

## Union Calendar No.

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2930

[Report No. 112-]

To amend the securities laws to provide for registration exemptions for certain crowdfunded securities, and for other purposes.

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### IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 2011

Mr. MCHENRY introduced the following bill; which was referred to the  
Committee on Financial Services

OCTOBER --, 2011

Reported with an amendment, committed to the Committee of the Whole  
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

# **A BILL**

To amend the securities laws to provide for registration exemptions for certain crowdfunded securities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Entrepreneur Access  
5 to Capital Act”.

6 **SEC. 2. CROWDFUNDING EXEMPTION.**

7 (a) **SECURITIES ACT OF 1933.**—Section 4 of the Se-  
8 curities Act of 1933 (15 U.S.C. 77d) is amended by add-  
9 ing at the end the following:

10 “(6) transactions involving the issuance of secu-  
11 rities for which—

12 “(A) the aggregate annual amount raised  
13 through the issue of the securities is  
14 \$5,000,000 or less; and

15 “(B) individual investments in the securi-  
16 ties are limited to an aggregate annual amount  
17 equal to the lesser of—

18 “(i) \$10,000; and

19 “(ii) 10 percent of the investor’s an-  
20 nual income.”.

21 (b) **VERIFICATION OF INCOME.**—For purposes of sec-  
22 tion 4(6) of the Securities Act of 1933, an issuer may rely  
23 on certifications provided by investors.

1 **SEC. 3. EXCLUSION OF CROWDFUNDING INVESTORS FROM**  
2 **SHAREHOLDER CAP.**

3 Section 12(g)(5) of the Securities Exchange Act of  
4 1934 (15 U.S.C. 781(g)(5)) is amended—

5 (1) by striking “For the purposes” and insert-  
6 ing:

7 “(A) IN GENERAL.—For the purposes”;  
8 and

9 (2) by adding at the end the following:

10 “(B) EXCLUSION FOR PERSONS HOLDING  
11 CERTAIN SECURITIES.—For purposes of this  
12 subsection, the term ‘held of record’ shall not  
13 include holders of securities issued pursuant to  
14 transactions described under section 4(6) of the  
15 Securities Act of 1933.”

16 **SEC. 4. PREEMPTION OF STATE LAW.**

17 Section 18(b)(4) of the Securities Act of 1933 (15  
18 U.S.C. 77r(b)(4)) is amended—

19 (1) by redesignating subparagraphs (C) and  
20 (D) as (D) and (E), respectively; and

21 (2) by inserting after subparagraph (B) the fol-  
22 lowing:

23 “(C) section 4(6);”

24 **SECTION 1. SHORT TITLE.**

25 *This Act may be cited as the “Entrepreneur Access to*  
26 *Capital Act”.*

1 **SEC. 2. CROWDFUNDING EXEMPTION.**

2 (a) *SECURITIES ACT OF 1933.*—Section 4 of the *Secu-*  
3 *rities Act of 1933 (15 U.S.C. 77d)* is amended by adding  
4 *at the end the following:*

5 “(6) *transactions involving the issuance of secu-*  
6 *rities for which—*

7 “(A) *the aggregate annual amount raised*  
8 *through the issue of the securities is—*

9 “(i) *\$1,000,000 or less; or*

10 “(ii) *if the issuer provides potential in-*  
11 *vestors with audited financial statements,*  
12 *\$2,000,000 or less;*

13 “(B) *individual investments in the securi-*  
14 *ties are limited to an aggregate annual amount*  
15 *equal to the lesser of—*

16 “(i) *\$10,000; and*

17 “(ii) *10 percent of the investor’s an-*  
18 *nuual income;*

19 “(C) *in the case of a transaction involving*  
20 *an intermediary between the issuer and the in-*  
21 *vestor, such intermediary complies with the re-*  
22 *quirements under section 4A(a); and*

23 “(D) *in the case of a transaction not involv-*  
24 *ing an intermediary between the issuer and the*  
25 *investor, the issuer complies with the require-*  
26 *ments under section 4A(b).”.*

1           **(b) REQUIREMENTS TO QUALIFY FOR CROWDFUNDING**  
2 *EXEMPTION.*—*The Securities Act of 1933 is amended by in-*  
3 *serting after section 4 the following:*

4 **“SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN**  
5 **SMALL TRANSACTIONS.**

