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# A BILL FOR AN ACT

RELATING TO CROWDFUNDING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to establish a  
2 limited intrastate crowdfunding exemption for businesses based  
3 in Hawaii to connect with investors located in Hawaii, through  
4 equity crowdfunding via third-party internet portals.

5           SECTION 2. Act 229, Session Laws of Hawaii 2006, is  
6 amended by adding a new section to read as follows:

7           "There is established an intrastate crowdfunding  
8 initiative, which may be referred to as the "Hawaii Invests  
9 Local Exemption Act," amending the Uniform Securities Act of  
10 2002 to exempt limited equity investments from comprehensive  
11 regulatory structures required of securities exchanges within  
12 the State."

13           SECTION 3. Chapter 485A is amended by adding a new part to  
14 be appropriately designated and to read as follows:

15           "485A- **Hawaii Invests Local Exemption Act.** (a) Except as  
16 otherwise provided in this act, an offer or sale of a security  
17 by an issuer is exempt from the requirements of sections 485A-



1 301 to 485A-305 and 485A-504, if the offer or sale meets all of  
2 the following requirements:

3 (1) The issuer of the security is an entity that is  
4 incorporated or organized under the laws of this state  
5 and is authorized to do business in this state.

6 (2) The transaction meets the requirements for the federal  
7 exemption for intrastate offerings under section  
8 3(a)(11) of the Securities Act of 1933 (15 U.S.C.  
9 77c(a)(11)), and pursuant to Rule 147 (17 C.F.R.  
10 230.147), including, but not limited to, the  
11 requirements for determining whether an offeree or  
12 purchaser is a resident of this state. All of the  
13 following apply concerning these requirements:

14 (A) Each of the following is prima facie evidence  
15 that an individual is a resident of this state:

16 (i) A valid operator's license, chauffeur's  
17 license, or official personal identification  
18 card issued by this state.

19 (ii) A current Hawaii voter registration.

20 (iii) A signed affidavit, as provided by the  
21 commissioner, that indicates that the



1           purchaser owns and occupies property in this  
2           state as his or her principal residence.

3           (iv) Any other record or documents issued by this  
4           state that establishes that the purchaser's  
5           principal residence is in this state.

6           (B) The provisions of Rule 147, (17 CFR 230.147) of  
7           the Securities Act of 1933, apply in determining  
8           the residency of an issuer or purchaser that is a  
9           corporation, partnership, trust, or other form of  
10           business organization.

11           (C) If a purchaser of a security that is exempt under  
12           this section resells that security within nine  
13           months after the closing of the particular  
14           offering in which the purchaser obtained that  
15           security to a person that is not a resident of  
16           this state, the original investment agreement  
17           between the issuer and the purchaser is void. If  
18           an agreement to purchase, or the purchase of, a  
19           security is void under this subparagraph, the  
20           issuer may recover damages from the  
21           misrepresenting offeree or purchaser. These



1           damages include, but are not limited to, the  
2           issuer's expenses in resolving the  
3           misrepresentation. However, damages described in  
4           this subparagraph shall not exceed the amount of  
5           the person's investment in the security.

6       (3) The sum of all cash and other consideration to be  
7           received for all sales of the security in reliance on  
8           this exemption does not exceed \$1,000,000, less the  
9           aggregate amount received for all sales of securities  
10          by the issuer within the 12 months before the first  
11          offer or sale made in reliance on this exemption, if  
12          the issuer has not made available to each prospective  
13          purchaser and the commissioner audited financial  
14          statements or reviewed financial statements for the  
15          issuer's most recently completed fiscal year, prepared  
16          by a certified public accountant, in accordance with  
17          the statements on auditing standards of the American  
18          institute of certified public accountants or the  
19          statements on standards for accounting and review  
20          services of the American institute of certified public  
21          accountants, as applicable.



1       (4) The issuer has not accepted more than \$5,000.00 from  
2       any single purchaser unless the purchaser is an  
3       accredited investor as defined by Rule 501, regulation  
4       D, (17 CFR 230.501) of the Securities Act of 1933. The  
5       issuer may rely on confirmation that the purchaser is  
6       an accredited investor from a licensed broker-dealer  
7       or another third party in making a determination that  
8       the purchaser is an accredited investor.

9       (5) At least ten days before an offer of securities is  
10       made in reliance on this exemption or the use of any  
11       publicly available website in connection with an  
12       offering of securities in reliance on this exemption,  
13       the issuer files a notice with the commissioner, in  
14       writing or in electronic form as specified by the  
15       commissioner, that contains all of the following:

16       (A) A notice of claim of exemption from registration,  
17       specifying that the issuer intends to conduct an  
18       offering in reliance on this exemption,  
19       accompanied by the filing fee specified in this  
20       section.



