

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0384.01 Thomas Morris x4218

HOUSE BILL 16-1049

HOUSE SPONSORSHIP

Lee,

SENATE SPONSORSHIP

(None),

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING AN ESCROW ACCOUNT HELD BY A DEPOSITORY
102 INSTITUTION ON BEHALF OF AN ISSUER OF AN INTRASTATE
103 OFFERING OF SECURITIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

The bill amends the "Colorado Crowdfunding Act", enacted in 2015, by:

- ! Using the defined term "depository institution" to describe the entity that an issuer must use to set up an escrow account to hold the proceeds of a sale of intrastate

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- ! securities; and
- ! Allowing the issuer to terminate the escrow account once the minimum amount of proceeds from the sale of the securities have been deposited into the account.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 11-51-308.5, **amend**
3 (3) (a) (IV) (D), (3) (a) (IV) (F), and (3) (a) (IX) as follows:

4 **11-51-308.5. Crowdfunding - intrastate offering of securities**
5 **- online intermediaries - rules - fees - short title - legislative**
6 **declaration.** (3) **Exemption.** If an offer or sale of a security by an issuer
7 made after the securities commissioner initially promulgates rules to
8 implement this section is conducted in accordance with all the following
9 requirements and those contained in the rules promulgated pursuant to
10 subsection (4) of this section, the transaction is exempt from section
11 11-51-301:

12 (a) The issuer of the security must be a business entity organized
13 pursuant to the laws of Colorado and authorized to do business in
14 Colorado and meet all of the following requirements:

15 (IV) Unless waived or modified by written consent by the
16 securities commissioner, not less than ten days before the commencement
17 of an offering of securities pursuant to the exemption provided by this
18 section, the issuer must do all the following:

19 (D) Provide the securities commissioner with a copy of an escrow
20 agreement with a ~~bank, regulated trust company or corporate fiduciary,~~
21 ~~savings bank, savings and loan association, or credit union~~ DEPOSITORY
22 INSTITUTION authorized to do business in Colorado in which the issuer
23 will deposit the purchaser's funds or cause the purchaser's funds to be

1 deposited and that the issuer may access only as provided in
2 sub-subparagraph (F) of this subparagraph (IV). The ~~bank, regulated trust~~
3 ~~company or corporate fiduciary, savings bank, savings and loan~~
4 ~~association, or credit union~~ DEPOSITORY INSTITUTION in which the
5 purchaser funds are deposited shall act only at the direction of the party
6 establishing the escrow agreement and does not have any duty or liability,
7 contractual or otherwise, to any purchaser or other person. A purchaser
8 may cancel the purchaser's commitment to invest if the minimum amount
9 established pursuant to sub-subparagraph (F) of this subparagraph (IV)
10 is not raised before the time stated in the escrow agreement.

11 (F) Establish both a minimum and a maximum offering amount,
12 and deposit all funds raised from purchasers pursuant to the exemption
13 provided by this section into an escrow account established pursuant to
14 sub-subparagraph (D) of this subparagraph (IV); EXCEPT THAT, ONCE THE
15 MINIMUM OFFERING AMOUNT HAS BEEN RAISED AND DEPOSITED IN THE
16 ESCROW ACCOUNT, THE ISSUER MAY TERMINATE THE ESCROW
17 ARRANGEMENT. The minimum established must be not less than one-half
18 of the maximum offering amount. The maximum amount must not exceed
19 the limitations set forth in subparagraph (II) of this paragraph (a). The
20 issuer shall not access the escrow funds until the aggregate funds raised
21 from all purchasers equals or exceeds the minimum amount. The issuer
22 shall use all funds in accordance with representations made to purchasers.

23 (IX) All payments for purchase of securities offered pursuant to
24 the exemption provided by this section must be directed to and held by
25 the ~~financial~~ DEPOSITORY institution specified in sub-subparagraph (D)
26 of subparagraph (IV) of this paragraph (a). The securities commissioner
27 may request from the ~~financial~~ DEPOSITORY institution information

1 necessary to ensure compliance with this section. This information is not
2 a public record and is not available for public inspection.

3 **SECTION 2. Applicability.** This act applies to conduct occurring
4 on or after the effective date of this act.

5 **SECTION 3. Safety clause.** The general assembly hereby finds,
6 determines, and declares that this act is necessary for the immediate
7 preservation of the public peace, health, and safety.