

SENATE

STATE OF MINNESOTA

EIGHTY-NINTH SESSION

S.F. No. 204

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DATE	D-PG	OFFICIAL STATUS
01/20/2015	90	Introduction and first reading Referred to Commerce See HF3, Art. 3, Sec. 12 (First Special Session)

A bill for an act
relating to securities regulation; providing an exemption from regulation for
crowdfunding transactions; proposing coding for new law in Minnesota Statutes,
chapter 80A.

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

Section 1. **[80A.461] MNVEST REGISTRATION EXEMPTION.**

Subdivision 1. Definitions. (a) For purposes of this section, the terms defined in
paragraphs (b) through (e) have the meanings given them.

(b) "MNvest issuer" means an entity organized under the laws of Minnesota, other
than a general partnership, that satisfies the requirements of Code of Federal Regulations,
title 17, part 230.147, and the following requirements:

(1) the principal office of the entity is located in Minnesota;
(2) as of the last day of the most recent semiannual fiscal period of the entity, at least
80 percent, or other threshold permitted by Code of Federal Regulations, title 17, part
230.147, of the entity's assets were located in Minnesota;

(3) except in the case of an entity whose gross revenue during the most recent period
of 12 full months did not exceed \$5,000, the entity derived at least 80 percent, or other
threshold permitted by Code of Federal Regulations, title 17, part 230.147, of the entity's
gross revenues from the operation of a business in Minnesota during (i) the previous fiscal
year, if the MNvest offering begins during the first six months of the entity's fiscal year; or
(ii) during the 12 months ending on the last day of the sixth month of the entity's current
fiscal year, if the MNvest offering begins following the last day;

(4) the entity does not attempt to limit its liability, or the liability of any other person, for fraud or intentional misrepresentation in connection with the offering of its securities in a MNvest offering; and

(5) the entity is not:

(i) engaged in the business of investing, reinvesting, owning, holding, or trading in securities, except that the entity may hold securities of one class in an entity that is not itself engaged in the business of investing, reinvesting, owning, holding, or trading in securities; or

(ii) subject to the reporting requirements of the Securities and Exchange Act of 1934, section 13 or section 15(d), United States Code, title 15, section 78m and section 78o(d).

(c) "MNvest offering" means an offer, or an offer and sale, of securities by a MNvest issuer that: (1) is conducted exclusively through a MNvest portal and (2) satisfies the requirements of this section and other requirements the administrator imposes by rule.

(d) "MNvest portal" means an Internet Web site that is operated by a portal operator for the offer or sale of MNvest offerings under this section or registered securities under section 80A.50, paragraph (b), and satisfies the requirements of subdivision 6.

(e) "Portal operator" means an entity, including an issuer, that:

(1) is authorized to do business in Minnesota;

(2) is a broker-dealer registered under this chapter or otherwise registers with the administrator as a portal operator in accordance with subdivision 7, paragraph (a), and is therefore excluded from broker-dealer registration; and

(3) satisfies such other conditions as the administrator may determine.

Subd. 2. **Generally.** The offer, sale, and issuance of securities in a MNvest offering is exempt from the requirements of sections 80A.49 to 80A.54, except 80A.50, paragraph (a), clause (3), and 80A.71, if the issuer meets the qualifications under this section.

Subd. 3. **MNvest offering.** (a) A MNvest offering must satisfy the following requirements:

(1) the issuer must be a MNvest issuer on the date that its securities are first offered for sale in the offering and continuously through the closing of the offering;

(2) the offering must meet the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, United States Code, title 15, section 77c (a)(11), and Rule 147 adopted under the Securities Act of 1933, Code of Federal Regulations, title 17, part 230.147;

(3) the sale of securities must be conducted exclusively through a MNvest portal;

(4) the MNvest issuer shall require the portal operator to provide or make available to prospective purchasers through the MNvest portal a copy of the MNvest issuer's balance

sheet and income statement for the MNvest issuer's most recent fiscal year, if the issuer was in existence. For offerings beginning more than 90 days after the issuer's most recent fiscal year end, or if the MNvest issuer was not in existence the previous calendar year, the MNvest issuer must provide or make available a balance sheet as of a date not more than 90 days before the commencement of the MNvest offering for the MNvest issuer's most recently completed fiscal year, or such shorter portion the MNvest issuer was in existence during that period, and the year-to-date period, or inception-to-date period, if shorter, corresponding with the more recent balance sheet required by this clause;

(5) in any 12-month period, the MNvest issuer shall not raise more than the aggregate amounts set forth in items (i) and (ii), either in cash or other consideration, in connection with one or more MNvest offerings:

