer to sell or sale of a security by an issuer that is conducted exclusively through one or more Internet websites is exempt from the provisions of NRS 90.460 and 90.560 if:*

(a) The issuer of the security is a business entity organized and existing under the laws of this State.

(b) The transaction satisfies the requirements for exemption under the Securities Act of 1933, 15 U.S.C. §§ 77c(a)(11) and Rule 147 of the Securities and Exchange Commission, 17 C.F.R. § 230.147.

(c) The total aggregate sales of the security, during any 12 consecutive months, does not exceed \$1,000,000.

(d) The issuer does not accept an investment of more than \$5,000 from any single purchaser, unless the purchaser is an accredited investor.

(e) At least 80 percent of the net proceeds from the offering will be used in connection with the operations of the issuer in this State.

(f) Unless otherwise waived by the Administrator, not less than 10 days before making an offer to sell a security pursuant to this section, the issuer:

(1) Files a Form D - Notice of Exempt Offering of Securities with the Securities and Exchange Commission;

(2) Pays the fee for the exemption established by the Administrator by regulation;

(3) Provides the Administrator a copy of the disclosure document provided to the prospective investor pursuant to paragraph (l); and



(4) Provides the Administrator with a copy of the escrow agreement with a depository institution authorized to do business in this State into which the issuer will deposit the money of the investors.

(g) The issuer is not, either before or as a result of the offering made pursuant to this section:

(1) An investment company, as defined in 15 U.S.C. § 80a-3;

(2) An entity described in 15 U.S.C. § 80a-3(c); or

(3) Subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78m and 78o(d).

(h) The issuer informs all prospective investors in securities offered pursuant to this section that the securities are not registered under federal securities law or the securities law of this State and are subject to resale limitations by including the following statement at the beginning of the disclosure document:

In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities have not been recommended by the United States Securities and Exchange Commission or the Securities Division of the Office of the Secretary of State of Nevada. Furthermore, the foregoing authorities have not confirmed the accuracy or determined the adequacy of this document. Any representation to the contrary is a criminal offense. These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted by Rule 147 of the Securities and Exchange Commission, 17 C.F.R § 230.147(e), as promulgated under the Securities Act of 1933, as amended, and the applicable securities laws of this State, pursuant to registration or exemption therefrom. Investors should be aware that they will be required to bear the financial risks of this investment for an indefinite period of time.

(i) Each purchaser certifies in writing or electronically the following:

I understand and acknowledge that I am investing in a high risk, speculative business venture. I may lose all of my investment or, under some circumstances, more than my investment, and I can afford this loss. This offering has not been reviewed or approved by the United States Securities



and Exchange Commission or the Securities Division of the Office of the Secretary of State of Nevada, and no such authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering. The securities I am acquiring in this offering are not liquid, there is no ready market for the sale of such securities, it may be difficult or impossible for me to sell or otherwise dispose of this investment and I may be required to hold this investment indefinitely. I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company.

(j) The issuer obtains evidence that each purchaser is a resident of this State and, if applicable, is an accredited investor.

(k) The depository institution named in the escrow agreement described in subparagraph (4) of paragraph (f) holds all payments for the purchase of securities offered pursuant to this section.

(l) The issuer of a security offered under the exemption provided pursuant to this section provides a disclosure document to each prospective investor at the time the offer to sell the security is made that contains:

(1) A description of the issuer, its organizational structure and the address and telephone number of its principal office;

(2) The history and business plan of the issues and a listing of any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member or other person holding a similar status or performing similar functions on behalf of the issuer;

(3) The name of each person who owns more than 20 percent of the ownership interests of any class of securities of the issuer;

(4) The name of each executive officer, director, managing member or other person holding a similar status or performing similar functions in the name of and on behalf of the issuer, including the title and prior experience of the person;

(5) The terms and conditions of the securities being offered for sale and of any outstanding securities of the issuer, the minimum and maximum amount of securities being offered, the percentage of ownership of the issuer represented by the offered securities, the price per share, unit or interest of the securities being offered, any restrictions imposed on the transfer of securities being offered and a disclosure of any anticipated future



