

CHAPTER 3

FINANCIAL INSTITUTIONS

HOUSE BILL 16-1049

BY REPRESENTATIVE(S) Lee, Arndt, Becker K., Buckner, Duran, Fields, Garnett, Kraft-Tharp, Melton, Mitsch Bush, Pabon, Saine, Salazar, Singer, Young, Hullinghorst;
also SENATOR(S) Scheffel and Hill, Baumgardner, Cooke, Grantham, Holbert, Kefalas, Lambert, Lundberg, Marble, Martinez Humenik, Neville T., Scott, Tate, Woods.

AN ACT

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

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

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

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

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

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

(D) Provide the securities commissioner with a copy of an escrow agreement with a bank, regulated trust company or corporate fiduciary, savings bank, savings and

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

(IX) All payments for purchase of securities offered pursuant to the exemption provided by this section must be directed to and held by the ~~financial~~ DEPOSITORY institution specified in sub-subparagraph (D) of subparagraph (IV) of this paragraph (a). The securities commissioner may request from the ~~financial~~ DEPOSITORY institution information necessary to ensure compliance with this section. This information is not a public record and is not available for public inspection.

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

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

Approved: March 9, 2016