

112TH CONGRESS
1ST SESSION

H. R. 2930

AN ACT

To amend the securities laws to provide for registration exemptions for certain crowdfunded securities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Entrepreneur Access
3 to Capital Act”.

4 **SEC. 2. CROWDFUNDING EXEMPTION.**

5 (a) SECURITIES ACT OF 1933.—Section 4 of the Se-
6 curities Act of 1933 (15 U.S.C. 77d) is amended by add-
7 ing at the end the following:

8 “(6) transactions involving the offer or sale of
9 securities by an issuer, provided that—

10 “(A) the aggregate amount sold within the
11 previous 12-month period in reliance upon this
12 exemption is—

13 “(i) \$1,000,000, as such amount is
14 adjusted by the Commission to reflect the
15 annual change in the Consumer Price
16 Index for All Urban Consumers published
17 by the Bureau of Labor Statistics, or less;
18 or

19 “(ii) if the issuer provides potential
20 investors with audited financial statements,
21 \$2,000,000, as such amount is adjusted by
22 the Commission to reflect the annual
23 change in the Consumer Price Index for
24 All Urban Consumers published by the Bu-
25 reau of Labor Statistics, or less;

1 “(B) the aggregate amount sold to any in-
2 investor in reliance on this exemption within the
3 previous 12-month period does not exceed the
4 lesser of—

5 “(i) \$10,000, as such amount is ad-
6 justed by the Commission to reflect the an-
7 nual change in the Consumer Price Index
8 for All Urban Consumers published by the
9 Bureau of Labor Statistics; and

10 “(ii) 10 percent of such investor’s an-
11 nual income;

12 “(C) in the case of a transaction involving
13 an intermediary between the issuer and the in-
14 vestor, such intermediary complies with the re-
15 quirements under section 4A(a); and

16 “(D) in the case of a transaction not in-
17 volving an intermediary between the issuer and
18 the investor, the issuer complies with the re-
19 quirements under section 4A(b).”.

20 (b) REQUIREMENTS TO QUALIFY FOR
21 CROWDFUNDING EXEMPTION.—The Securities Act of
22 1933 is amended by inserting after section 4 the following:

1 **“SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN**
2 **SMALL TRANSACTIONS.**

3 “(a) REQUIREMENTS ON INTERMEDIARIES.—For
4 purposes of section 4(6), a person acting as an inter-
5 mediary in a transaction involving the offer or sale of secu-
6 rities shall comply with the requirements of this subsection
7 if the intermediary—

8 “(1) warns investors, including on the
9 intermediary’s website used for the offer and sale of
10 such securities, of the speculative nature generally
11 applicable to investments in startups, emerging busi-
12 nesses, and small issuers, including risks in the sec-
13 ondary market related to illiquidity;

14 “(2) warns investors that they are subject to
15 the restriction on sales requirement described under
16 subsection (e);

17 “(3) takes reasonable measures to reduce the
18 risk of fraud with respect to such transaction;

19 “(4) provides the Commission with the
20 intermediary’s physical address, website address,
21 and the names of the intermediary and employees of
22 the intermediary, and keep such information up-to-
23 date;

24 “(5) provides the Commission with continuous
25 investor-level access to the intermediary’s website;

1 “(6) requires each potential investor to answer
2 questions demonstrating—

3 “(A) an understanding of the level of risk
4 generally applicable to investments in startups,
5 emerging businesses, and small issuers;

6 “(B) an understanding of the risk of
7 illiquidity; and

8 “(C) such other areas as the Commission
9 may determine appropriate by rule or regula-
10 tion;

11 “(7) requires the issuer to state a target offer-
12 ing amount and a deadline to reach the target offer-
13 ing amount and ensure the third party custodian de-
14 scribed under paragraph (10) withholds offering pro-
15 ceeds until aggregate capital raised from investors
16 other than the issuer is no less than 60 percent of
17 the target offering amount;

18 “(8) carries out a background check on the
19 issuer’s principals;

20 “(9) provides the Commission and potential in-
21 vestors with notice of the offering, not later than the
22 first day securities are offered to potential investors,
23 including—

24 “(A) the issuer’s name, legal status, phys-
25 ical address, and website address;

1 “(B) the names of the issuer’s principals;

2 “(C) the stated purpose and intended use
3 of the proceeds of the offering sought by the
4 issuer; and