1           (B) A copy of the disclosure statement to be provided  
2           to prospective investors in connection with the  
3           offering. The disclosure statement must contain  
4           all of the following:

5           (i) A description of the issuer, including its  
6           type of entity, the address and telephone  
7           number of its principal office, its  
8           formation history, its business plan, and  
9           the intended use of the offering proceeds,  
10          including any amounts to be paid, as  
11          compensation or otherwise, to any owner,  
12          executive officer, director, managing  
13          member, or other person occupying a similar  
14          status or performing similar functions on  
15          behalf of the issuer.

16          (ii) The identity of each person that owns more  
17          than 10% of the ownership interests of any  
18          class of securities of the issuer.

19          (iii) The identity of the executive officers,  
20          directors, and managing members of the  
21          issuer, and any other individuals who occupy



1           similar status or perform similar functions  
2           in the name of and on behalf of the issuer,  
3           including their titles and their prior  
4           experience.

5           (iv) The terms and conditions of the securities  
6           being offered and of any outstanding  
7           securities of the issuer, the minimum and  
8           maximum amount of securities being offered,  
9           if any, and either the percentage ownership  
10          of the issuer represented by the offered  
11          securities or the valuation of the issuer  
12          implied by the price of the offered  
13          securities.

14          (v) The identity of any person that the issuer  
15          has or intends to retain to assist the  
16          issuer in conducting the offering and sale  
17          of the securities, including the owner of  
18          any websites, if known, but excluding any  
19          person acting solely as an accountant or  
20          attorney and any employees whose primary job  
21          responsibilities involve the operating



1 business of the issuer rather than assisting  
2 the issuer in raising capital, and for each  
3 person identified in response to this sub-  
4 subparagraph, a description of the  
5 consideration being paid to that person for  
6 that assistance.

7 (vi) A description of any litigation or legal  
8 proceedings involving the issuer or its  
9 management.

10 (vii) The name and address of any website that  
11 the issuer intends to use in connection with  
12 the offering, including its uniform resource  
13 locator or URL. If the issuer has not  
14 engaged a website described in this sub-  
15 subparagraph at the time the issuer files  
16 the disclosure statement described in this  
17 subparagraph with the commissioner under  
18 this subdivision but subsequently does  
19 engage a website for use in connection with  
20 the offering, the issuer shall provide the  
21 information described in this sub-





1                   subparagraph to the commissioner by filing a  
2                   supplemental notice.

3           (C) An escrow agreement with a bank or other  
4                   depository institution located in this state, in  
5                   which the purchaser funds will be deposited, that  
6                   provides that all offering proceeds will be  
7                   released to the issuer only when the aggregate  
8                   capital raised from all purchasers is equal to or  
9                   greater than the minimum target offering amount  
10                  specified in the disclosure statement as  
11                  necessary to implement the business plan and that  
12                  all purchasers will receive a return of their  
13                  subscription funds if that target offering amount  
14                  is not raised by the time stated in the  
15                  disclosure statement. The bank or other  
16                  depository institution may contract with the  
17                  issuer to collect reasonable fees for its escrow  
18                  services regardless of whether the target  
19                  offering amount is reached.

20           (6) The issuer is not, either before or as a result of the  
21                  offering, an investment company, as defined in section



1           3 of the Investment Company Act of 1940 (15 U.S.C 80a-  
2           3), or an entity that would be an investment company  
3           but for the exclusions provided in subsection (c) of  
4           that section, or subject to the reporting requirements  
5           of section 13 or 15(d) of the Securities Exchange Act  
6           of 1934 (15 U.S.C 78m and 78o(d)).

7           (7) The issuer informs each prospective purchaser that the  
8           securities are not registered under federal or state  
9           securities laws and that the securities are subject to  
10           limitations on transfer or resale and displays the  
11           following legend conspicuously on the cover page of  
12           the disclosure statement:

13           "IN MAKING AN INVESTMENT DECISION, PURCHASERS MUST  
14           RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE  
15           TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS  
16           INVOLVED. THESE SECURITIES HAVE **NOT** BEEN RECOMMENDED  
17           BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR  
18           REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING  
19           AUTHORITIES HAVE **NOT** CONFIRMED THE ACCURACY OR  
20           DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY  
21           REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.



1 THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON  
2 TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED  
3 OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (E) OF  
4 RULE 147 (17 CFR 230.147(E)), AS PROMULGATED UNDER THE  
5 SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE  
6 STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR  
7 EXEMPTION THEREFROM. PURCHASERS SHOULD BE AWARE THAT  
8 THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF  
9 THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME."