(i) \$5,000,000 if the financial statements described in clause (4) have been (1) audited by a public accountant who is independent of the MNvest issuer using auditing standards issued by either the American Institute of Certified Public Accountants or the Public Company Oversight Board, or (2) reviewed by a public accountant who is independent of the MNvest issuer using the Statements on Standards for Accounting and Review Services issued by the Accounting and Review Services Committee of the American Institute of Certified Public Accountants; or

(ii) \$2,000,000 if the financial statements described in clause (4) have not been audited or reviewed as described in item (i);

(6) the MNvest issuer must use at least 80 percent of the net proceeds of the offering in connection with the operation of its business within Minnesota;

(7) no single purchaser may purchase more than \$10,000 in securities of the MNvest issuer under this exemption in connection with a single MNvest offering unless the purchaser is an accredited investor;

(8) all payments for the purchase of securities must be held in escrow until the aggregate capital deposited into escrow from all purchasers is equal to or greater than the stated minimum offering amount. Purchasers will receive a return of all their subscription funds if the minimum offering amount is not raised by the stipulated expiration date required in subdivision 4, clause (2). The escrow agent must be a bank, regulated trust company, savings bank, savings association, or credit union authorized to do business in Minnesota. The escrow agent is only responsible to act at the direction of the party establishing the escrow account and does not have a duty or liability, contractual or otherwise, to an investor or other person except as set forth in the applicable escrow agreement or other contract;

4.1 (9) the MNvest issuer shall require the portal operator to make available to the
4.2 prospective purchaser through the MNvest portal a disclosure document that meets the
4.3 requirements set forth in subdivision 4;

4.4 (10) before selling securities to a prospective purchaser on a MNvest portal, the
4.5 MNvest issuer shall require the portal operator to obtain from the prospective purchaser
4.6 the certification required under subdivision 5;

4.7 (11) not less than ten days before the beginning of an offering of securities in reliance
4.8 on the exemption under this section, the MNvest issuer shall provide the following to
4.9 the administrator:

4.10 (i) a notice of claim of exemption from registration, specifying that the MNvest
4.11 issuer will be conducting an offering in reliance on the exemption under this section;

4.12 (ii) a copy of the disclosure document to be provided to prospective purchasers in
4.13 connection with the offering, as described in subdivision 4; and

4.14 (iii) a filing fee of \$300; and

4.15 (12) the MNvest issuer and the portal operator may engage in general solicitation
4.16 and advertising of the MNvest offering.

4.17 Beginning in 2018, the dollar limitations provided in this section must be
4.18 adjusted periodically by the administrator pursuant to section 47.59, subdivision 3. The
4.19 administrator shall round each dollar amount adjustment to the nearest \$10,000.

4.20 **Subd. 4. Required disclosures to prospective MNvest offering purchasers.**
4.21 The MNvest issuer shall require the portal operator to make available to the prospective
4.22 purchaser through the MNvest portal a printable or downloadable disclosure document
4.23 containing the following:

4.24 (1) the MNvest issuer's type of entity, the address and telephone number of its
4.25 principal office, its formation history for the previous five years, a summary of the material
4.26 facts of its business plan and its capital structure, and its intended use of the offering
4.27 proceeds, including any amounts to be paid from the proceeds of the MNvest offering, as
4.28 compensation or otherwise, to an owner, executive officer, director, governor, manager,
4.29 member, or other person occupying a similar status or performing similar functions on
4.30 behalf of the MNvest issuer;

4.31 (2) the MNvest offering must stipulate the date on which the offering will expire,
4.32 which must not be longer than 12 months from the date the MNvest offering commenced;

4.33 (3) a copy of the escrow agreement between the escrow agent, the MNvest issuer,
4.34 and, if applicable, the portal operator, as described in subdivision 3, clause (8);

4.35 (4) the financial statements required under subdivision 3, clause (4);

5.1 (5) the identity of all persons owning more than ten percent of any class of equity
5.2 interests in the company;

5.3 (6) the identity of the executive officers, directors, governors, managers, members,
5.4 and other persons occupying a similar status or performing similar functions in the name of
5.5 and on the behalf of the MNvest issuer, including their titles and their relevant experience;

