

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 1512

S.P. 568

In Senate, May 7, 2013

An Act To Increase Funding for Start-ups

Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by President ALFOND of Cumberland.

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

2 **Sec. 1. 32 MRSA §16202, sub-§25**, as enacted by PL 2005, c. 65, Pt. A, §2, is
3 amended to read:

4 **25. Investments in viatical or life settlement contracts.** Any offer or sale of an
5 investment in a viatical or life settlement contract, if:

6 A. The underlying viatical or life settlement transaction with the viator was not in
7 violation of the Viatical and Life Settlements Act;

8 B. Such disclosure documents as the administrator, by rule or order, requires are
9 delivered to each offeree or purchaser; and

10 C. Prior to any offer in this State, a notice specifying the terms of the offer is filed
11 with the administrator together with a consent to service of process complying with
12 section 16611, signed by the issuer, and a nonrefundable filing fee of \$300 for each
13 type or class of security being offered in this State and the administrator does not by
14 order disallow the exemption within the next 5 full business days; ~~or~~

15 **Sec. 2. 32 MRSA §16202, sub-§26**, as amended by PL 2009, c. 500, §1, is
16 further amended to read:

17 **26. Nonpublic offerings under 4(2).** A security offered in a nonpublic offering
18 under Section 4(2) of the federal Securities Act of 1933, 15 United States Code, Section
19 77d(2) if, no later than 15 days after the first sale in this State, a notice on "Form D," as
20 promulgated by the Securities and Exchange Commission, is filed with the administrator
21 together with a consent to service of process complying with section 16611, signed by the
22 issuer, and the payment of a nonrefundable filing fee of \$300 for each type or class of
23 security sold. If the Form D includes a consent to service of process, a separate document
24 need not be filed for this purpose, and if the consent to service of process on the Form D
25 is executed in a manner accepted by the Securities and Exchange Commission, it is
26 deemed to comply with the requirement in this section and section 16611, subsection 1
27 that the consent be signed. An additional nonrefundable late filing fee of \$500 must be
28 paid for a filing made between 16 and 30 days after the first sale in this State-; or

29 **Sec. 3. 32 MRSA §16202, sub-§27** is enacted to read:

30 **27. Maine seed capital exemption.** An issuer transaction or sale if:

31 A. The issuer of the security is a business entity formed under the laws of the State
32 and registered with the Secretary of State;

33 B. The transaction meets the requirements of the federal exemption for intrastate
34 offerings in Section 3(a)(11) of the federal Securities Act of 1933, 15 United States
35 Code, Section 77c(a)(11), and 17 Code of Federal Regulations, Section 230.147
36 (2013);

37 C. The sum of all cash and other consideration to be received for all sales of the
38 security in reliance upon this exemption does not exceed;

1 (1) If the issuer has not undergone and provided the documentation resulting
2 from a financial audit that was performed the previous year and that met
3 generally accepted accounting principles, \$1,000,000 less the aggregate amount
4 received for all sales of securities by the issuer within the 12 months before the
5 first offer or sale made in reliance upon the exemption provided by this
6 subsection; or

7 (2) If the issuer has undergone and provided the documentation resulting from a
8 financial audit that was performed the previous year and that met generally
9 accepted accounting principles, \$2,000,000 less the aggregate amount received
10 for all sales of securities by the issuer within the 12 months before the first offer
11 or sale made in reliance upon the exemption provided by this subsection.

12 Beginning in 2018, and every 5 years thereafter, the administrator shall adjust the
13 maximum amount of cash and other consideration allowed under this paragraph to
14 reflect the cumulative change in the United States Department of Labor, Bureau of
15 Labor Statistics Consumer Price Index;

16 D. The issuer has not accepted more than \$2,000 from any single purchaser, unless
17 the purchaser is an accredited investor as defined in 17 Code of Federal Regulations,
18 Section 230.501 (2013). Beginning in 2018, and every 5 years thereafter, the
19 administrator shall adjust the maximum amount the issuer may accept from a single
20 purchaser to reflect the cumulative change in the United States Department of Labor,
21 Bureau of Labor Statistics Consumer Price Index;

22 E. Before the use of any general solicitation or the 25th sale of the security,
23 whichever occurs first, the issuer files a notice with the administrator in writing or in
24 electronic form prescribed by the administrator that:

25 (1) Specifies that the issuer is conducting an offering in reliance upon the
26 exemption provided by this subsection; and

27 (2) Contains the names and addresses, including Internet website addresses, of
28 the issuer and all persons who will be involved in the offer or sale of securities on
29 behalf of the issuer, and the bank or other depository institution in which investor
30 funds will be deposited;

31 F. The issuer is not, either before the offering or as a result of the offering, an
32 investment company, as defined in Section 3 of the federal Investment Company Act
33 of 1940, 15 United States Code, Section 80a-3, or subject to the reporting
34 requirements of Section 13 or 15(d) of the federal Securities Exchange Act of 1934,
35 15 United States Code, Section 78m and 78o(d);

36 G. The issuer informs all purchasers that the securities have not been registered
37 under this chapter and that the securities are subject to the limitation on resales
38 contained in 17 Code of Federal Regulations, Section 230.147(e) (2013);

