

C.R.S. 11-51-304

COLORADO REVISED STATUTES

*** This document reflects changes current through all laws passed at the First Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2013) ***

TITLE 11. FINANCIAL INSTITUTIONS
SECURITIES
ARTICLE 51. SECURITIES
PART 3. REGISTRATION OF SECURITIES AND EXEMPTIONS

C.R.S. **11-51-304** (2013)**Legislative Alert:**

LEXSEE 2014 Colo. HB 1079 -- See section 1.

11-51-304. Registration by qualification

(1) A security may be registered by qualification.

(2) A registration statement under this section shall contain full and fair disclosure of all material facts respecting the investment offered, including the following information, shall state the title of the security and the number or amount being registered under this article, and shall be accompanied by the following documents in addition to the consent to service of process required by section 11-51-706:

(a) With respect to the issuer, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(b) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions, the name, address, and principal occupation for the past five years; the amount of securities of the issuer held as of a specified date within thirty days of the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;

(c) With respect to persons covered by paragraph (b) of this subsection (2), the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries, and affiliates) to all such persons in the aggregate;

(d) With respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph (b) of this subsection (2) other than the occupation;

(e) With respect to every promoter, if the issuer was organized within the past three years, the information specified in paragraph (b) of this subsection (2), any amount paid within that period or intended to be paid to that person, and the consideration for any such payment;

(f) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution, the name and address, the amount of securities of the issuer held as of the date of the filing of the registration statement, a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected, and a statement of the person's reasons for making the offering;

(g) The capitalization and long-term debt on both a current and pro forma basis of the issuer, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration whether in the form of cash, physical assets, services, patents, goodwill, or anything for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;

(h) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion is to be made to any person or class of persons, other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees including separately cash, securities, contracts, or anything of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

(i) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; and the amounts of any funds to be raised; and, if any part of the proceeds is to be used to acquire any property including goodwill otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, and the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expenses in connection with the acquisition including the cost of borrowing money to finance the acquisition;

(j) A description of any stock options or other security options outstanding or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in paragraph (b), (d), (e), (f), or (h) of this subsection (2) and by any person who holds or will hold ten percent or more in the aggregate of any such options;

(k) The date of, parties to, and general effect concisely stated of every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract, and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets including any litigation or proceeding known to be contemplated by governmental authorities;

(l) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of its effective date to be used in connection with the offering;

(m) A specimen or copy of the security being registered, a copy of the issuer's articles of

incorporation and bylaws, or their substantial equivalents, as currently in effect, and a copy of any indenture or other instrument covering the security to be registered;

(n) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, which shall state whether the security when sold will be legally issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

(o) The written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation other than a public and official document or statement which is used in connection with the registration statement;

(p) The balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and

(q) Such additional information as the securities commissioner requires by rule or order and as is required for full and fair disclosure respecting the investment offered.

(3) A registration statement under this section becomes effective when the securities commissioner so orders or twenty-eight calendar days from the date of filing if the securities commissioner does not request changes in the registration statement or if the registration statement is not subject to a stop order under section 11-51-306.

(4) The securities commissioner may, by rule or order, require as a condition of registration under this section that an offering circular containing any designated part of the information specified in subsection (2) of this section be sent or given to each person to whom an offer is made before or concurrently with: The first written offer made to such person otherwise than by means of a public advertisement by or for the account of the issuer or any other person on whose behalf the offering is being made or by any broker-dealer or underwriter who is offering part of an unsold allotment or subscription taken as a participant in the distribution; the confirmation of any sale made by or for the account of any person; or a payment made pursuant to any such sale or the delivery of the security pursuant to any such sale, whichever first occurs.

(5) The date of filing shall be the date that the registration statement or an amendment to the registration statement is received by the securities commissioner.

