

MAINE STATE LEGISLATURE

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Date: 2/4/14

(Filing No. S- 382)

INSURANCE AND FINANCIAL SERVICES

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

126TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 568, L.D. 1512, Bill, "An Act To Increase Funding for Start-ups"

Amend the bill by striking out everything after the title and before the summary and inserting the following:

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation promotes and encourages the growth of Maine small businesses by facilitating the ability of a business to raise capital by selling small amounts of securities to a wider pool of small investors with fewer restrictions; and

Whereas, the enactment of this legislation will provide immediate access to capital and streamline regulations for Maine small businesses without diminishing the regulatory protections for investors; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA §16304, sub-§6-A is enacted to read:

6-A. Short-form registration statement. The administrator may adopt by rule a form to be used as a short-form registration statement for securities being registered under this section and sold in offerings in which:

A. The issuer of the security is a corporation or other entity having its principal place of business in this State and registered with the Secretary of State as an entity formed under the laws of this State or authorized to transact business within this State;

B. The aggregate amount of securities sold to all investors by the issuer within any 12-month period is not more than \$1,000,000;

COMMITTEE AMENDMENT

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- 1 C. The aggregate amount of securities sold to any investor by the issuer, including
2 any amount sold during the 12-month period preceding the date of the transaction,
3 does not exceed \$5,000, or a greater amount as the administrator may provide by rule
4 or order, unless the investor is an accredited investor as defined in 17 Code of Federal
5 Regulations, Section 230.501 (2013);
- 6 D. The offering meets the requirements of the federal exemption for limited
7 offerings and sales of securities not exceeding \$1,000,000 in 17 Code of Federal
8 Regulations, Section 230.504 (2013);
- 9 E. The issuer files with the administrator, provides to investors and makes available
10 to potential investors an offering document setting forth the following:
- 11 (1) The name, legal status, physical address and website address of the issuer;
- 12 (2) The names of the directors, officers and any persons occupying a similar
13 status or performing similar functions;
- 14 (3) The name of each person holding more than 20% of the shares of the issuer;
- 15 (4) A description of the business of the issuer and the anticipated business plan
16 of the issuer;
- 17 (5) A description of the financial condition of the issuer, including the following:
- 18 (a) For offerings that, together with all other offerings of the issuer within
19 the preceding 12-month period, have, in the aggregate, offering amounts of
20 \$100,000 or less:
- 21 (i) The income tax returns filed by the issuer for the most recently
22 completed year, if any; and
- 23 (ii) The financial statements of the issuer certified by the principal
24 executive officer of the issuer to be true and complete in all material
25 respects;
- 26 (b) For offerings that, together with all other offerings of the issuer within
27 the preceding 12-month period, have, in the aggregate, offering amounts of
28 more than \$100,000 but not more than \$500,000, financial statements
29 reviewed by a public accountant who is independent of the issuer, using
30 professional standards and procedures for the review or standards and
31 procedures established by the administrator by rule; or
- 32 (c) For offerings that, together with all other offerings of the issuer within
33 the preceding 12-month period, have, in the aggregate, offering amounts of
34 more than \$500,000, audited financial statements;
- 35 (6) A description of the stated purpose and intended use of the proceeds of the
36 offering sought by the issuer;
- 37 (7) The offering amount, the deadline to reach the offering amount and regular
38 updates regarding the progress of the issuer in meeting the offering amount;

1 (8) The price to the public of the securities or, if the price has not been
2 determined, the method for determining the price as long as prior to the sale each
3 investor is provided in writing the final price and all required disclosures with a
4 reasonable opportunity to rescind the commitment to purchase the securities; and

5 (9) A description of the ownership and capital structure of the issuer, including:

6 (a) The terms of the securities being offered and all other classes of security
7 of the issuer, including how those terms may be modified, and a summary of
8 the differences between the classes of securities, including how the rights of
9 the securities being offered may be materially limited, diluted or qualified by
10 the rights of any other class of security of the issuer;

11 (b) A description of how the exercise of the rights held by the principal
12 shareholders of the issuer could negatively impact the purchasers of the
13 securities being offered;

14 (c) The name and ownership level of each existing shareholder who owns
15 more than 20% of any class of the securities of the issuer;

16 (d) How the securities being offered are being valued and examples of
17 methods for how those securities may be valued by the issuer in the future,
18 including during subsequent corporate actions; and

19 (e) The risks to purchasers of the securities relating to minority ownership in
20 the issuer and the risks associated with corporate actions, including additional
21 issuances of shares, a sale of the issuer or of assets of the issuer and
22 transactions with related parties; and

23 F. The issuer sets aside in a separate bank account all funds raised as part of the
24 offering to be held until such time as the minimum offering amount is reached. If the
25 minimum offering amount is not met within one year of the effective date of the
26 offering, the issuer must return all funds to investors.

27 An issuer who elects to use a short-form registration statement pursuant to this subsection
28 must comply with other requirements set forth by rule adopted or order issued under this
29 chapter.

30 Notwithstanding section 16304, subsection 3, the administrator may provide by rule that a
31 short-form registration statement filed under this subsection is immediately effective
32 upon filing or becomes effective within some other stated period after filing,
33 conditionally or otherwise.

34 **Emergency clause.** In view of the emergency cited in the preamble, this
35 legislation takes effect when approved.'

36 SUMMARY

37 This amendment replaces the bill and adds an emergency preamble and emergency
38 clause. Like the bill, the purpose of the amendment is to promote and encourage the
39 growth of Maine small businesses by facilitating the ability of a business to raise capital

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COMMITTEE AMENDMENT "A" to S.P. 568, L.D. 1512

1 by selling small amounts of securities to a wider pool of small investors with fewer
2 restrictions.

3 This amendment provides for a streamlined registration process and simplified
4 registration statement if the issuer and the offering meet certain conditions, including:

5 1. The issuer of the security is a business entity formed and registered under Maine
6 law with its principal place of business in Maine;

7 2. The dollar amount of the securities sold by an issuer during any 12-month period
8 does not exceed \$1,000,000;

9 3. The dollar amount of securities sold to any single investor does not exceed \$5,000
10 unless the investor is an accredited investor as defined in regulations adopted by the
11 federal Securities and Exchange Commission;

12 4. The offering meets the requirements for a federal exemption from registration for
13 small offerings as set forth in regulations adopted by the federal Securities and Exchange
14 Commission;

15 5. The issuer files with the administrator and provides to investors and prospective
16 investors an offering document meeting the requirements of state law and any rules
17 adopted or orders issued by the administrator; and

18 6. The issuer sets aside in a separate bank account funds received from investors
19 until such time as the minimum offering amount is reached. If the minimum offering
20 amount is not met within one year of the effective date of the offering, the issuer must
21 return all funds to investors.

22 **FISCAL NOTE REQUIRED**

23 **(See attached)**

COMMITTEE AMENDMENT



126th MAINE LEGISLATURE

LD 1512

LR 1882(02)

An Act To Increase Funding for Start-ups

Fiscal Note for Bill as Amended by Committee Amendment 'A' (S-382)

Committee: Insurance and Financial Services

Fiscal Note Required: Yes

Fiscal Note

Minor revenue increase - General Fund
Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Any additional revenue collected and costs incurred by the Office of Securities in the Department of Professional and Financial Regulation are expected to be minor and the costs can be absorbed within existing budgeted resources.