1 *issuance of securities that would affect the value of the securities*
2 *being offered;*

3 (6) *The name of any person who has been or will be*
4 *retained by the issuer to assist in conducting the offering and sale*
5 *of securities pursuant to this section, including, without limitation,*
6 *the operator of an Internet website, and a description of the*
7 *consideration being paid to the person for such assistance, if*
8 *applicable;*

9 (7) *A description of any litigation, legal proceedings or*
10 *pending regulatory action involving the issuer or its management;*

11 (8) *The name and Internet address of each Internet website*
12 *that will be used by the issuer to offer or sell securities pursuant to*
13 *this section; and*

14 (9) *Any additional information relating to the speculative*
15 *nature of the offering.*

16 (m) *The offering exempted pursuant to this section is made*
17 *exclusively through one or more Internet websites and the*
18 *operator of each such Internet website:*

19 (1) *Except as otherwise provided in subsection 7, registers*
20 *with the Division by filing a statement that includes the*
21 *information set forth in subsection 1 of section 4 of this act;*

22 (2) *Maintains records of all offers and sales of securities*
23 *made through the Internet website and provides such records to*
24 *the Division upon request;*

25 (3) *Limits access to the offer to sell or sale of securities*
26 *pursuant to this section to residents of this State; and*

27 (4) *Does not hold, manage, possess or handle money or*
28 *securities transacted through the Internet website or make an*
29 *investment based on an offer to sell securities made through the*
30 *Internet website.*

31 (n) *The issuer provides a quarterly report to its investors and*
32 *to the Division until the securities offered for sale by the issuer*
33 *pursuant to this section are no longer outstanding. The report*
34 *must include, without limitation:*

35 (1) *The total compensation received by each director and*
36 *executive officer of the issuer, including, without limitation, cash*
37 *compensation earned since the previous report and on an annual*
38 *basis, and any bonuses, stock options, other rights to receive*
39 *securities of the issuer or any affiliate of the issuer and other*
40 *compensation received; and*

41 (2) *An analysis of the business operations and financial*
42 *condition of the issuer.*

43 2. *An offer to sell or sale of a security to an officer, director,*
44 *partner, trustee or person holding a similar position or performing*
45 *similar functions in the name of and on behalf of the issuer who*



owns 10 percent or more of the outstanding shares of any class or classes of securities of the issuer does not count toward the monetary limitation set forth in paragraph (c) of subsection 1.

3. An issuer shall not access the money held in escrow by a depository institution pursuant to paragraph (k) of subsection 1 until the aggregate money raised from an offering for the sale of securities made pursuant to this section equals or exceeds the minimum amount specified in the escrow agreement.

4. An investor may cancel its investment commitment made based on an offering for the sale of securities made pursuant to this section:

(a) If the target offering amount is not raised within the time limit stated in the escrow agreement; or

(b) For any reason, if such cancellation occurs more than 48 hours before the offering deadline identified in the disclosure document provided by the issuer.

5. An exemption claimed pursuant to this section may not be used in conjunction with any other exemption provided for in this chapter, except for an offer to sell or a sale made to a person identified in the disclosure document described in paragraph (l) of subsection 1 during the 12 months immediately preceding the exempted offer or sale.

6. The exemption provided for in this section cannot be used if an issuer or person affiliated with the issuer or offering is subject to disqualification as established by the Administrator by regulation or pursuant to the Securities Act of 1933, 15 U.S.C. § 77c(a)(11), and Rule 147 of the Securities and Exchange Commission, 17 C.F.R § 230.147(e).

7. An operator of an Internet website is not required to register as a broker-dealer if the operator:

(a) Satisfies the requirements of subsection 2 of section 4 of this act; or

(b) Is registered as a broker-dealer under the Securities Exchange Act of 1934, 15 U.S.C. § 78o.