6           **“(a) REQUIREMENTS ON INTERMEDIARIES.**—*For pur-*  
7 *poses of section 4(6), a person acting as an intermediary*  
8 *in a transaction involving the issuance of securities shall*  
9 *comply with the requirements of this subsection if the inter-*  
10 *mediary—*

11                   **“(1)** *warns investors, including on the*  
12 *intermediary’s website, of the speculative nature gen-*  
13 *erally applicable to investments in startups, emerging*  
14 *businesses, and small issuers, including risks in the*  
15 *secondary market related to illiquidity;*

16                   **“(2)** *warns investors that they are subject to the*  
17 *restriction on sales requirement described under sub-*  
18 *section (e);*

19                   **“(3)** *takes reasonable measures to reduce the risk*  
20 *of fraud with respect to such transaction;*

21                   **“(4)** *provides the Commission with the*  
22 *intermediary’s physical address, website address, and*  
23 *the names of the intermediary and employees of the*  
24 *person, and keep such information up-to-date;*

1           “(5) provides the Commission with continuous  
2 investor-level access to the intermediary’s website;

3           “(6) requires each potential investor to answer  
4 questions demonstrating competency in—

5                   “(A) recognition of the level of risk gen-  
6 erally applicable to investments in startups,  
7 emerging businesses, and small issuers;

8                   “(B) risk of illiquidity; and

9                   “(C) such other areas as the Commission  
10 may determine appropriate;

11           “(7) requires the issuer to state a target offering  
12 amount and withhold capital formation proceeds  
13 until aggregate capital raised from investors other  
14 than the issuer is no less than 60 percent of the target  
15 offering amount;

16           “(8) carries out a background check on the  
17 issuer’s principals;

18           “(9) provides the Commission with basic notice  
19 of the offering, not later than the first day funds are  
20 solicited from potential investors, including—

21                   “(A) the issuer’s name, legal status, phys-  
22 ical address, and website address;

23                   “(B) the names of the issuer’s principals;

1                   “(C) the stated purpose and intended use of  
2                   the capital formation funds sought by the issuer;  
3                   and

4                   “(D) the target offering amount;

5                   “(10) outsources cash-management functions to a  
6                   qualified third party custodian, such as a traditional  
7                   broker or dealer or insured depository institution;

8                   “(11) maintains such books and records as the  
9                   Commission determines appropriate;

10                  “(12) makes available on the intermediary’s  
11                  website a method of communication that permits the  
12                  issuer and investors to communicate with one an-  
13                  other; and

14                  “(13) does not offer investment advice.

15                  “(b) *REQUIREMENTS ON ISSUERS IF NO INTER-*  
16                  *MEDIARY.—For purposes of section 4(6), an issuer who of-*  
17                  *fers securities without an intermediary shall comply with*  
18                  *the requirements of this subsection if the issuer—*

19                  “(1) warns investors, including on the issuer’s  
20                  website, of the speculative nature generally applicable  
21                  to investments in startups, emerging businesses, and  
22                  small issuers, including risks in the secondary market  
23                  related to illiquidity;



1           “(2) warns investors that they are subject to the  
2           restriction on sales requirement described under sub-  
3           section (e);

4           “(3) takes reasonable measures to reduce the risk  
5           of fraud with respect to such transaction;

6           “(4) provides the Commission with the issuer’s  
7           physical address, website address, and the names of  
8           the principals and employees of the issuers, and keeps  
9           such information up-to-date;

10          “(5) provides the Commission with continuous  
11          investor-level access to the issuer’s website;

12          “(6) requires each potential investor to answer  
13          questions demonstrating competency in—

14                 “(A) recognition of the level of risk gen-  
15                 erally applicable to investments in startups,  
16                 emerging businesses, and small issuers;

17                 “(B) risk of illiquidity; and

18                 “(C) such other areas as the Commission  
19                 may determine appropriate;

20          “(7) states a target offering amount and with-  
21          holds capital formation proceeds until the aggregate  
22          capital raised from investors other than the issuer is  
23          no less than 60 percent of the target offering amount;

1           “(8) provides the Commission with basic notice  
2 of the offering, not later than the first day funds are  
3 solicited from potential investors, including—

4                   “(A) the stated purpose and intended use of  
5 the capital formation funds sought by the issuer;  
6 and

7                   “(B) the target offering amount;

8           “(9) outsources cash-management functions to a  
9 qualified third party custodian, such as a traditional  
10 broker or dealer or insured depository institution;

11           “(10) maintains such books and records as the  
12 Commission determines appropriate;

13           “(11) makes available on the issuer’s website a  
14 method of communication that permits the issuer and  
15 investors to communicate with one another;

16           “(12) does not offer investment advice; and

17           “(13) discloses to potential investors, on the  
18 issuer’s website, that the issuer has an interest in the  
19 issuance.

