

HB3791



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3791

by Rep. Carol Sente

SYNOPSIS AS INTRODUCED:

815 ILCS 5/2.35

815 ILCS 5/4

815 ILCS 5/8d

from Ch. 121 1/2, par. 137.4

Amends the Illinois Securities Law of 1953. Includes certain agents of title insurance companies and registered broker-dealers and registered investment advisors within the scope of the term "qualified escrowee". With respect to certain exempt transactions, removes a requirement that the dealer be organized under Illinois Law, authorizes the payment of finders fees, and make other changes. Permits an Internet Portal to accept equity as payment if specified conditions are met.

LRB100 07306 JLS 21791 b

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Securities Law of 1953 is amended
5 by changing Sections 2.35, 4, and 8d as follows:

6 (815 ILCS 5/2.35)

7 Sec. 2.35. Qualified escrowee. "Qualified escrowee" means
8 a person, firm, partnership, association, corporation, or
9 other legal entity who: (a) falls under the definition of
10 "title insurance company" under, and pursuant to the terms and
11 requirements of, the Title Insurance Act, or is otherwise an
12 agent or affiliate of such title insurance company, and which
13 maintains at least one physical business location within the
14 State; (b) is certified as an independent escrowee under, and
15 pursuant to the terms and requirements of, the Title Insurance
16 Act; or (c) is a bank, regulated trust company, savings bank,
17 savings and loan association, or credit union, registered
18 broker-dealer, or registered investment advisor which is
19 authorized to do business in the State and which maintains at
20 least one physical business location within the State.

21 (Source: P.A. 99-182, eff. 1-1-16.)

22 (815 ILCS 5/4) (from Ch. 121 1/2, par. 137.4)

1 Sec. 4. Exempt transactions. The provisions of Sections 2a,
2 5, 6 and 7 of this Act shall not apply to any of the following
3 transactions, except where otherwise specified in this Section
4 4:

5 A. Any offer or sale, whether through a dealer or
6 otherwise, of securities by a person who is not an issuer,
7 underwriter, dealer or controlling person in respect of
8 such securities, and who, being the bona fide owner of such
9 securities, disposes thereof for his or her own account;
10 provided, that such offer or sale is not made directly or
11 indirectly for the benefit of the issuer or of an
12 underwriter or controlling person.

13 B. Any offer, sale, issuance or exchange of securities
14 of the issuer to or with security holders of the issuer
15 except to or with persons who are security holders solely
16 by reason of holding transferable warrants, transferable
17 options, or similar transferable rights of the issuer, if
18 no commission or other remuneration is paid or given
19 directly or indirectly for or on account of the procuring
20 or soliciting of such sale or exchange (other than a fee
21 paid to underwriters based on their undertaking to purchase
22 any securities not purchased by security holders in
23 connection with such sale or exchange).

24 C. Any offer, sale or issuance of securities to any
25 corporation, bank, savings bank, savings institution,
26 savings and loan association, trust company, insurance

1 company, building and loan association, or dealer; to a
2 pension fund, pension trust, or employees' profit sharing
3 trust, other financial institution or institutional
4 investor, any government or political subdivision or
5 instrumentality thereof, whether the purchaser is acting
6 for itself or in some fiduciary capacity; to any
7 partnership or other association engaged as a substantial
8 part of its business or operations in purchasing or holding
9 securities; to any trust in respect of which a bank or
10 trust company is trustee or co-trustee; to any entity in
11 which at least 90% of the equity is owned by persons
12 described under subsection C, H, or S of this Section 4; to
13 any employee benefit plan within the meaning of Title I of
14 the Federal ERISA Act if (i) the investment decision is
15 made by a plan fiduciary as defined in Section 3(21) of the
16 Federal ERISA Act and such plan fiduciary is either a bank,
17 savings and loan association, insurance company,
18 registered investment adviser or an investment adviser
19 registered under the Federal 1940 Investment Advisers Act,
20 or (ii) the plan has total assets in excess of \$5,000,000,
21 or (iii) in the case of a self-directed plan, investment
22 decisions are made solely by persons that are described
23 under subsection C, D, H or S of this Section 4; to any
24 plan established and maintained by, and for the benefit of
25 the employees of, any state or political subdivision or
26 agency or instrumentality thereof if such plan has total

1 assets in excess of \$5,000,000; or to any organization
2 described in Section 501(c)(3) of the Internal Revenue Code
3 of 1986, any Massachusetts or similar business trust, or
4 any partnership, if such organization, trust, or
5 partnership has total assets in excess of \$5,000,000.

6 D. The Secretary of State is granted authority to
7 create by rule or regulation a limited offering
8 transactional exemption that furthers the objectives of
9 compatibility with federal exemptions and uniformity among
10 the states. The Secretary of State shall prescribe by rule
11 or regulation the amount of the fee for filing any report
12 required under this subsection, but the fee shall not be
13 less than the minimum amount nor more than the maximum
14 amount established under Section 11a of this Act and shall
15 not be returnable in any event.