10 (8) The issuer requires each purchaser to certify in  
11 writing, and to include as part of that certification  
12 his or her signature, and his or her initials next to  
13 each paragraph of the certification, as follows:  
14 "I understand and acknowledge that: I am investing in  
15 a high-risk, speculative business venture. I may lose  
16 all of my investment, and I can afford the loss of my  
17 investment. This offering has not been reviewed or  
18 approved by any state or federal securities commission  
19 or other regulatory authority and that no regulatory  
20 authority has confirmed the accuracy or determined the  
21 adequacy of any disclosure made to me relating to this



1           offering. The securities I am acquiring in this  
2           offering are illiquid, that the securities are subject  
3           to possible dilution, that there is no ready market  
4           for the sale of those securities, that it may be  
5           difficult or impossible for me to sell or otherwise  
6           dispose of this investment, and that, accordingly, I  
7           may be required to hold this investment indefinitely.  
8           I may be subject to tax on my share of the taxable  
9           income and losses of the issuer, whether or not I have  
10           sold or otherwise disposed of my investment or  
11           received any dividends or other distributions from the  
12           issuer. By entering into this transaction with the  
13           issuer, I am affirmatively representing myself as  
14           being a Hawaii resident at the time that this contract  
15           is formed, and if this representation is subsequently  
16           shown to be false, the contract is void. If I resell  
17           any of the securities I am acquiring in this offering  
18           to a person that is not a Hawaii resident, within nine  
19           months after the closing of the offering, my contract  
20           with the issuer for the purchase of these securities  
21           is void."



1       (9) If the offer and sale of securities under this section  
2           is made through an internet website, all of the  
3           following requirements are met:

4       (A) Before any offer of an investment opportunity to  
5           residents of this state through the use of a  
6           website, the issuer provides to the website and  
7           to the commissioner evidence that the issuer is  
8           organized under the laws of this state and that  
9           it is authorized to do business in this state.

10      (B) The issuer obtains from each purchaser of a  
11           security under this section evidence that the  
12           purchaser is a resident of this state and, if  
13           applicable, an accredited investor.

14      (C) The website operator files a written notice with  
15           the commissioner that includes the website  
16           operator's name, business address, and contact  
17           information and states that it is authorized to  
18           do business in this state and is being utilized  
19           to offer and sell securities under this  
20           exemption. Beginning twelve months after the date  
21           of the written notice, a website operator that



1           has filed a written notice under this  
2           subparagraph shall annually notify the  
3           commissioner in writing of any changes in the  
4           information provided to the commissioner under  
5           this subparagraph.

6           (D) The issuer and the website keep and maintain  
7           records of the offers and sales of securities  
8           made through the website and provide ready access  
9           to the records to the commissioner on request.  
10          The commissioner may access, inspect, and review  
11          any website described in this subdivision and its  
12          records.

13          (10) All payments for the purchase of securities are  
14          directed to and held by the bank or depository  
15          institution subject to the provisions of subdivision  
16          (a) (5) (C).

17          (11) Offers or sales of a security are not made through an  
18          internet website unless the website has filed the  
19          written notice required under subdivision (a) (9) (C)  
20          with the commissioner.



1       (12) The issuer does not pay, directly or indirectly, any  
2       commission or remuneration to an executive officer,  
3       director, managing member, or other individual who has  
4       a similar status or performs similar functions in the  
5       name of and on behalf of the issuer for offering or  
6       selling the securities unless he or she is registered  
7       as a broker-dealer, investment adviser, or investment  
8       adviser representative under part II. An executive  
9       officer, director, managing member, or other  
10       individual who has a similar status or performs  
11       similar functions in the name of and on behalf of the  
12       issuer is exempt from the registration requirements  
13       under part II if he or she does not receive, directly  
14       or indirectly, any commission or remuneration for  
15       offering or selling securities of the issuer that are  
16       exempt from registration under this section.

17       (13) The issuer provides a copy of the disclosure statement  
18       provided to the commissioner under subdivision  
19       (a) (5) (B) to each prospective purchaser at the time  
20       the offer of securities is made to the prospective  
21       purchaser. In addition to the information described in



1           subdivision a) (5) (B), the disclosure statement  
2           provided to the commissioner and to prospective  
3           purchasers shall include additional information  
4           material to the offering, including, where  
5           appropriate, a discussion of significant factors that  
6           make the offering speculative or risky. This  
7           discussion must be concise and organized logically and  
8           should not present risks that could apply to any  
9           issuer or any offering.

10          (14) The term of the offering does not exceed twelve months  
11          after the date of the first offer.

12          (b) If the offer and sale of a security of an issuer is  
13          exempt under this section, the issuer shall provide a quarterly  
14          report to the issuer's purchasers until none of the securities  
15          issued under this section are outstanding. All of the following  
16          apply to the quarterly report described in this subsection:

17          (1) The issuer shall provide the report free of charge to  
18          the purchasers.