8. Beginning on January 1, 2021, and every 5 years thereafter, the Administrator shall adjust the monetary limitation set forth in paragraph (c) of subsection 1 based proportionally on changes to the Consumer Price Index for all Urban Consumers published by the United States Department of Labor. The monetary limitation must be rounded to the nearest \$50,000.

9. The Administrator shall adopt regulations necessary to carry out the provisions of this section.

Sec. 4. 1. If required to register with the Division pursuant to paragraph (m) of subsection 1 of section 3 of this act, the operator of an Internet website must register with the Division by



1 *paying the filing fee established by the Administrator by*
2 *regulation and submitting to the Division a statement setting*
3 *forth:*

4 *(a) That the Internet website is operated by a business entity*
5 *organized and existing under the laws of this State;*

6 *(b) That the operator of the Internet website is acting on*
7 *behalf of an issuer to offer to sell and sell securities pursuant to*
8 *section 3 of this act;*

9 *(c) The address and contact information of the operator of the*
10 *Internet website; and*

11 *(d) Except as otherwise provided in subsection 2, confirmation*
12 *that the operator of the Internet website is licensed as a broker-*
13 *dealer pursuant to NRS 90.310.*

14 *2. The operator of an Internet website is not required to be*
15 *licensed as a broker-dealer pursuant to NRS 90.310 if:*

16 *(a) The operator does not:*

17 *(1) Offer investment advice or recommendations;*

18 *(2) Solicit purchases, sales or offers to buy the securities*
19 *offered or displayed on the Internet website;*

20 *(3) Compensate employees, agents or other persons for the*
21 *solicitation, or based on the sale of securities displayed or*
22 *referenced on the Internet website;*

23 *(4) Identify, promote or otherwise refer to any individual*
24 *security offered on the Internet website in any advertising for the*
25 *Internet website; and*

26 *(5) Engage in any other activities that the Administrator*
27 *determines by regulation are prohibited;*

28 *(b) The operator is not compensated based on the amount of*
29 *securities sold;*

30 *(c) The fee imposed by the operator of the Internet website for*
31 *an offering of securities on the Internet website is a fixed amount*
32 *for each offering, a variable amount based on the length of time*
33 *that the securities are offered or a combination of the fixed and*
34 *variable fees; and*

35 *(d) The operator of the Internet website, or director, executive*
36 *officer, general partner, managing member or other person with*
37 *management authority for the Internet website, has not been*
38 *subject to any matter which causes disqualification pursuant to*
39 *Rule 506(d)(1) of the Securities and Exchange Commission, 17*
40 *C.F.R. § 230.506(d)(1).*

41 *3. An operator of an Internet website shall report to the*
42 *Division any change relating to an exemption from a requirement*
43 *to register or to be licensed within 30 days after such a change*
44 *occurs.*



Sec. 5. NRS 90.211 is hereby amended to read as follows:

90.211 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 90.215 to 90.309, inclusive, *and section 2 of this act* have the meanings ascribed to them in those sections.

Sec. 6. NRS 90.530 is hereby amended to read as follows:

90.530 The following transactions are exempt from NRS 90.460 and 90.560:

1. An isolated nonissuer transaction, whether or not effected through a broker-dealer.

2. A nonissuer transaction in an outstanding security if the issuer of the security has a class of securities subject to registration under section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, and has been subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78m and 78o(d), for not less than 90 days next preceding the transaction, or has filed and maintained with the Administrator for not less than 90 days preceding the transaction information, in such form as the Administrator, by regulation, specifies, substantially comparable to the information the issuer would be required to file under section 12(b) or 12(g) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78l(b) and 78l(g), were the issuer to have a class of its securities registered under section 12 of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, and paid a fee of \$300 with the filing.