16 E. Any offer or sale of securities by an executor,
17 administrator, guardian, receiver or trustee in insolvency
18 or bankruptcy, or at any judicial sale, or at a public sale
19 by auction held at an advertised time and place, or the
20 offer or sale of securities in good faith and not for the
21 purpose of avoiding the provisions of this Act by a pledgee
22 of securities pledged for a bona fide debt.

23 F. Any offer or sale by a registered dealer, either as
24 principal or agent, of any securities (except face amount
25 certificate contracts and investment fund shares) at a
26 price reasonably related to the current market price of

1 such securities, provided:

2 (1) (a) the securities are issued and outstanding;

3 (b) the issuer is required to file reports pursuant
4 to Section 13 or Section 15(d) of the Federal 1934 Act
5 and has been subject to such requirements during the 90
6 day period immediately preceding the date of the offer
7 or sale, or is an issuer of a security covered by
8 Section 12(g) (2) (B) or (G) of the Federal 1934 Act;

9 (c) the dealer has a reasonable basis for believing
10 that the issuer is current in filing the reports
11 required to be filed at regular intervals pursuant to
12 the provisions of Section 13 or Section 15(d), as the
13 case may be, of the Federal 1934 Act, or in the case of
14 insurance companies exempted from Section 12(g) of the
15 Federal 1934 Act by subparagraph 12(g) (2) (G) thereof,
16 the annual statement referred to in Section
17 12(g) (2) (G) (i) of the Federal 1934 Act; and

18 (d) the dealer has in its records, and makes
19 reasonably available upon request to any person
20 expressing an interest in a proposed transaction in the
21 securities, the issuer's most recent annual report
22 filed pursuant to Section 13 or 15(d), as the case may
23 be, of the Federal 1934 Act or the annual statement in
24 the case of an insurance company exempted from Section
25 12(g) of the Federal 1934 Act by subparagraph
26 12(g) (2) (G) thereof, together with any other reports

1 required to be filed at regular intervals under the
2 Federal 1934 Act by the issuer after such annual report
3 or annual statement; provided that the making
4 available of such reports pursuant to this
5 subparagraph, unless otherwise represented, shall not
6 constitute a representation by the dealer that the
7 information is true and correct, but shall constitute a
8 representation by the dealer that the information is
9 reasonably current; or

10 (2) (a) prior to any offer or sale, an application for
11 the authorization thereof and a report as set forth
12 under sub-paragraph (d) of this paragraph (2) has been
13 filed by any registered dealer with and approved by the
14 Secretary of State pursuant to such rules and
15 regulations as the Secretary of State may prescribe;

16 (b) the Secretary of State shall have the power by
17 order to refuse to approve any application or report
18 filed pursuant to this paragraph (2) if

19 (i) the application or report does not comply
20 with the provisions of this paragraph (2), or

21 (ii) the offer or sale of such securities would
22 work or tend to work a fraud or deceit, or

23 (iii) the issuer or the applicant has violated
24 any of the provisions of this Act;

25 (c) each application and report filed pursuant to
26 this paragraph (2) shall be accompanied by a filing fee

1 and an examination fee in the amount established
2 pursuant to Section 11a of this Act, which shall not be
3 returnable in any event;

4 (d) there shall be submitted to the Secretary of
5 State no later than 120 days following the end of the
6 issuer's fiscal year, each year during the period of
7 the authorization, one copy of a report which shall
8 contain a balance sheet and income statement prepared
9 as of the issuer's most recent fiscal year end
10 certified by an independent certified public
11 accountant, together with such current information
12 concerning the securities and the issuer thereof as the
13 Secretary of State may prescribe by rule or regulation
14 or order;

15 (e) prior to any offer or sale of securities under
16 the provisions of this paragraph (2), each registered
17 dealer participating in the offer or sale of such
18 securities shall provide upon request of prospective
19 purchasers of such securities a copy of the most recent
20 report required under the provisions of sub-paragraph
21 (d) of this paragraph (2);

22 (f) approval of an application filed pursuant to
23 this paragraph (2) of subsection F shall expire 5 years
24 after the date of the granting of the approval, unless
25 said approval is sooner terminated by (1) suspension or
26 revocation by the Secretary of State in the same manner

1 as is provided for in subsections E, F and G of Section
2 11 of this Act, or (2) the applicant filing with the
3 Secretary of State an affidavit to the effect that (i)
4 the subject securities have become exempt under
5 Section 3 of this Act or (ii) the applicant no longer
6 is capable of acting as the applicant and stating the
7 reasons therefor or (iii) the applicant no longer
8 desires to act as the applicant. In the event of the
9 filing of an affidavit under either preceding
10 sub-division (ii) or (iii) the Secretary of State may
11 authorize a substitution of applicant upon the new
12 applicant executing the application as originally
13 filed. However, the aforementioned substituted
14 execution shall have no effect upon the previously
15 determined date of expiration of approval of the
16 application. Notwithstanding the provisions of this
17 subparagraph (f), approvals granted under this
18 paragraph (2) of subsection F prior to the effective
19 date of this Act shall be governed by the provisions of
20 this Act in effect on such date of approval; and

21 (g) no person shall be considered to have violated
22 Section 5 of this Act by reason of any offer or sale
23 effected in reliance upon an approval granted under
24 this paragraph (2) after a termination thereof under
25 the foregoing subparagraph (f) if official notice of
26 such termination has not been circulated generally to

1 dealers by the Secretary of State and if such person
2 sustains the burden of proof that he or she did not
3 know, and in the exercise of reasonable care, could not
4 have known, of the termination; or

5 (3) the securities, or securities of the same class,
6 are the subject of an existing registration under Section 5
7 of this Act.

