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SENATE BILL NO. 1207

Offered January 14, 2015

Prefiled January 13, 2015

A BILL to amend the Code of Virginia by adding a section numbered 13.1-514.1:1, relating to the establishment of an exemption to the Securities Act; Crowdfunding Virginia Exemption.

Patron—Wagner

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 13.1-514.1:1 as follows:

§ 13.1-514.1:1. Crowdfunding Virginia Exemption.

A. As used in this section, "individual" means an individual residing in the Commonwealth, or a corporation, trust, partnership, or association or any other legal entity duly organized under the laws of the Commonwealth, that does not:

1. Offer investment advice or recommendations;
2. Solicit purchases, sales, or offers to purchase the securities exempted from requirements of this chapter by this section;
3. Compensate employees, agents, or other persons for the solicitation of purchases, sales, or offers to purchase the securities exempted from requirements of this chapter by this section; or
4. Take custody of investor funds or securities.

B. The offer or sale of a security by an issuer shall be exempt from the securities, broker-dealer, and agent registration requirements of this chapter, and each individual who represents an issuer in an offer or sale shall be exempt from the registration requirements for broker-dealers, if the offer or sale is conducted in accordance with each of the following requirements:

1. The issuer of the security shall be a for-profit business entity formed under the laws of the Commonwealth and registered to transact business in the Commonwealth;

2. The transaction shall meet the requirements of the federal exemption for intrastate offerings in § 3(a)(11) of the Securities Act of 1933 (15 U.S.C. § 77c(a)(11)) and Securities and Exchange Commission (SEC) Rule 147 (17 C.F.R. § 230.147);

3. The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption shall not exceed \$1 million, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption;

4. The issuer shall not accept more than \$10,000 from any single investor unless the investor is an accredited investor as defined by Regulation D, Rule 501 of the Securities Act of 1933 (17 C.F.R. § 230.501), in which event the amount the issuer may accept from such an investor is unlimited;

5. All funds received from investors shall be deposited into a bank or depository institution authorized to do business in the Commonwealth, and all the funds shall be used in accordance with representations made to investors;

6. Before the use of any general solicitation or the twenty-fifth sale of the security, whichever occurs first, the issuer shall file a notice with the Commissioner in writing or in electronic form. The notice shall specify that the issuer is conducting an offering in reliance upon this exemption and shall contain the names and addresses of the following persons:

- a. The issuer;
 - b. All persons who will be involved in the offer or sale of securities on behalf of the issuer; and
 - c. The bank or other depository institution in which investor funds will be deposited;
7. The issuer is not, either before or as a result of the offering, an investment company as defined in § 3 of the Investment Company Act of 1940 (15 U.S.C. § 80a-3) or subject to the reporting requirements of § 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m or 78o(d)); and
8. The issuer shall inform all investors purchasing securities under this exemption that the securities have not been registered under federal or state securities law and that the securities are subject to the limitation on resales contained in subsection (e) of SEC Rule 147 (17 C.F.R. § 230.147(e)).

C. This exemption shall not be used in conjunction with any other exemption under federal or state securities law, except for offers and sales to the following persons, who shall not count toward the limitation in subdivision B 3:

1. An officer, director, partner, or trustee or an individual occupying similar status or performing similar functions; or

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59 2. A person owning 10 percent or more of the outstanding shares of any class or classes of
60 securities.

61 D. This exemption shall not be available if the issuer, any predecessor of the issuer, any affiliate of
62 the issuer, any member of the board of directors, officer, general partner, limited liability company
63 manager, or managing member of the issuer, or any person that has been or will be paid, directly or
64 indirectly, remuneration for solicitation of investors in connection with such sale of securities pursuant
65 to the offering;

66 1. Has filed a registration statement that is the subject of any pending proceeding or examination
67 under § 8 of the Securities Act of 1933 or has been the subject of any refusal order or stop order
68 thereunder within five years prior to the offering;

69 2. Is subject to any pending proceeding under SEC Rule 258 promulgated under the Securities Act of
70 1933, or any similar section adopted under § 3(b) of the Securities Act of 1933, or to an order entered
71 thereunder within five years prior to the offering;

72 3. Has been convicted within five years prior to the offering of any felony or misdemeanor in
73 connection with the purchase or sale of any security or involving the making of any false filing related
74 to the offer or sale of any security;

75 4. Is subject to any order, judgment, or decree of any court of competent jurisdiction or regulatory
76 authority temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or
77 decree of any court of competent jurisdiction or regulatory authority entered within five years prior to
78 the offering permanently restraining or enjoining, such person from engaging in or continuing any
79 conduct or practice in connection with the purchase or sale of any security or involving the making of
80 any false filing related to the offer or sale of any security;

81 5. Is subject to a U.S. Postal Service false representation order entered under 39 U.S.C. § 3005
82 within five years prior to the offering, or is subject to a temporary restraining order or preliminary
83 injunction entered under 39 U.S.C. § 3007 with respect to conduct alleged to have violated 39 U.S.C.
84 § 3005; or

85 6. Has been found by the Commission to have sold or permitted the sale through an Internet website
86 of a security to an investor who is not a resident of the Commonwealth.

87 E. The Commission shall charge a nonrefundable filing fee for each filing of an exemption notice
88 required by subdivision B 6. The filing fee initially shall be \$250 per filing; however, the Commission
89 may, by regulation, increase the filing fee to an amount not to exceed \$500 per filing as necessary to
90 defray the costs of administering the exemption established by this section.

91 F. The exemption authorized by this section shall be known and may be cited as the "Crowdfunding
92 Virginia Exemption."

93 2. That the provisions of this act shall expire on July 1, 2020.