(6) The securities commissioner shall by rule prescribe a limited offering registration procedure for any offering of securities by an issuer if the issuer has its principal office and the majority of its full-time employees in Colorado; if the issuer provides in its offering document that at least eighty percent of the net proceeds from the offering shall be used in connection with the operations of such issuer in this state; if the gross proceeds from such offering of securities and any other offering of securities will not exceed one million dollars within any twelve-month period; and if the registration statement and offering documents for such limited offering contain the following:

(a) With respect to the issuer, its principal business address, and its form, state or foreign jurisdiction, and date of its organization;

(b) The general character and location of its business and a description of its physical properties and equipment;

- (c) The name and address of every officer and director of the issuer and of every person occupying a similar status or performing similar functions, and for each such person, a brief description of their business experience within the last five years, a description of any transaction during the preceding year or any proposed transaction between any such persons and the issuer, and a description of any of the following events occurring within the last five years that are material to an evaluation of the offering:
- (I) The filing of a petition in bankruptcy by or against, or the filing of a receivership action against, any such person personally or by or against any entity for which they served as officer, director, or in a similar status or function;
- (II) Any conviction of any such person in a criminal proceeding, or the filing of any indictment, information, or criminal complaint against any such person (excluding traffic violations and other minor offenses); and
- (III) Any order, judgment, or decree, not subsequently reversed, suspended, or vacated, against any such person entered by a court of competent jurisdiction or any federal or state regulatory authority involving the violation by such person of any federal or state securities law or in connection with any matter material to the offering, the issuer, or its business;
- (d) The principal factors contributing to the risks of the enterprise, including, when applicable, the absence of an operating history of the issuer, the absence of profitable operations in recent periods, the nature of the business or proposed business in which the issuer will engage, and the absence of any previous market for the securities of the issuer;
- (e) The amount of authorized and issued securities of the issuer;
- (f) The kind and amount of securities to be offered, the proposed offering price, and the minimum and maximum amounts that will be raised in the offering;
- (g) The name, address, and amount of compensation of any underwriter or broker-dealer to receive compensation in connection with the offering;
- (h) The estimated proceeds to be received by the issuer from the offering and the purposes for which such proceeds are to be used;
- (i) An unaudited balance sheet as of a date within four months of the filing of the registration statement and an unaudited profit and loss statement and analysis of surplus for the most recent fiscal year of the issuer and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's existence if less than one year; and
- (j) The following legend prominently stated on the cover page of the offering document:

THESE SECURITIES ARE OFFERED PURSUANT TO A LIMITED OFFERING REGISTRATION WITH THE COLORADO DIVISION OF SECURITIES. THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE COLORADO DIVISION OF SECURITIES NOR HAS THE DIVISION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFERING DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.---THE STATE OF COLORADO HAS INSTITUTED THIS LIMITED OFFERING REGISTRATION PROCEDURE IN AN EFFORT TO SIMPLIFY AND EXPEDITE THE SMALL BUSINESS CAPITAL FORMATION PROCESS. INVESTORS ARE ENCOURAGED TO ASK QUESTIONS OF AND SEEK ADDITIONAL INFORMATION FROM THE ISSUER AND UNDERWRITER OF THESE SECURITIES.

- (7) In the case of a registration by qualification under subsection (6) of this section, the securities commissioner may not require as a condition of registration under section 11-51-302 (5) that any of the gross proceeds from the sale of the registered security be held in escrow in

the case of an offering underwritten by a broker-dealer registered under the federal "Securities Exchange Act of 1934", or that more than thirty-five percent of the gross proceeds from the sale of the registered security be held in escrow in the case of an offering not underwritten by such a broker-dealer.

(8) A registration statement under subsection (6) of this section becomes effective when the securities commissioner so orders or fourteen calendar days from the date of the filing if the securities commissioner does not request changes in the registration statement or if the registration statement is not subject to a stop order under section 11-51-306.

HISTORY: Source: L. 90: Entire article R&RE, p. 710, § 1, effective July 1.

Editor's note: This section is similar to former § 11-51-109 as it existed prior to 1990.

Cross references: For the "Securities Exchange Act of 1934", see Pub.L. 73-22, codified at 15 U.S.C. sec. 78a et seq.