8 The exemption provided in this subsection F shall apply
9 only if the offer or sale is made in good faith and not for the
10 purpose of avoiding any of the provisions of this Act, and only
11 if the offer or sale is not made for the direct or indirect
12 benefit of the issuer of the securities, or the controlling
13 person in respect of such issuer.

14 G. (1) Any offer, sale or issuance of a security, whether
15 to residents or to non-residents of this State, where:

16 (a) all sales of such security to residents of this
17 State (including the most recent such sale) within the
18 immediately preceding 12-month period have been made
19 to not more than 35 persons or have involved an
20 aggregate sales price of not more than \$1,000,000;

21 (b) such security is not offered or sold by means
22 of any general advertising or general solicitation in
23 this State; and

24 (c) no commission, discount, or other remuneration
25 exceeding 20% of the sale price of such security, if
26 sold to a resident of this State, is paid or given

1 directly or indirectly for or on account of such sales.

2 (2) In computing the number of resident purchasers or
3 the aggregate sales price under paragraph (1) (a) above,
4 there shall be excluded any purchaser or dollar amount of
5 sales price, as the case may be, with respect to any
6 security which at the time of its sale was exempt under
7 Section 3 or was registered under Section 5, 6 or 7 or was
8 sold in a transaction exempt under other subsections of
9 this Section 4.

10 (3) A prospectus or preliminary prospectus with
11 respect to a security for which a registration statement is
12 pending or effective under the Federal 1933 Act shall not
13 be deemed to constitute general advertising or general
14 solicitation in this State as such terms are used in
15 paragraph (1) (b) above, provided that such prospectus or
16 preliminary prospectus has not been sent or otherwise
17 delivered to more than 150 residents of this State.

18 (4) The Secretary of State shall by rule or regulation
19 require the filing of a report or reports of sales made in
20 reliance upon the exemption provided by this subsection G
21 and prescribe the form of such report and the time within
22 which such report shall be filed. Such report shall set
23 forth the name and address of the issuer and of the
24 controlling person, if the sale was for the direct or
25 indirect benefit of such person, and any other information
26 deemed necessary by the Secretary of State to enforce

1 compliance with this subsection G. The Secretary of State
2 shall prescribe by rule or regulation the amount of the fee
3 for filing any such report, established pursuant to Section
4 11a of this Act, which shall not be returnable in any
5 event. The Secretary of State may impose, in such cases as
6 he or she may deem appropriate, a penalty for failure to
7 file any such report in a timely manner, but no such
8 penalty shall exceed an amount equal to five times the
9 filing fee. The contents of any such report or portion
10 thereof may be deemed confidential by the Secretary of
11 State by rule or order and if so deemed shall not be
12 disclosed to the public except by order of court or in
13 court proceedings. The failure to file any such report
14 shall not affect the availability of such exemption, but
15 such failure to file any such report shall constitute a
16 violation of subsection D of Section 12 of this Act,
17 subject to the penalties enumerated in Section 14 of this
18 Act. The civil remedies provided for in subsection A of
19 Section 13 of this Act and the civil remedies of rescission
20 and appointment of a receiver, conservator, ancillary
21 receiver or ancillary conservator provided for in
22 subsection F of Section 13 of this Act shall not be
23 available against any person by reason of the failure to
24 file any such report or on account of the contents of any
25 such report.

26 H. Any offer, sale or issuance of a security to an

1 accredited investor provided that such security is not
2 offered or sold by means of any general advertising or
3 general solicitation, except as otherwise permitted in
4 this Act.

5 I. Any offer, sale or issuance of securities to or for
6 the benefit of security holders of any person incident to a
7 vote by such security holders pursuant to such person's
8 organizational document or any applicable statute of the
9 jurisdiction of such person's organization, on a merger,
10 consolidation, reclassification of securities, or sale or
11 transfer of assets in consideration of or exchange for
12 securities of the same or another person.

13 J. Any offer, sale or issuance of securities in
14 exchange for one or more outstanding securities, claims or
15 property interests, or partly in such exchange and partly
16 for cash, where such offer, sale or issuance is incident to
17 a reorganization, recapitalization, readjustment,
18 composition or settlement of a claim, as approved by a
19 court of competent jurisdiction of the United States, or
20 any state.