5 “(D) the target offering amount and the
6 deadline to reach the target offering amount;

7 “(10) outsources cash-management functions to
8 a qualified third party custodian, such as a broker
9 or dealer registered under section 15(b)(1) of the
10 Securities Exchange Act of 1934 or an insured de-
11 pository institution;

12 “(11) maintains such books and records as the
13 Commission determines appropriate;

14 “(12) makes available on the intermediary’s
15 website a method of communication that permits the
16 issuer and investors to communicate with one an-
17 other;

18 “(13) provides the Commission with a notice
19 upon completion of the offering, which shall include
20 the aggregate offering amount and the number of
21 purchasers; and

22 “(14) does not offer investment advice.

23 “(b) REQUIREMENTS ON ISSUERS IF NO INTER-
24 MEDIARY.—For purposes of section 4(6), an issuer who
25 offers or sells securities without an intermediary shall

1 comply with the requirements of this subsection if the
2 issuer—

3 “(1) warns investors, including on the issuer’s
4 website, of the speculative nature generally applica-
5 ble to investments in startups, emerging businesses,
6 and small issuers, including risks in the secondary
7 market related to illiquidity;

8 “(2) warns investors that they are subject to
9 the restriction on sales requirement described under
10 subsection (e);

11 “(3) takes reasonable measures to reduce the
12 risk of fraud with respect to such transaction;

13 “(4) provides the Commission with the issuer’s
14 physical address, website address, and the names of
15 the principals and employees of the issuers, and
16 keeps such information up-to-date;

17 “(5) provides the Commission with continuous
18 investor-level access to the issuer’s website;

19 “(6) requires each potential investor to answer
20 questions demonstrating—

21 “(A) an understanding of the level of risk
22 generally applicable to investments in startups,
23 emerging businesses, and small issuers;

24 “(B) an understanding of the risk of
25 illiquidity; and

1 “(C) such other areas as the Commission
2 may determine appropriate by rule or regula-
3 tion;

4 “(7) states a target offering amount and en-
5 sures that the third party custodian described under
6 paragraph (9) withholds offering proceeds until the
7 aggregate capital raised from investors other than
8 the issuer is no less than 60 percent of the target
9 offering amount;

10 “(8) provides the Commission with notice of the
11 offering, not later than the first day securities are
12 offered to potential investors, including—

13 “(A) the stated purpose and intended use
14 of the proceeds of the offering sought by the
15 issuer; and

16 “(B) the target offering amount and the
17 deadline to reach the target offering amount;

18 “(9) outsources cash-management functions to
19 a qualified third party custodian, such as a broker
20 or dealer registered under section 15(b)(1) of the
21 Securities Exchange Act of 1934 or an insured de-
22 pository institution;

23 “(10) maintains such books and records as the
24 Commission determines appropriate;

1 “(11) makes available on the issuer’s website a
2 method of communication that permits the issuer
3 and investors to communicate with one another;

4 “(12) does not offer investment advice;

5 “(13) provides the Commission with a notice
6 upon completion of the offering, which shall include
7 the aggregate offering amount and the number of
8 purchasers; and

9 “(14) discloses to potential investors, on the
10 issuer’s website, that the issuer has an interest in
11 the issuance.

12 “(c) VERIFICATION OF INCOME.—For purposes of
13 section 4(6), an issuer or intermediary may rely on certifi-
14 cations as to annual income provided by the person to
15 whom the securities are sold to verify the investor’s in-
16 come.

17 “(d) INFORMATION AVAILABLE TO STATES.—The
18 Commission shall make the notices described under sub-
19 sections (a)(9), (a)(13), (b)(8), and (b)(13) and the infor-
20 mation described under subsections (a)(4) and (b)(4)
21 available to the States.

22 “(e) RESTRICTION ON SALES.—With respect to a
23 transaction involving the issuance of securities described
24 under section 4(6), a purchaser may not transfer such se-

1 securities during the 1-year period beginning on the date
2 of purchase, unless such securities are sold to—

3 “(1) the issuer of such securities; or

4 “(2) an accredited investor.

5 “(f) CONSTRUCTION.—

6 “(1) NO REGISTRATION AS BROKER.—With re-
7 spect to a transaction described under section 4(6)
8 involving an intermediary, such intermediary shall
9 not be required to register as a broker under section
10 15(a)(1) of the Securities Exchange Act of 1934
11 solely by reason of participation in such transaction.