3. A nonissuer transaction by a sales representative licensed in this State, in an outstanding security if:

(a) The security is sold at a price reasonably related to the current market price of the security at the time of the transaction;

(b) The security does not constitute all or part of an unsold allotment to, or subscription or participation by, a broker-dealer as an underwriter of the security;

(c) At the time of the transaction, a recognized securities manual designated by the Administrator by regulation or order contains the names of the issuer's officers and directors, a statement of the financial condition of the issuer as of a date within the preceding 18 months, and a statement of income or operations for each of the last 2 years next preceding the date of the statement of financial condition, or for the period as of the date of the statement of financial condition if the period of existence is less than 2 years;

(d) The issuer of the security has not undergone a major reorganization, merger or acquisition within the preceding 30 days which is not reflected in the information contained in the manual; and

(e) At the time of the transaction, the issuer of the security has a class of equity security listed on the New York Stock Exchange,



American Stock Exchange or other exchange designated by the Administrator, or on the National Market System of the National Association of Securities Dealers Automated Quotation System. The requirements of this paragraph do not apply if:

(1) The security has been outstanding for at least 180 days;

(2) The issuer of the security is actually engaged in business and is not developing the issuer's business, in bankruptcy or in receivership; and

(3) The issuer of the security has been in continuous operation for at least 5 years.

4. A nonissuer transaction in a security that has a fixed maturity or a fixed interest or dividend provision if there has been no default during the current fiscal year or within the 3 preceding years, or during the existence of the issuer, and any predecessors if less than 3 years, in the payment of principal, interest or dividends on the security.

5. A nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to purchase.

6. A transaction between the issuer or other person on whose behalf the offering of a security is made and an underwriter, or a transaction among underwriters.

7. A transaction in a bond or other evidence of indebtedness secured by a real estate mortgage, deed of trust, personal property security agreement, or by an agreement for the sale of real estate or personal property, if the entire mortgage, deed of trust or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.

8. A transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator.

9. A transaction executed by a bona fide secured party without the purpose of evading this chapter.

10. An offer to sell or the sale of a security to a financial or institutional investor or to a broker-dealer.

11. Except as otherwise provided in this subsection, a transaction pursuant to an offer to sell securities of an issuer if:

(a) The transaction is part of an issue in which there are not more than 25 purchasers in this State, other than those designated in subsection 10, during any 12 consecutive months;

(b) No general solicitation or general advertising is used in connection with the offer to sell or sale of the securities;

(c) No commission or other similar compensation is paid or given, directly or indirectly, to a person, other than a broker-dealer licensed or not required to be licensed under this chapter, for soliciting a prospective purchaser in this State; and

(d) One of the following conditions is satisfied:



(1) The seller reasonably believes that all the purchasers in this State, other than those designated in subsection 10, are purchasing for investment; or

(2) Immediately before and immediately after the transaction, the issuer reasonably believes that the securities of the issuer are held by 50 or fewer beneficial owners, other than those designated in subsection 10, and the transaction is part of an aggregate offering that does not exceed \$500,000 during any 12 consecutive months.

➤ The Administrator by rule or order as to a security or transaction or a type of security or transaction may withdraw or further condition the exemption set forth in this subsection or waive one or more of the conditions of the exemption.

12. An offer to sell or sale of a preorganization certificate or subscription if:

(a) No commission or other similar compensation is paid or given, directly or indirectly, for soliciting a prospective subscriber;

(b) No public advertising or general solicitation is used in connection with the offer to sell or sale;

(c) The number of offers does not exceed 50;

(d) The number of subscribers does not exceed 10; and

(e) No payment is made by a subscriber.

13. An offer to sell or sale of a preorganization certificate or subscription issued in connection with the organization of a depository institution if that organization is under the supervision of an official or agency of a state or of the United States which has and exercises the authority to regulate and supervise the organization of the depository institution. For the purpose of this subsection, "under the supervision of an official or agency" means that the official or agency by law has authority to require disclosures to prospective investors similar to those required under NRS 90.490, impound proceeds from the sale of a preorganization certificate or subscription until organization of the depository institution is completed, and require refund to investors if the depository institution does not obtain a grant of authority from the appropriate official or agency.