21 K. Any offer, sale or issuance of securities for
22 patronage, or as patronage refunds, or in connection with
23 marketing agreements by cooperative associations organized
24 exclusively for agricultural, producer, marketing,
25 purchasing, or consumer purposes; and the sale of
26 subscriptions for or shares of stock of cooperative

1 associations organized exclusively for agricultural,
2 producer, marketing, purchasing, or consumer purposes, if
3 no commission or other remuneration is paid or given
4 directly or indirectly for or on account of such
5 subscription, sale or resale, and if any person does not
6 own beneficially more than 5% of the aggregate amount of
7 issued and outstanding capital stock of such cooperative
8 association.

9 L. Offers for sale or solicitations of offers to buy
10 (but not the acceptance thereof), of securities which are
11 the subject of a pending registration statement filed under
12 the Federal 1933 Act and which are the subject of a pending
13 application for registration under this Act.

14 M. Any offer or sale of preorganization subscriptions
15 for any securities prior to the incorporation,
16 organization or formation of any issuer under the laws of
17 the United States, or any state, or the issuance by such
18 issuer, after its incorporation, organization or
19 formation, of securities pursuant to such preorganization
20 subscriptions, provided the number of subscribers does not
21 exceed 25 and either (1) no commission or other
22 remuneration is paid or given directly or indirectly for or
23 on account of such sale or sales or issuance, or (2) if any
24 commission or other remuneration is paid or given directly
25 or indirectly for or on account of such sale or sales or
26 issuance, the securities are not offered or sold by any

1 means of general advertising or general solicitation in
2 this State.

3 N. The execution of orders for purchase of securities
4 by a registered salesperson and dealer, provided such
5 persons act as agent for the purchaser, have made no
6 solicitation of the order to purchase the securities, have
7 no direct interest in the sale or distribution of the
8 securities ordered, receive no commission, profit, or
9 other compensation other than the commissions involved in
10 the purchase and sale of the securities and deliver to the
11 purchaser written confirmation of the order which clearly
12 identifies the commissions paid to the registered dealer.

13 O. Any offer, sale or issuance of securities, other
14 than fractional undivided interests in an oil, gas or other
15 mineral lease, right or royalty, for the direct or indirect
16 benefit of the issuer thereof, or of a controlling person,
17 whether through a dealer (acting either as principal or
18 agent) or otherwise, if the securities sold, immediately
19 following the sale or sales, together with securities
20 already owned by the purchaser, would constitute 50% or
21 more of the equity interest of any one issuer, provided
22 that the number of purchasers is not more than 5 and
23 provided further that no commission, discount or other
24 remuneration exceeding 15% of the aggregate sale price of
25 the securities is paid or given directly or indirectly for
26 or on account of the sale or sales.

1 P. Any offer, sale or issuance of securities (except
2 face amount certificate contracts and investment fund
3 shares) issued by and representing an interest in an issuer
4 which is a business corporation incorporated under the laws
5 of this State, the purposes of which are to provide capital
6 and supervision solely for the redevelopment of blighted
7 urban areas located in a municipality in this State and
8 whose assets are located entirely within that
9 municipality, provided: (1) no commission, discount or
10 other remuneration is paid or given directly or indirectly
11 for or on account of the sale or sales of such securities;
12 (2) the aggregate amount of any securities of the issuer
13 owned of record or beneficially by any one person will not
14 exceed the lesser of \$5,000 or 4% of the equity
15 capitalization of the issuer; (3) the officers and
16 directors of the corporation have been bona fide residents
17 of the municipality not less than 3 years immediately
18 preceding the effectiveness of the offering sheet for the
19 securities under this subsection P; and (4) the issuer
20 files with the Secretary of State an offering sheet
21 descriptive of the securities setting forth:

22 (a) the name and address of the issuer;

23 (b) the title and total amount of securities to be
24 offered;

25 (c) the price at which the securities are to be
26 offered; and

1 (d) such additional information as the Secretary
2 of State may prescribe by rule and regulation.

3 The Secretary of State shall within a reasonable time
4 examine the offering sheet so filed and, unless the
5 Secretary of State shall make a determination that the
6 offering sheet so filed does not conform to the
7 requirements of this subsection P, shall declare the
8 offering sheet to be effective, which offering sheet shall
9 continue effective for a period of 12 months from the date
10 it becomes effective. The fee for examining the offering
11 sheet shall be as established pursuant to Section 11a of
12 this Act, and shall not be returnable in any event. The
13 Secretary of State shall by rule or regulation require the
14 filing of a report or reports of sales made to residents of
15 this State in reliance upon the exemption provided by this
16 subsection P and prescribe the form of such report and the
17 time within which such report shall be filed. The Secretary
18 of State shall prescribe by rule or regulation the amount
19 of the fee for filing any such report, but such fee shall
20 not be less than the minimum amount nor more than the
21 maximum amount established pursuant to Section 11a of this
22 Act, and shall not be returnable in any event. The
23 Secretary of State may impose, in such cases as he or she
24 may deem appropriate, a penalty for failure to file any
25 such report in a timely manner, but no such penalty shall
26 exceed an amount equal to five times the filing fee. The

1 contents of any such report shall be deemed confidential
2 and shall not be disclosed to the public except by order of
3 court or in court proceedings. The failure to file any such
4 report shall not affect the availability of such exemption,
5 but such failure to file any such report shall constitute a
6 violation of subsection D of Section 12 of this Act,
7 subject to the penalties enumerated in Section 14 of this
8 Act. The civil remedies provided for in subsection A of
9 Section 13 of this Act and the civil remedies of rescission
10 and appointment of a receiver, conservator, ancillary
11 receiver or ancillary conservator provided for in
12 subsection F of Section 13 of this Act shall not be
13 available against any person by reason of the failure to
14 file any such report or on account of the contents of any
15 such report.

