

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 2615**

**2015 Carryover**

(BY DELEGATE LANE, FAIRCLOTH AND MILLER)

[Introduced January 13, 2016; referred to the  
Committee on Small Business, Entrepreneurship and  
Economic Development and Finance.]

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

1 Be it enacted by the Legislature of West Virginia:

2 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 3 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 Business Capital Act.

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

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

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

1 (a) In order to qualify for exemption under this article, the issuer shall:

2 (1) Be a for-profit entity organized under the laws of West Virginia with its principal place  
 3 of business in West Virginia;

4 (2) Be registered with the Secretary of State;

5 (3) Have at least eighty percent of its operating revenue for the previous two fiscal years  
 6 generated from inside West Virginia if it is an existing business entity;

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

9 (5) Ensure prior to completion of a sale that the purchaser is a qualified purchaser under

10 subsection (b) of this section.

11 (b) In order to qualify for the exemption under this article, the purchaser shall be a resident  
12 of West Virginia or be an entity organized under the laws of West Virginia with its principal place  
13 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 exemption for intrastate  
2 offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C § 77c(a)(11) and SEC rule  
3 147, 17 CFR 230.147.

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

6 (c) The issuer may not issue more than \$25,000 per annum to any single purchaser unless  
7 the purchaser is an accredited investor as defined under rule 501 of SEC Reg D, 17 CFR 230.501.

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

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

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

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

18 (h) Prior to any general solicitation, or the sale of the twenty-fifth security, the issuer shall  
19 file a Notice of Issuer with Secretary of State, which notice shall contain the name of the issuer,

- 20 all persons involved in the offer or sale of the securities under this article and the attorney who  
21 will act as escrow agent.

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.