5.6 (7) the terms and conditions of the securities being offered and of any outstanding
5.7 securities of the MNvest issuer; the minimum and maximum amount of securities being
5.8 offered; either the percentage economic ownership of the MNvest issuer represented by
5.9 the offered securities, assuming the minimum and, if applicable, maximum number of
5.10 securities being offered is sold, or the valuation of the MNvest issuer implied by the price
5.11 of the offered securities; the price per share, unit, or interest of the securities being offered;
5.12 any restrictions on transfer of the securities being offered; and a disclosure that any future
5.13 issuance of securities might dilute the value of securities being offered;

5.14 (8) the identity of and consideration payable to a person who has been or will be
5.15 retained by the MNvest issuer to assist the MNvest issuer in conducting the offering and
5.16 sale of the securities, including a portal operator, but excluding (i) persons acting primarily
5.17 as accountants or attorneys, and (ii) employees whose primary job responsibilities involve
5.18 operating the business of the MNvest issuer rather than assisting the MNvest issuer in
5.19 raising capital;

5.20 (9) a description of any pending material litigation, legal proceedings, or regulatory
5.21 action involving the MNvest issuer or any executive officers, directors, governors,
5.22 managers, members, and other persons occupying a similar status or performing similar
5.23 functions in the name of and on behalf of the MNvest issuer;

5.24 (10) a statement of the material risks unique to the MNvest issuer and its business
5.25 plans;

5.26 (11) a statement that the securities have not been registered under federal or state
5.27 securities law and that the securities are subject to limitations on resale; and

5.28 (12) the following legend must be displayed conspicuously in the disclosure
5.29 document:

5.30 "IN MAKING AN INVESTMENT DECISION, PURCHASERS MUST RELY
5.31 ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF
5.32 THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE
5.33 SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR
5.34 STATE SECURITIES COMMISSION OR DIVISION OR OTHER REGULATORY
5.35 AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE
5.36 NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY

OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SEC RULE 147 (CODE OF FEDERAL REGULATIONS, TITLE 17, PART 230.147 (e)) AS PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. PURCHASERS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME."

Subd. 5. Required certification from MNvest offering purchasers. Before selling securities to a prospective purchaser through a MNvest portal, the MNvest issuer shall require the portal operator to obtain from the prospective purchaser through the applicable MNvest portal a written or electronic certification that includes, at a minimum, the following statements:

"I UNDERSTAND AND ACKNOWLEDGE THAT:

If I make an investment in an offering through this MNvest portal, it is very likely that I am investing in a high-risk, speculative business venture that could result in the complete loss of my investment, and I need to be able to afford such a loss.

This offering has not been reviewed or approved by any state or federal securities commission or division or other regulatory authority and that no such person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.

If I make an investment in an offering through this MNvest portal, it is very likely that the investment will be difficult to transfer or sell and, accordingly, I may be required to hold the investment indefinitely.

By entering into this transaction with the company, I am affirmatively representing myself as being a Minnesota resident at the time that this contract is formed, and if this representation is subsequently shown to be false, the contract is void."

Subd. 6. MNvest portal. A MNvest portal must satisfy the requirements of clauses (1) through (4):

(1) the Web site does not contain the word "MNvest" in its URL address;

(2) the Web site implements reasonable steps to limit Web site access to the offer or sale of securities to only Minnesota residents when conducting MNvest offerings; and

(3) MNvest offerings may not be viewed on the MNvest portal by a prospective purchaser until:

(i) the portal operator verifies, through its exercise of reasonable steps, such as using a third-party verification service or as otherwise approved by the administrator, that the prospective purchaser is a Minnesota resident; and

(ii) the prospective purchaser makes an affirmative acknowledgment, electronically through the MNvest portal, that:

(A) I am a Minnesota resident;

(B) the securities and investment opportunities listed on this Web site involve high-risk, speculative business ventures. If I choose to invest in any securities or investment opportunity listed on this Web site, I may lose all of my investment, and I can afford such a loss;

(C) the securities and investment opportunities listed on this Web site have not been reviewed or approved by any state or federal securities commission or division or other regulatory authority, and no such person or authority, including this Web site, has confirmed the accuracy or determined the adequacy of any disclosure made to prospective investors relating to any offering; and

(D) if I choose to invest in any securities or investment opportunity listed on this Web site, I understand that the securities I will acquire may be difficult to transfer or sell, that there is no ready market for the sale of such securities, that it may be difficult or impossible for me to sell or otherwise dispose of this investment at any price, and that, accordingly, I may be required to hold this investment indefinitely; and

(4) the Web site complies with all other rules adopted by the administrator.