16 Q. Any isolated transaction, whether effected by a
17 dealer or not.

18 R. Any offer, sale or issuance of a security to any
19 person who purchases at least \$150,000 of the securities
20 being offered, where the purchaser's total purchase price
21 does not, or it is reasonably believed by the person
22 relying upon this subsection R that said purchase price
23 does not, exceed 20 percent of the purchaser's net worth at
24 the time of sale, or if a natural person a joint net worth
25 with that person's spouse, for one or any combination of
26 the following: (i) cash, (ii) securities for which market

1 quotations are readily available, (iii) an unconditional
2 obligation to pay cash or securities for which quotations
3 are readily available, which obligation is to be discharged
4 within five years of the sale of the securities to the
5 purchaser, or (iv) the cancellation of any indebtedness
6 owed by the issuer to the purchaser; provided that such
7 security is not offered or sold by means of any general
8 advertising or general solicitation in this State.

9 S. Any offer, sale or issuance of a security to any
10 person who is, or who is reasonably believed by the person
11 relying upon this subsection S to be, a director, executive
12 officer, or general partner of the issuer of the securities
13 being offered or sold, or any director, executive officer,
14 or general partner of a general partner of that issuer. For
15 purposes of this subsection S, "executive officer" shall
16 mean the president, any vice president in charge of a
17 principal business unit, division or function (such as
18 sales, administration or finance), any other officer who
19 performs a policy making function, or any other person who
20 performs similar policy making functions for the issuer.
21 Executive officers of subsidiaries may be deemed executive
22 officers of the issuer if they perform such policy making
23 functions for the issuer.

24 A document being filed pursuant to this Section 4 shall
25 be deemed filed, and any fee paid pursuant to this Section
26 4 shall be deemed paid, upon the date of actual receipt

1 thereof by the Secretary of State.

2 T. An offer or sale of a security, by an issuer that ~~is~~
3 ~~organized and,~~ as of the time of the offer and the time of
4 sale is ~~7~~ in good standing under the laws of the State of
5 Illinois and that is~~7~~ made solely to persons or entities
6 that are, as of the time of the offer and time of sale,
7 residents of the State of Illinois, subject to the
8 following provided:

9 (1) The offering is made in compliance with the
10 requirements of ~~meets all of the requirements of the~~
11 ~~federal exemption for intrastate offerings provided in~~
12 Section 3(a)(11) of the Securities Act of 1933 (15
13 U.S.C. 77c(a)(11)) and Rule 147 adopted under the
14 Securities Act of 1933 (17 CFR 230.147), Rule 147A (17
15 CFR 230.147A), or any other federal exemption
16 providing for intrastate offerings from time to time in
17 effect.

18 (2) The aggregate purchase price of all securities
19 sold by an issuer in reliance on the exemption under
20 this subsection, within any 12-month period, does not
21 exceed: (i) \$1,000,000; or (ii) \$4,000,000 if the
22 issuer has undergone and made available (directly, or
23 through a registered Internet portal), to each
24 prospective purchaser and the Secretary of State,
25 copies of its most recent financial statements which
26 have been audited by an independent auditor and

1 certified by a senior officer of the issuer as fairly,
2 completely, and accurately presenting the financial
3 condition of the issuer, in all material respects, as
4 of the dates indicated therein. Amounts received in
5 connection with any offer or sale to any accredited
6 investor or any of the following shall not count toward
7 the calculation of the foregoing monetary limitations:

8 (a) any entity (including, without limitation,
9 any trust) in which all of the equity interests are
10 owned by (or with respect to any trust, the primary
11 beneficiaries are) persons who are accredited
12 investors or who meet one or more of the criteria
13 in subparagraphs (b) through (d) of this paragraph
14 (2);

15 (b) with respect to participating in an
16 offering of a particular issuer, a natural person
17 serving as an officer, director, partner, or
18 trustee of, or otherwise occupying similar status
19 or performing similar functions with respect to,
20 such issuer;

21 (c) with respect to participating in an
22 offering of a particular issuer, a natural person
23 or entity who owns 10% or more of the then
24 aggregate outstanding voting capital securities of
25 such issuer; or

26 (d) such other person or entity as the

1 Secretary of State may hereafter exempt by rule.

2 The Secretary of State may hereafter cumulatively
3 increase the dollar limitations provided in this
4 paragraph (2).

5 (3) The aggregate amount sold by an issuer to any
6 purchaser (other than an accredited investor or a
7 person or entity which meets one or more of the
8 criteria in subparagraphs (a) through (d) of paragraph
9 (2) of this subsection T) in an offering of securities
10 made in reliance on the exemption provided in this
11 subsection T, within any consecutive 12-month period,
12 does not exceed \$5,000.