20           “(c) VERIFICATION OF INCOME.—For purposes of sec-  
21 tion 4(6), an issuer or intermediary may rely on certifi-  
22 cations provided by an investor to verify the investor’s in-  
23 come.

24           “(d) INFORMATION AVAILABLE TO STATES.—The Com-  
25 mission shall make the notices described under subsections

1 *(a)(9) and (b)(8) and the information described under sub-*  
2 *sections (a)(4) and (b)(4) available to the States.*

3 “*(e) RESTRICTION ON SALES.—With respect to a*  
4 *transaction involving the issuance of securities described*  
5 *under section 4(6), an investor may not sell such securities*  
6 *during the 1-year period beginning on the date of purchase,*  
7 *unless such securities are sold to—*

8 “*(1) the issuer of such securities; or*

9 “*(2) an accredited investor.*

10 “*(f) CONSTRUCTION.—*

11 “*(1) NO TREATMENT AS BROKER.—With respect*  
12 *to a transaction described under section 4(6) involv-*  
13 *ing an intermediary, such intermediary shall not be*  
14 *treated as a broker under the securities laws solely by*  
15 *reason of participation in such transaction.*

16 “*(2) NO PRECLUSION OF OTHER CAPITAL RAIS-*  
17 *ING.—Nothing in this section or section 4(6) shall be*  
18 *construed as preventing an issuer from raising cap-*  
19 *ital through methods not described under section*  
20 *4(6).”.*

21 “*(c) RULEMAKING.—Not later than 90 days after the*  
22 *date of the enactment of this Act, the Securities and Ex-*  
23 *change Commission shall issue such rules as may be nec-*  
24 *essary to carry out section 4A of the Securities Act of 1933.*

1 *In issuing such rules, the Commission shall carry out the*  
2 *cost-benefit analysis required under section 2(b) of such Act.*

3       (d) *DISQUALIFICATION.*—*Not later than 90 days after*  
4 *the date of the enactment of this Act, the Securities and*  
5 *Exchange Commission shall by rule or regulation establish*  
6 *disqualification provisions under which a person shall not*  
7 *be eligible to utilize the exemption under section 4(6) of the*  
8 *Securities Act of 1933 or to participate in the affairs of*  
9 *an intermediary facilitating the use of that exemption.*  
10 *Such provisions shall be substantially similar to the dis-*  
11 *qualification provisions contained in the regulations adopt-*  
12 *ed in accordance with section 926 of the Dodd-Frank Wall*  
13 *Street Reform and Consumer Protection Act (15 U.S.C. 77d*  
14 *note).*

15 **SEC. 3. EXCLUSION OF CROWDFUNDING INVESTORS FROM**  
16 **SHAREHOLDER CAP.**

17       Section 12(g)(5) of the Securities Exchange Act of  
18 1934 (15 U.S.C. 78l(g)(5)) is amended—

19           (1) by striking “For the purposes” and inserting:

20                   “(A) *IN GENERAL.*—*For the purposes*”; and

21           (2) by adding at the end the following:

22                   “(B) *EXCLUSION FOR PERSONS HOLDING*  
23 *CERTAIN SECURITIES.*—*For purposes of this sub-*  
24 *section, the term ‘held of record’ shall not include*  
25 *holders of securities issued pursuant to trans-*

1           *actions described under section 4(6) of the Secu-*  
2           *rities Act of 1933.”.*

3   **SEC. 4. PREEMPTION OF STATE LAW.**

4       *Section 18(b)(4) of the Securities Act of 1933 (15*  
5   *U.S.C. 77r(b)(4)) is amended—*

6           *(1) by redesignating subparagraphs (C) and (D)*  
7       *as subparagraphs (D) and (E), respectively; and*

8           *(2) by inserting after subparagraph (B) the fol-*  
9       *lowing:*

10           *“(C) section 4(6);”.*