

**E N G R O S S E D**

**H. B. 2615**

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(BY DELEGATE(S) LANE)

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[Introduced February 5, 2015; referred to the  
Committee on Small Business, Entrepreneurship and  
Economic Development; then to the Committee on Finance.]

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A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §32-5-501, §32-5-502, §32-5-503 and §32-5-504, all relating to creating the West Virginia Small Business Capital Act; and exempting the offer and sale of certain securities from the Uniform Securities Act.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §32-5-501, §32-5-502, §32-5-503 and §32-5-504, all to read as follows:

**ARTICLE 5. WEST VIRGINIA SMALL BUSINESS CAPITAL ACT.**

**§32-5-501. Short title.**

- 1       This article may be known as the West Virginia Small
- 2       Business Capital Act.

**§32-5-502. Offers or sale of securities.**

- 1       Notwithstanding any other provision of law to the contrary,
- 2       the offer or sale of a security by an issuer is exempt from the
- 3       requirements of articles one, two, three and four of this chapter
- 4       if the offer, sale, issuer and purchaser meet the requirements of
- 5       this article.

**§32-5-503. Qualifications of issuer and purchaser.**

- 1       (a) In order to qualify for exemption under this article, the
- 2       issuer shall:
- 3       (1) Be a for-profit entity organized under the laws of West
- 4       Virginia with its principal place of business in West Virginia;
- 5       (2) Be registered with the Secretary of State;
- 6       (3) Have at least eighty percent of its operating revenue for
- 7       the previous two fiscal years generated from inside West
- 8       Virginia if it is an existing business entity;

9       (4) Generate at least eighty percent of its operating revenue  
10 for the next two fiscal years from inside West Virginia if it is a  
11 newly formed business entity; and

12       (5) Ensure prior to completion of a sale that the purchaser is  
13 a qualified purchaser under subsection (b) of this section.

14       (b) In order to qualify for the exemption under this article,  
15 the purchaser shall be a resident of West Virginia or be an entity  
16 organized under the laws of West Virginia with its principal  
17 place of business in West Virginia.

**§32-5-504. Qualifications of offers, sales and transactions.**

1       (a) The transaction must meet the requirements of the federal  
2 exemption for intrastate offerings in section 3(a)(11) of the  
3 Securities Act of 1933, 15 U.S.C § 77c(a)(11) and SEC rule 147,  
4 17 CFR 230.147.

5       (b) The sum of all cash and other consideration received  
6 from the issue of securities under this exemption may not exceed  
7 \$1 million per annum.

8       (c) The issuer may not issue more than \$10,000 per annum  
9 to any single purchaser unless the purchaser is an accredited

10 investor as defined under rule 501 of SEC Reg D, 17 CFR  
11 230.501.

12 (d) All funds received by issuer from purchasers under this  
13 article, shall be held in escrow by an attorney licensed to practice  
14 law in West Virginia who shall deposit the funds in a depository  
15 institution authorized to do business in West Virginia.

16 (e) All funds shall be used in accordance with the  
17 representations made to purchasers. The attorney with whom the  
18 funds are held in escrow shall make a quarterly report to  
19 purchasers describing all draws upon the funds by issuer.

20 (f) The issuer shall make a quarterly report to purchasers of  
21 the financials of the business operations, including the specific  
22 use of any escrow funds.

23 (g) The issuer shall hold a meeting of all purchasers at least  
24 one time per year within West Virginia.

25 (h) Prior to any general solicitation, or the sale of securities  
26 to the twenty-fifth person, the issuer shall file a Notice of Issuer  
27 with Secretary of State, which notice shall contain the name of  
28 the issuer, all persons involved in the offer or sale of the  
29 securities under this article and the attorney who will act as

30 escrow agent. When the Secretary of State receives Notice of  
31 Issuer, he or she shall promptly forward a copy of it to the  
32 auditor of the State of West Virginia.

**§32-5-505. Misleading filings, criminal penalties and civil liabilities.**

1 Notwithstanding the provisions of section five hundred two  
2 of this article, an issuer under this article shall be subject to the  
3 provisions of sections four hundred four, four hundred nine and  
4 four hundred ten of article four of this chapter.

**§32-5-506. Anti-fraud provisions preserved.**

1 Notwithstanding the provisions of this article, nothing in this  
2 exemption shall be construed to alleviate any person from the  
3 anti-fraud provisions of articles one, two, three or four of this  
4 chapter.

NOTE: The purpose of this bill is to create the West Virginia Small Business Capital Act. It exempts the offer and sale of certain securities from the Uniform Securities Act.

This article is new; therefore, it has been completely underscored.