13 (4) The Secretary of State shall establish by rule
14 the duties of the issuer including disclosure and
15 filing requirements, treatment of escrow funds and
16 agreements, production of financial statements, and
17 other requirements as deemed necessary.

18 (5) The issuer has made available, to each
19 prospective purchaser and the Secretary of State,
20 copies of its most recent financial statements
21 personally certified by one or more senior officers of
22 the issuer as fairly, completely, and accurately
23 presenting the financial condition of the issuer, in
24 all material respects, as of the dates indicated
25 therein.

26 (6) No commission or other remuneration is paid or

1 given ~~directly or indirectly~~ to any person or entity
2 (including, without limitation, any registered
3 Internet portal) for soliciting any investor, other
4 than such payments made ~~person in this State, except~~ to
5 registered dealers and registered salespersons
6 licensed in this State and such finder fees and other
7 payments now or hereafter permitted under applicable
8 federal law.

9 (7) Not less than 15 days before the earlier of the
10 first sale of securities made in reliance on the
11 exemption provided in this subsection T, or the use of
12 any general solicitation with respect thereto (other
13 than a general announcement made by or on behalf of),
14 an issuer shall file a notice filing with the Secretary
15 of State together with such other forms, materials, and
16 fees as required by the Secretary of State by rule.

17 The Secretary of State shall prescribe by rule the
18 amount of the fee for filing the notice filing required
19 under this subsection, but the fee shall not be less
20 than the minimum amount nor more than the maximum
21 amount ~~in subparagraph (a), established under pursuant~~
22 ~~to~~ Section 11a of this Act and shall not be returnable
23 in any event. The Secretary of State may impose, in
24 such cases as the Secretary ~~he or she~~ may deem
25 appropriate, a penalty for failure to file any such
26 notice in a timely manner, but no such penalty shall

1 exceed an amount equal to 5 times the filing fee. The
2 contents of any such notice or portion thereof may be
3 deemed confidential by the Secretary of State by rule
4 or order and if so deemed shall not be disclosed to the
5 public except by order of court or in court
6 proceedings. The failure to file any such notice does
7 not affect the availability of such exemption, but such
8 failure to file any such report constitutes a violation
9 of subsection D of Section 12 of this Act and is
10 subject to the penalties and remedies available in this
11 Act and under the law.

12 (8) All payments for purchase of securities
13 offered pursuant to the exemption provided under this
14 subsection T are made directly to, and held by, a ~~the~~
15 ~~qualified escrowee identified in the escrow agreement~~
16 ~~required pursuant to subparagraph (c) of paragraph~~
17 ~~(4)~~.

18 (9) The issuer includes each of the following in
19 one or more of the offering materials delivered to a
20 prospective purchaser, or to which a prospective
21 purchaser has been granted electronic access, in
22 connection with the offering:

23 (a) a description of the issuer, its type of
24 entity, the address, and telephone number of its
25 principal office;

26 (b) a reasonably detailed description of the

1 intended use of the offering proceeds, including
2 any amounts to be paid, as compensation or
3 otherwise, to any owner, executive officer,
4 director, managing member, or other person
5 occupying a similar status or performing similar
6 functions on behalf of the issuer;

7 (c) the identity of all persons owning more
8 than 20% ~~10%~~ of the voting capital securities of
9 the issuer;

10 (d) the identity of the executive officers,
11 directors, managing members, and other persons
12 occupying a similar status or performing similar
13 functions in the name of and on behalf of the
14 issuer, including their titles and a reasonably
15 detailed description of their prior experience;

16 (e) the identity of any person or entity who
17 has been or will be retained by the issuer to
18 assist the issuer in conducting the offering and
19 sale of the securities (including all registered
20 Internet portals but excluding persons acting
21 solely as accountants, marketing agents, or
22 attorneys and employees whose primary job
23 responsibilities involve the operating business of
24 the issuer rather than assisting the issuer in
25 raising capital) and a description of the
26 consideration being paid to each such person or

1 entity for such assistance;

2 (e-5) to the extent the issuer is an affiliate
3 or related party of the registered Internet portal
4 being used to conduct the offering, a reasonably
5 detailed description of the relationship between
6 the parties;

7 (f) any additional information material to the
8 offering, including a description of significant
9 factors that make the offering speculative or
10 risky for the purchaser;

11 (g) (blank). ~~the information required pursuant~~
12 ~~to subparagraphs (a) and (b) of paragraph (4) of~~
13 ~~this subsection T;~~

14 (h) such other information as the Secretary of
15 State may hereafter require by rule.