39 H. The issuer requires from all purchasers in writing in a separate written document
40 by the time of the sale the following statement: "I acknowledge that I am investing in
41 a high-risk, speculative business venture, that I may lose all of my investment and
42 that I can afford the loss of my investment. I understand that this offering has not
43 been reviewed by the State and that no authority has expressed an opinion on the

1 merits of this offering." An investor who has signed the acknowledgment contained
2 in this paragraph may not bring an action against the company or any director or
3 officer of the company except in the case of fraud or breach of fiduciary duty, as long
4 as the issuer is able to produce the signed acknowledgement;

5 I. If the sale of securities is by an Internet website, the Internet website requires as a
6 condition of buyer registration on the Internet website evidence or certification that
7 the buyer is a resident of the State. An issuer registering to offer a security on an
8 Internet website under this paragraph must provide evidence or a certification that the
9 issuer is organized under and authorized to do business within the State at the time of
10 registration. The administrator may inspect or review any Internet website under this
11 paragraph. Prior to offering an investment opportunity to residents of this State, an
12 Internet website operator shall inform the administrator of the existence of the
13 Internet website and shall give the administrator access to the Internet website;

14 J. The issuer provides a quarterly report, free of charge, to the issuer's shareholders
15 until there are no securities issued under this subsection outstanding. An issuer may
16 satisfy the reporting requirement of this paragraph by making the information
17 available on an Internet website if the information is made available within 45 days
18 of the end of each fiscal quarter and remains available for at least 60 days. An issuer
19 must provide a printed copy of the report to any shareholder upon request. The report
20 must contain:

21 (1) The amount of compensation received by each director and executive officer,
22 including cash compensation earned since the previous report and on an annual
23 basis and any bonuses, stock options, other rights to receive securities of the
24 issuer or an affiliate of the issuer or other compensation received; and

25 (2) An analysis of the business operations and financial condition of the issuer;
26 and

27 K. Within 5 years prior to the offering, the issuer or a person affiliated with the
28 issuer or the offering:

29 (1) Has not filed a registration statement that is the subject of a pending
30 proceeding or examination under 15 United States Code, Section 77h and has not
31 been the subject of a refusal order or stop order under 15 United States Code,
32 Section 77h;

33 (2) Is not subject to a pending proceeding under 17 Code of Federal Regulations,
34 Section 230.258 (2013) or to an order entered under 17 Code of Federal
35 Regulations, Section 230.258 (2013);

36 (3) Has not been convicted of a felony or misdemeanor in connection with the
37 purchase or sale of a security or involving the making of a false filing related to
38 the offer or sale of a security;

39 (4) Is not subject to an order, judgment or decree of a court of competent
40 jurisdiction or regulatory authority, including non-United States regulatory
41 authorities, preliminarily, temporarily or permanently restraining or enjoining
42 that person from engaging in or continuing conduct or a practice in connection

1 with the purchase or sale of a security or involving the making of a false filing
2 related to the offer or sale of a security;

3 (5) Is not subject to a United States Postal Service false representation order
4 entered under 39 United States Code, Section 3005 and is not subject to a
5 temporary restraining order or preliminary injunction entered under 39 United
6 States Code, Section 3007 with respect to conduct alleged to have violated 39
7 United States Code, Section 3005.

8 The provisions of this paragraph do not apply if, upon a showing of good cause and
9 without prejudice to any other action by the administrator, the administrator
10 determines that it is not necessary under the circumstances that an exemption be
11 denied, and the issuer establishes that it made factual inquiry into whether any
12 disqualification existed under this paragraph but did not know, and in the exercise of
13 reasonable care could not have known, that a disqualification existed under this
14 paragraph. The nature and scope of the inquiry required by an issuer varies based on
15 the circumstances of the issuer and the other offering participants.

16 The exemption provided in this subsection may not be used in conjunction with any other
17 exemption under this chapter, except that offers and sales to controlling persons do not
18 count toward the limitation in paragraph C. For purposes of this subsection, "controlling
19 person" means an officer, director, partner or trustee, or an individual occupying a
20 similar status or performing similar functions with respect to the issuer or to a person
21 owning 10% or more of the outstanding shares of any class or classes of securities of the
22 issuer.

23 The administrator shall adopt rules to protect investors who purchase securities under this
24 subsection. Rules adopted pursuant to this subsection are routine technical rules as
25 defined in Title 5, chapter 375, subchapter 2-A.

26 **SUMMARY**

27 The purpose of this bill is to promote and encourage the growth of Maine small
28 businesses by facilitating the ability of a business to raise capital by selling small amounts
29 of equity to a wider pool of small investors with fewer restrictions. This bill exempts
30 from existing restrictions regarding registration and advertising an issuer transaction or
31 sale if the issuer transaction or sale meets certain conditions, including:

32 1. The issuer of the security must be a business entity formed and registered under
33 Maine law;

34 2. The purchasers of the securities must be Maine residents;

35 3. The size of the offering may not exceed \$1,000,000 if the issuer has not
36 undergone, and provided documentation from, a financial audit in the previous year;

37 4. The size of the offering may not exceed \$2,000,000 if the issuer has undergone,
38 and provided documentation from, a financial audit in the previous year;

1 5. The issuer may not accept more than \$2,000 from any single purchaser unless the
2 purchaser is an accredited investor under rules adopted by the federal Securities and
3 Exchange Commission; and

4 6. The issuer requires from all purchasers a written acknowledgement that the
5 purchaser assumes the risks associated with the investment.