A BILL TO BE ENTITLED

AN ACT

relating to crowdfunding portal regulations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) is amended by adding Section 44 to read as follows:

Sec. 44. CROWDFUNDING. (a) The Board shall adopt rules to regulate and facilitate online intrastate crowdfunding.

(b) The rules adopted by the Board under Subsection (a) of this section must:

(1) prohibit offerings made by businesses whose organization substantially limits the owner's liability;

(2) require each offering to disclose the minimum amount to be raised that will be sufficient to execute a business plan and dedicate a certain amount of funds to a specific business plan;

(3) require each offering to set a date by which all funds be raised;

(4) require the portal to refund all funds to investors if the minimum investment amount is not raised by the date set by the issuer;

(5) define "control person" to include any person who has de facto control or has equivalent powers;

(6) authorize crowdfunding portals to:
(A) be founded and administered by entities outside of this state;

(B) use an account in any Texas bank for any required escrow account; and

(C) engage in general solicitation or advertising of the offering if:

(i) the solicitation and advertising are directed only to residents of this state;

(ii) securities are purchased only through the Texas crowdfunding website; and

(iii) all solicitation and advertising is accompanied by a notice stating that the offering is limited to Texas residents;

(7) prohibit crowdfunding portals from:

(A) compensating employees, agents, or other persons in a manner that takes into account the volume of securities sold through its Texas crowdfunding website, unless the persons are registered with the Commissioner and are permitted to receive such compensation; or

(B) offering investment advice or recommendations, unless the portal is a registered investment adviser;

(8) prohibit issuers from:

(A) accepting more than the greater of $5,000 or five percent of a person's annual income from any single purchaser unless the issuer has a reasonable basis for believing that the purchaser of a security under this section is a resident of this
state and:

(i) is an accredited investor described by Section 1152.110, Insurance Code; or

(ii) is an individual who:

(a) had an income of at least $75,000 for each of the two most recent years and expects to have an income of at least $75,000 during the current year; and

(b) is a licensed attorney or a licensed certified public accountant or is registered with the Financial Industry Regulatory Authority or a successor association; or

(B) raising more than $2 million in an offering as determined under 17 C.F.R. Section 230.502(a); and

(9) prohibit issuers from accepting funds from a purchaser who is not a resident of this state.

(c) The Board by rule must require crowdfunding portal websites to disclose to prospective investors, for each Texas crowdfunding offering, not later than the 21st day before an investor may purchase the securities offered:

(1) the name of the issuer;

(2) the name and age of each individual who:

(A) is a director, general partner, manager, managing member, or executive officer of the issuer;

(B) owns at least five percent of any class of securities of the issuer, other than pure debt securities;

(C) has the power to execute non-ministerial contracts on behalf of the issuer; or
(D) has the right, in any capacity, to exercise
significant management control over the issuer;
(3) the business experience and current occupation of
each control person;
(4) a statement of whether any control person or any
entity in which a control person acted as a control person has been
a debtor in bankruptcy or similar proceedings within the last seven
years;
(5) the amount being raised in the offering, and the
minimum offering amount;
(6) the manner in which the proceeds of the offering
will be spent;
(7) the business purpose of the offering, including a
description of the projects for which the proceeds of the offering
will be used;
(8) a description of the securities being offered,
including voting rights and rights to distributions, and whether
those rights are superior or subordinate to the rights of other
securities of the issuer;
(9) a statement of whether the interests of investors
may be diluted;
(10) a statement showing the total capital to be
invested in the projects for which the proceeds of the offering will
be used, and the sources of the capital;
(11) a description of any other securities of the
issuer currently outstanding, or into which outstanding securities
may be converted;
H.B. No. 2580

(12) a table showing the ownership of the issuer immediately following the offering, if all of the securities offered in the offering are sold;

(13) a description of any litigation pending or threatened against the issuer;

(14) any significant conflicts of interest associated with the offering;

(15) all compensation to be paid in connection with the offering;

(16) the business performance record, during the preceding five years, of the issuer and each control person;

(17) financial statements of the issuer, including:

(A) a profit and loss statement for the most recent fiscal year; and

(B) a balance sheet dated not earlier than the 91st day before the date of the offering that is:

(i) audited or prepared in accordance with generally accepted accounting principles; or

(ii) certified by the chief executive officer of the issuer as reflecting all material transactions of the issuer prepared within the last three years are provided;

(18) a statement of the relationship between the issuer and the issuer's Texas crowdfunding portal, including any compensation paid to the portal;

(19) a statement of the material risks associated with investing in the offering;
(20) a statement determined by the commission, that these investments are not guaranteed and that the entire investment may be lost, and the statement shall require the affirmative agreement of the purchaser before funds are transferred; and

(21) other information as the Commissioner may require by rule.

(e) The portal is not considered to be offering investment advice or recommendations as restricted under a rule adopted under Subsection (b)(5)(B) of this section solely because the portal:

(1) selects or performs due diligence with respect to an issuer or offering to be listed; or

(2) provides generally applicable educational materials.

(f) A portal may not be:

(1) an entity precluded from engaging as an issuer in an offering described by 17 C.F.R. Section 230.506(d)(1) by reason of a conviction, order, judgment, decree, suspension, expulsion, or bar that was issued after September 1, 2015; or

(2) an individual who, for an entity described by Subdivision (1) of this subsection:

(A) is a director, general partner, manager, managing member, or executive officer of the issuer;

(B) owns at least five percent of any class of securities of the issuer, other than pure debt securities;

(C) has the power to execute non-ministerial contracts on behalf of such entity; or

(D) has the right, in any capacity, to exercise
significant management control over the issuer.

(g) The Board shall adopt rules and procedures necessary for the administration of this Act.

SECTION 2. This Act takes effect September 1, 2015.