19          (2) An issuer may satisfy the report requirement under this  
20          subsection by making the information available on an  
21          internet website if the information is made available





1           within forty-five days after the end of each fiscal  
2           quarter and remains available until the next quarterly  
3           report is issued.

4           (3) The issuer shall file each report with the commissioner  
5           and must provide a written copy of the report to any  
6           purchaser on request.

7           (4) The report must include all of the following:

8           (A) The compensation received by each director and  
9           executive officer of the issuer, including cash  
10           compensation earned since the previous report and  
11           on an annual basis and any bonuses, stock  
12           options, other rights to receive securities of  
13           the issuer or any affiliate of the issuer, or  
14           other compensation received.

15           (B) An analysis by management of the issuer of the  
16           business operations and financial condition of  
17           the issuer.

18           (c) The exemption provided in this section shall not be  
19           used in conjunction with any other exemption under this article,  
20           except offers and sales to controlling persons shall not count  
21           toward the limitation in subsection (a) (3).



1        (d) The exemption described in this section does not apply  
2 if an issuer or person that is affiliated with the issuer or  
3 offering is subject to any disqualification established by the  
4 commissioner by rule or contained in Rule 262 as promulgated  
5 under the Securities Act of 1933 (17 CFR 230.262). However, this  
6 subsection does not apply if both of the following are met:

7        (1) On a showing of good cause and without prejudice to any  
8            other action by the commissioner, the commissioner  
9            determines that it is not necessary under the  
10           circumstances that an exemption be denied.

11       (2) The issuer establishes that it made factual inquiry  
12           into whether any disqualification existed under this  
13           subsection but did not know, and in the exercise of  
14           reasonable care could not have known, that a  
15           disqualification existed under this subsection. The  
16           nature and scope of the requisite inquiry will vary  
17           based on the circumstances of the issuer and the other  
18           offering participants.

19       (e) The commissioner may adopt rules to implement the  
20 provisions of this section and to protect purchasers that



1 purchase securities that are exempt from registration under this  
2 section.

3 (f) The commissioner shall charge a nonrefundable filing  
4 fee of \$100.00 for filing an exemption notice required under  
5 subsection (a). The fees paid to the commissioner under this  
6 subsection shall be used to pay the costs incurred in  
7 administering and enforcing this act.

8 (g) A website through which an offer or sale of securities  
9 under this section is made is not subject to the broker-dealer,  
10 investment adviser, or investment adviser representative  
11 registration requirements under part II if the website meets all  
12 of the following conditions:

13 (1) It does not offer investment advice or recommendations.

14 (2) It does not solicit purchases, sales, or offers to buy  
15 the securities offered or displayed on the website.

16 (3) It does not compensate employees, agents, or other  
17 persons for the solicitation or based on the sale of  
18 securities displayed or referenced on the website.

19 (4) It does not hold, manage, possess, or otherwise handle  
20 purchaser funds or securities.



1       (5) It does not engage in any other activities that the  
2               commissioner by rule determines are inappropriate for  
3               an exemption from the registration requirements under  
4               part II.

5       (h) A violation of this section, including a violation  
6       concerning website operation, shall be a violation of part V.

7       (i) As used in this section, "controlling person" means an  
8       officer, director, partner, or trustee, or another individual  
9       who has similar status or performs similar functions, of or for  
10       the issuer or to a person that owns 10% or more of the  
11       outstanding shares of any class or classes of securities of the  
12       issuer."

13       SECTION 4.   New statutory material is underscored.

14       SECTION 5.   This Act shall not be applied so as to impair  
15       any contract existing as of the effective date of this Act in a  
16       manner violate of either the Hawaii State constitution or  
17       Article I, section 10, of the United States Constitution.

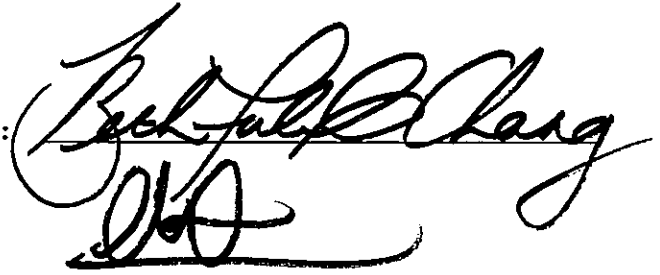
18       SECTION 6.   This shall take effect on January 1, 2016.

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# H.B. NO. 1482

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "Beck-John Chang", written over a horizontal line. Below the line is a large, stylized initial "JC".

JAN 29 2015



# H.B. NO. 1482

**Report Title:**

Crowdfunding; Hawaii Invests Local Exemption Act

**Description:**

Establishes a crowdfunding program for limited intrastate investments limited between Hawaii residents and Hawaii businesses, limited to no more than \$1,000,000 raised over a twelve month period, and no more than \$5,000 per investor. Disclaimer requirements. Effective January 1, 2016.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