16 (10) The issuer (directly or through a registered
17 Internet portal) requires each purchaser to certify,
18 in writing or electronically, that the purchaser:

19 (a) is a resident of the State of Illinois;

20 (b) understands that the purchaser ~~he or she~~ is
21 investing in a high-risk, highly speculative,
22 business venture, that the purchaser ~~he or she~~ may
23 lose all of the ~~his or her~~ investment, and that the
24 purchaser ~~that he or she~~ can afford such a loss of
25 the ~~his or her~~ investment;

26 (c) understands that the securities being

1 offered are highly illiquid, that there is no ready
2 market for the sale of such securities, that it may
3 be difficult or impossible for purchaser to sell or
4 otherwise dispose of such securities, and (where
5 applicable) that purchaser may be required to hold
6 the securities for an indefinite period of time;
7 and

8 (d) understands that purchaser may be subject
9 to the payment of certain taxes with respect to the
10 securities being purchased whether or not
11 purchaser has sold, or otherwise disposed of, such
12 securities or whether purchaser has received any
13 distributions or other amounts from the issuer.

14 (11) The issuer (directly or through a registered
15 Internet portal) obtains from each purchaser of a
16 security offered under this subsection T evidence that
17 the purchaser is a resident of this State and, if
18 applicable, is an accredited investor. Without
19 limiting the generality of the foregoing, and not to
20 the exclusion of other reasonable methods which may be
21 used by the issuer in connection with the foregoing, an
22 issuer may rely on any evidence permitted under the
23 applicable federal exemption relied upon pursuant to
24 paragraph (1) of this subsection T.

25 (12) The issuer (and to the extent a registered
26 Internet portal is used, such registered Internet

1 portal) maintains records of all offers and sales of
2 securities made pursuant to the exemption granted by
3 this subsection T and provides ready access to such
4 records to the Secretary of State, upon notice from the
5 Secretary of State.

6 (13) The issuer is not, either before or as a
7 result of the offering:

8 (a) an investment company, as defined in
9 Section 3 of the Investment Company Act of 1940 (15
10 U.S.C. 80a-3), as amended and in effect (unless the
11 issuer qualifies for exemption from the terms
12 thereof ~~exclusion from such definition~~ pursuant
13 to: one or more of the exceptions provided in
14 Section 3(c) of the Investment Company Act of
15 1940; ~~or~~ any other provision of the Investment
16 Company Act of 1940; ~~or~~ any administrative rule,
17 regulation, or letter ruling ~~rule or regulation~~
18 promulgated with respect to the Investment Company
19 Act of 1940 or in connection therewith; or any
20 other applicable federal regulation or exemption);
21 or

22 (b) subject to the reporting requirements of
23 Section 13 or 15(d) of the Securities Exchange Act
24 of 1934 (15 U.S.C. 78m or 15 U.S.C. 78o(d)).

25 (14) Neither the issuer, nor any person owning more
26 than 20% of the voting capital securities of the issuer

1 ~~affiliated with the issuer~~ (either before or as a
2 result of the offering), nor the offering itself, nor
3 the registered Internet portal (to the extent used) is
4 subject to disqualification established by the
5 Secretary of State by rule or contained in the
6 applicable federal exemption relied upon pursuant to
7 paragraph (1) of this subsection T ~~the Securities Act~~
8 ~~of 1933 (15 U.S.C. 77c(a)(11)) and Rule 147 adopted~~
9 ~~under the Securities Act of 1933 (17 CFR 230.147),~~
10 unless both of the following are met:

11 (a) on a showing of good cause and without
12 prejudice to any other action by the Secretary of
13 State, the Secretary of State determines that it is
14 not necessary under the circumstances that an
15 exemption is denied; and

16 (b) the issuer establishes that it made a
17 factual inquiry into whether any disqualification
18 existed under this paragraph (14), but did not
19 know, and in the exercise of reasonable care could
20 not have known, that a disqualification existed
21 under this paragraph (14); the nature and scope of
22 the requisite inquiry will vary based on the
23 circumstances of the issuer and the other offering
24 participants.

25 (15) A separate investment vehicle may be used to
26 aggregate investments in the offering being made by an

1 issuer under this Section provided that:

2 (a) such separate investment vehicle is an
3 entity who, by its organizational documents, is
4 organized as a single purpose entity whose sole
5 purpose is the acquisition, ownership, and
6 management of the securities made part of the
7 subject offering;

8 (b) such separate investment vehicle is not,
9 either before or as a result of the offering, an
10 investment company, as defined in Section 3 of the
11 Investment Company Act of 1940 (15 U.S.C. 80a-3),
12 as amended and in effect (unless the separate
13 investment vehicle qualifies for exemption from
14 the terms thereof pursuant to: one or more of the
15 exceptions provided in Section 3(c) of the
16 Investment Company Act of 1940; any other
17 provision of the Investment Company Act of 1940;
18 any administrative rule, regulation, or no action
19 ruling promulgated with respect to the Investment
20 Company Act of 1940 or in connection therewith; or
21 any other federal regulation); and

22 (c) for purposes of determining compliance
23 with the provisions of this Section and the related
24 administrative rules, such investment vehicle
25 shall be disregarded and the subject offering
26 shall be assessed as if the issuer had made a

1 direct offering to the participating investors.

2 (Source: P.A. 99-182, eff. 1-1-16.)

3 (815 ILCS 5/8d)

4 Sec. 8d. Offerings made through registered Internet
5 portals.

6 (a) An issuer shall make an offering or sale of securities
7 pursuant to subsection T of Section 4 of this Act through the
8 use of one or more registered Internet portals.