Subd. 7. **Portal operator.** (a) An entity, other than a registered broker-dealer, wishing to become a portal operator shall file with the administrator:

(1) form [to be approved by the administrator], including all applicable schedules and supplemental information;

(2) a copy of the articles of incorporation or other documents that indicate the entity's form of organization; and

(3) a filing fee of \$200; provided, however, that no fee is due if the issuer will be the portal operator.

(b) A portal operator's registration expires 12 months from the date the administrator has approved the entity as a portal operator, and subsequent registration for the succeeding 12-month period shall be issued upon written application and upon payment of a renewal fee of \$200, without filing of further statements or furnishing any further information, unless specifically requested by the administrator. A MNvest issuer functioning as a portal operator is not subject to the renewal fees of this paragraph. This section is not applicable to a registered broker-dealer functioning as a portal operator.

(c) A portal operator that is not a broker-dealer registered under this chapter shall not:
(1) offer investment advice or recommendations, provided that a portal operator
shall not be deemed to be offering investment advice or recommendations merely because
it (i) selects, or may perform due diligence with respect to, issuers or offerings to be listed,
or (ii) provides general investor educational materials;

(2) provide transaction-based compensation for securities sold under this chapter to
employees, agents, or other persons unless the employees, agents, or other persons are
registered with the administrator and permitted to receive such compensation;

(3) charge a fee to the issuer for an offering of securities on a MNvest portal unless
the fee is (i) a fixed amount for each offering, (ii) a variable amount based on the length of
time that the securities are offered on the MNvest portal, or (iii) a combination of such
fixed and variable amounts; or

(4) hold, manage, possess, or otherwise handle purchaser funds or securities. This
restriction does not apply if the issuer is the portal operator.

(d) A portal operator shall provide the administrator with the same access to every
part of its MNvest portal that is accessible to purchasers or prospective purchasers.

(e) A portal operator shall comply with the record-keeping requirements of this
paragraph, provided that the failure to maintain records in compliance with this paragraph
shall not affect the MNvest issuer's exemption from registration afforded by this section:

(1) a portal operator shall maintain and preserve, for a period of five years from either
the date of the closing or termination of the securities offering, the following records:

(i) the name of each issuer whose securities have been listed on its MNvest portal;

(ii) copies of all offering materials that have been displayed on its MNvest portal;

(iii) the names and other personal information of each purchaser who has registered
at its MNvest portal;

(iv) any agreements and contracts between the portal operator and the issuer; and

(v) any information used to establish that a MNvest issuer, prospective MNvest
purchaser, or MNvest purchaser is a Minnesota resident;

(2) a portal operator shall, upon written request of the administrator, furnish to the
administrator any records required to be maintained and preserved under this subdivision;

(3) the records required to be kept and preserved under this subdivision must be
maintained in a manner, including by any electronic storage media, that will permit the
immediate location of any particular document so long as such records are available for
immediate and complete access by representatives of the administrator. Any electronic
storage system must preserve the records exclusively in a nonrewriteable, nonerasable
format; verify automatically the quality and accuracy of the storage media recording

9.1 process; serialize the original and, if applicable, duplicate units storage media, and
9.2 time-date for the required period of retention the information placed on such electronic
9.3 storage media; and be able to download indexes and records preserved on electronic
9.4 storage media to an acceptable medium. In the event that a records retention system
9.5 commingles records required to be kept under this subdivision with records not required to
9.6 be kept, representatives of the administrator may review all commingled records; and
9.7 (4) a portal operator shall maintain such other records as the administrator shall
9.8 determine by rule.

9.9 (f) The maximum liability of a portal operator to an issuer, purchaser, or prospective
9.10 purchaser shall not exceed the sum of all fees charged to the issuer in paragraph (c),
9.11 clause (4), unless it has failed to comply with the requirements of this section applicable
9.12 to a portal operator, or has otherwise committed an act or omission constituting gross
9.13 negligence or intentional misconduct.

9.14 Subd. 8. **Insignificant deviations.** A failure to comply with a term, condition,
9.15 or requirement of this section will not result in the loss of the exemption set forth in
9.16 subdivision 1 for an offer or sale to a particular individual or entity, if the MNvest issuer
9.17 relying on the exemption shows:

9.18 (1) the failure to comply was insignificant with respect to the offering as a whole;

9.19 (2) the issuer made a good faith and reasonable attempt to comply with all applicable
9.20 terms, conditions, and requirements in this section; and

9.21 (3) the issuer did not know of the failure where the failure to comply with a term,
9.22 condition, or requirement of this section was the result of the failure of the MNvest portal
9.23 to comply with the requirements of this section.

9.24 **EFFECTIVE DATE.** This section is effective the day following final enactment.