14. A transaction pursuant to an offer to sell to existing security holders of the issuer, including persons who at the time of the transaction are holders of transferable warrants exercisable within not more than 90 days after their issuance, convertible securities or nontransferable warrants, if:

(a) No commission or other similar compensation, other than a standby commission, is paid or given, directly or indirectly, for soliciting a security holder in this State; or



(b) The issuer first files a notice specifying the terms of the offer to sell, together with a nonrefundable fee of \$300, and the Administrator does not by order disallow the exemption within the next 5 full business days.

15. A transaction involving an offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933, 15 U.S.C. §§ 77a et seq., if:

(a) A registration or offering statement or similar record as required under the Securities Act of 1933, 15 U.S.C. §§ 77a et seq., has been filed, but is not effective;

(b) A registration statement, if required, has been filed under this chapter, but is not effective; and

(c) No order denying, suspending or revoking the effectiveness of registration, of which the offeror is aware, has been entered by the Administrator or the Securities and Exchange Commission, and no examination or public proceeding that may culminate in that kind of order is known by the offeror to be pending.

16. A transaction involving an offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933, 15 U.S.C. §§ 77a et seq., if:

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

(b) No order denying, suspending or revoking the effectiveness of registration, of which the offeror is aware, has been entered by the Administrator and no examination or public proceeding that may culminate in that kind of order is known by the offeror to be pending.

17. A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets or other reorganization to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties, if:

(a) The securities to be distributed are registered under the Securities Act of 1933, 15 U.S.C. §§ 77a et seq., before the consummation of the transaction; or

(b) The securities to be distributed are not required to be registered under the Securities Act of 1933, 15 U.S.C. §§ 77a et seq., written notice of the transaction and a copy of the materials, if any, by which approval of the transaction will be solicited, together with a nonrefundable fee of \$300, are given to the Administrator at least 10 days before the consummation of the transaction and the Administrator does not, by order, disallow the exemption within the next 10 days.



18. A transaction involving the offer to sell or sale of one or more promissory notes each of which is directly secured by a first lien on a single parcel of real estate, or a transaction involving the offer to sell or sale of participation interests in the notes if the notes and participation interests are originated by a depository institution and are offered and sold subject to the following conditions:

(a) The minimum aggregate sales price paid by each purchaser may not be less than \$250,000;

(b) Each purchaser must pay cash either at the time of the sale or within 60 days after the sale; and

(c) Each purchaser may buy for the purchaser's own account only.

19. A transaction involving the offer to sell or sale of one or more promissory notes directly secured by a first lien on a single parcel of real estate or participating interests in the notes, if the notes and interests are originated by a mortgagee approved by the Secretary of Housing and Urban Development under sections 203 and 211 of the National Housing Act, 12 U.S.C. §§ 1709 and 1715b, and are offered or sold, subject to the conditions specified in subsection 18, to a depository institution or insurance company, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Government National Mortgage Association.

20. A transaction between any of the persons described in subsection 19 involving a nonassignable contract to buy or sell the securities described in subsection 18 if the contract is to be completed within 2 years and if:

(a) The seller of the securities pursuant to the contract is one of the parties described in subsection 18 or 19 who may originate securities;

(b) The purchaser of securities pursuant to a contract is any other person described in subsection 19; and

(c) The conditions described in subsection 18 are fulfilled.

21. A transaction involving one or more promissory notes secured by a lien on real estate, or participating interests in those notes, by:

(a) A mortgage banker licensed pursuant to chapter 645E of NRS to engage in those transactions; or

(b) A mortgage broker licensed pursuant to chapter 645B of NRS to engage in those transactions.

22. An offer to sell or sale of a security by an issuer if the transaction:

(a) Is conducted exclusively through one or more Internet websites; and

(b) Satisfies the requirements of section 3 of this act.



1 **Sec. 7.** This act becomes effective:

2 1. Upon passage and approval for the purposes of adopting
3 regulations and performing any other preparatory administrative
4 tasks that are necessary to carry out the provisions of this act; and

5 2. On January 1, 2016, for all other purposes.