9 (b) The Internet portal:

10 (1) shall be a registered broker-dealer under the
11 Securities Exchange Act of 1934 (15 U.S.C. 78o);

12 (2) shall be a funding portal registered under the
13 Securities Act of 1933 (15 U.S.C. 77d-1) and the Securities
14 and Exchange Commission has adopted rules under authority
15 of Section 3(h) of the Securities Exchange Act of 1934 (15
16 U.S.C. 78c) and Section 304 of the Jumpstart Our Business
17 Startups Act (P.L. 112-106) governing funding portals;

18 (3) shall be a dealer registered under this Act as of
19 the date of any offer or sale of securities made through
20 the Internet portal; or

21 (4) shall, to the extent it meets the qualifications
22 for exemption from registration pursuant to subsection (d)
23 of this Section:

24 (A) file, not later than 30 days before the date of
25 the first offer or sale of securities made within this

1 State, an application for registration (or renewal of
2 registration, as applicable) as a registered Internet
3 portal with the Secretary of State, in writing or in
4 electronic form as prescribed by the Secretary of
5 State, which the Secretary of State shall make
6 available as an electronic document on the Secretary of
7 State's Internet website, containing such information
8 and required deliveries as specified therein; and

9 (B) pay the application filing fee established
10 under Section 11a of this Act; the Secretary of State
11 shall, within a reasonable time, examine the filed
12 application and other materials filed and, approve or
13 deny the application.

14 (c) If any change occurs in the information submitted by,
15 or on behalf of, an Internet portal to the Secretary of State,
16 the Internet portal shall notify the Secretary of State within
17 10 days after such change occurs and shall provide the
18 Secretary of State with such additional information (if any)
19 requested by the Secretary of State in connection therewith.

20 (d) Notwithstanding anything contained in this Act to the
21 contrary, neither an Internet portal nor its owning or
22 operating entity is required to register as a dealer or an
23 investment advisor under this Act if each of the following
24 applies with respect to the Internet portal and its owning or
25 operating entity:

26 (1) It does not solicit purchases, sales, or offers to

1 buy the securities offered or displayed on the Internet
2 portal.

3 (2) It does not collect or hold funds in connection
4 with any purchase, sale, or offer to buy any securities
5 offered or displayed on the Internet portal.

6 (3) It does not compensate employees, agents, or other
7 persons for the solicitation or based on the sale of
8 securities displayed or referenced on the Internet portal.

9 (4) It is not compensated based on the amount of
10 securities sold.

11 (5) The fee it charges an issuer for an offering of
12 securities on the Internet portal is a fixed amount for
13 each offering, a variable amount based on the length of
14 time that the securities are offered on the Internet
15 portal, a variable amount based on the total proposed
16 offering amount, or any combination of such fixed and
17 variable amounts.

18 (6) It does not offer investment advice or
19 recommendations; however, an Internet portal is not deemed
20 to be offering investment advice or recommendations simply
21 by virtue of:

22 (A) selecting transactions in which the Internet
23 portal shall serve as an intermediary;

24 (B) establishing reasonable selection criteria for
25 an issuer to meet in order to establish an offer or
26 sale of securities through the Internet portal;

1 (C) establishing reasonable selection criteria for
2 a potential purchaser to meet in order to participate
3 in an offer or sale of securities made through the
4 Internet portal; or

5 (D) terminating an issuer transaction at any time
6 before the first sale of the securities of such issuer
7 if the Internet portal determines such action is
8 appropriate, after reasonable due diligence, to
9 protect potential purchasers, and the Internet portal
10 is able to direct the qualified escrowee to return all
11 funds then provided by potential purchasers, if any.

12 (7) It does not engage in such other activities as the
13 Secretary of State, by rule, determines are prohibited.

14 (e) Upon completion of an offering made pursuant to
15 subsection T of Section 4, each registered Internet portal
16 involved with the transactions (and the issuer, to the extent
17 applicable) shall store any and all electronic materials
18 related to the completed offering (including copies of all
19 offering documents, all offering materials, and all purchaser
20 information) on a secure, non-public, server or in such other
21 manner as the Secretary of State may hereafter deem acceptable
22 by rule.

23 (f) Notwithstanding anything contained in this Act to the
24 contrary, in connection with any offering or sale of securities
25 pursuant to subsection T of Section 4 of this Act, the hosting
26 registered Internet portal may elect, in its discretion, to

1 accept as compensation (in whole or part) for the services
2 provided in connection with the subject offering:

3 (1) such equity in, or other securities issued by,
4 issuer on the Internet portal as part of the subject
5 offering; or

6 (2) equity in, or other securities issued by, issuer of
7 any kind, provided that any right to distribution or
8 payment with respect to such class of equity or other
9 securities received by the registered Internet portal be
10 equal, or junior, in terms of priority to the distribution
11 and payment rights, as applicable, of the securities being
12 offered on the Internet portal as part of the subject
13 offering.

14 (Source: P.A. 99-182, eff. 1-1-16.)