12 “(2) NO PRECLUSION OF OTHER CAPITAL RAIS-
13 ING.—Nothing in this section or section 4(6) shall
14 be construed as preventing an issuer from raising
15 capital through methods not described under section
16 4(6).”.

17 (c) RULEMAKING.—Not later than 180 days after the
18 date of the enactment of this Act, the Securities and Ex-
19 change Commission shall issue such rules as may be nec-
20 essary to carry out section 4A of the Securities Act of
21 1933. In issuing such rules, the Commission shall consider
22 the costs and benefits of the action.

23 (d) DISQUALIFICATION.—Not later than 180 days
24 after the date of the enactment of this Act, the Securities
25 and Exchange Commission shall by rule or regulation es-

1 establish disqualification provisions under which an issuer
 2 shall not be eligible to utilize the exemption under section
 3 4(6) of the Securities Act of 1933 based on the discipli-
 4 nary history of the issuer or its predecessors, affiliates,
 5 officers, directors, or persons fulfilling similar roles. The
 6 Commission shall also establish disqualification provisions
 7 under which an intermediary shall not be eligible to act
 8 as an intermediary in connection with an offering utilizing
 9 the exemption under section 4(6) of the Securities Act of
 10 1933 based on the disciplinary history of the intermediary
 11 or its predecessors, affiliates, officers, directors, or persons
 12 fulfilling similar roles. Such provisions shall be substan-
 13 tially similar to the disqualification provisions contained
 14 in the regulations adopted in accordance with section 926
 15 of the Dodd-Frank Wall Street Reform and Consumer
 16 Protection Act (15 U.S.C. 77d note).

17 **SEC. 3. EXCLUSION OF CROWDFUNDING INVESTORS FROM**
 18 **SHAREHOLDER CAP.**

19 Section 12(g)(5) of the Securities Exchange Act of
 20 1934 (15 U.S.C. 78l(g)(5)) is amended—

21 (1) by striking “(5) For the purposes” and in-
 22 serting:

23 “(5) DEFINITIONS.—

24 “(A) IN GENERAL.—For the purposes”;

25 and

1 (2) by adding at the end the following:

2 “(B) EXCLUSION FOR PERSONS HOLDING
3 CERTAIN SECURITIES.—For purposes of this
4 subsection, securities held by persons who pur-
5 chase such securities in transactions described
6 under section 4(6) of the Securities Act of 1933
7 shall not be deemed to be ‘held of record.’”.

8 **SEC. 4. PREEMPTION OF STATE LAW.**

9 (a) IN GENERAL.—Section 18(b)(4) of the Securities
10 Act of 1933 (15 U.S.C. 77r(b)(4)) is amended—

11 (1) by redesignating subparagraphs (C) and
12 (D) as subparagraphs (D) and (E), respectively; and

13 (2) by inserting after subparagraph (B) the fol-
14 lowing:

15 “(C) section 4(6);”.

16 (b) CLARIFICATION OF THE PRESERVATION OF
17 STATE ENFORCEMENT AUTHORITY.—

18 (1) IN GENERAL.—The amendments made by
19 subsection (a) relate solely to State registration, doc-
20 umentation, and offering requirements, as described
21 under section 18(a) of Securities Act of 1933 (15
22 U.S.C. 77r(a)), and shall have no impact or limita-
23 tion on other State authority to take enforcement
24 action with regard to an issuer, intermediary, or any

1 other person or entity using the exemption from reg-
2 istration provided by section 4(6) of such Act.

3 (2) CLARIFICATION OF STATE JURISDICTION
4 OVER UNLAWFUL CONDUCT OF INTERMEDIARIES,
5 ISSUERS, AND CUSTODIANS.—Section 18(c)(1) of the
6 Securities Act of 1933 is amended by striking “with
7 respect to fraud or deceit, or unlawful conduct by a
8 broker or dealer, in connection with securities or se-
9 curities transactions.” and inserting the following: “,
10 in connection with securities or securities trans-
11 actions, with respect to—

12 “(A) fraud or deceit;

13 “(B) unlawful conduct by a broker or deal-
14 er; and

15 “(C) with respect to a transaction de-
16 scribed under section 4(6), unlawful conduct by
17 an intermediary, issuer, or custodian.”.

Passed the House of Representatives November 3,
2011.

Attest:

Clerk.

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