A BILL TO BE ENTITLED

AN ACT TO ENACT THE JUMP-START OUR BUSINESS START-UPS ACT.

Whereas, start-up companies play a critical role in creating new jobs and sources of revenue; and

Whereas, crowd funding, or raising money through small contributions from a large number of investors, allows smaller enterprises in North Carolina to have access to the capital they need to initiate new business ventures; and

Whereas, by promoting crowd funding, the General Assembly can give new businesses access to additional financing tools, can assist in democratizing start-up capital, and can facilitate investment by North Carolina residents in North Carolina start-ups; and

Whereas, by facilitating investment with appropriate restrictions to protect the interests of North Carolina investors, the General Assembly can promote the formation and growth of smaller North Carolina enterprises, along with additional job formation, and can permit businesses to raise capital using equity crowd funding unencumbered by excessive government regulation; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Article 3 of Chapter 78A of the General Statutes is amended by adding a new section to read:


(a) Exemption From Registration Requirements. – The offer or sale of a security by an issuer shall be exempt from the requirements of Article 4 of this Chapter, and any seller who represents an issuer in an offer or sale shall be exempt from the requirements of Article 5 of this Chapter, if the offer or sale is conducted in accordance with each of the following requirements:

(1) The issuer of the security is a business entity formed under the laws of the State and registered with the Secretary of State.

(2) The transaction meets the requirements of the federal exemption for intrastate offerings in section 3(a)(11) of the Securities Act of 1933, 15 U.S.C. § 77c(a)(11), and SEC rule 147, 17 C.F.R. 230.147.

(3) The sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption does not exceed the cap provided in this subdivision.

a. One million dollars ($1,000,000), less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption, if the
b. Two million dollars ($2,000,000), less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption, if the issuer has undergone and provided the documentation resulting from a financial audit performed the previous year and meeting generally accepted accounting principles.

(4) The issuer has not accepted more than two thousand dollars ($2,000) from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of SEC regulation D, 17 C.F.R. 230.501.

(5) Before the use of any general solicitation or the twenty-fifth sale of the security, whichever occurs first, the issuer shall file a notice with the Commissioner, in writing or in electronic form prescribed by the Commissioner, specifying that the issuer is conducting an offering in reliance upon this exemption and containing the names and addresses of the issuer, all persons, including internet Web sites, who will be involved in the offer or sale of securities on behalf of the issuer, and the bank or other depository institution in which investor funds will be deposited.

(6) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. § 8a-3, or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m and 78o(d).

(7) The issuer informs all purchasers that the securities have not been registered under the Act and that the securities are subject to the limitation on resales contained in subsection (e) of SEC rule 147, 17 C.F.R. 230.147(e).

(8) The issuer requires from all purchasers in writing in a separate written document by the time of the sale the following statement: "I acknowledge that I am investing in a high-risk, speculative business venture, that I may lose all of my investment, and that I can afford the loss of my investment. I understand this offering has not been reviewed by the State, and no authority has expressed an opinion on the merits of this offering." An investor who has signed the acknowledgment contained in this subdivision may not bring an action against the company or any director or officer of the company except in the case of fraud or breach of fiduciary duty, provided that the issuer is able to produce the signed acknowledgment.

(9) If the sale of securities is by an internet Web site, the Web site must require as a condition of buyer registration on the site evidence or certification that the buyer is a North Carolina resident. Issuers registering to offer a security on a Web site under this subdivision must provide evidence or a certification that they are organized under and authorized to do business within the State of North Carolina at the time of registration. The Commissioner may inspect or review any Web site. Prior to offering an investment opportunity to residents of this State, a Web site operator shall inform the Commissioner of the existence of the Web site and shall give the Commissioner access to the site.

(b) Indexing. – The caps provided in subsection (a) of this section shall be cumulatively adjusted for inflation every fifth year.

(c) Report. – An issuer of a security, the offer and sale of which is exempt under this section, shall provide a quarterly report to the issuer's shareholders until no securities issued
under this section are outstanding. The report required by this subdivision shall be free of charge. An issuer may satisfy the reporting requirement of this subdivision by making the information available on an internet Web site address if the information is made available within 45 days of the end of each fiscal quarter and remains available for at least 60 days. An issuer must provide a written copy of the report to any shareholder upon request. The report must contain each of the following:

1. Compensation received by each director and executive officer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of the issuer or any affiliate of the issuer, or other compensation received.

2. An analysis by management of the issuer of the business operations and financial condition of the issuer.

(d) Offers and Sales to Controlling Persons. – The exemption provided in this section shall not be used in conjunction with any other exemption under this Chapter, except for offers and sales to controlling persons shall not count toward the limitation in subdivision (3) of subsection (a) of this section. A controlling person is an officer, director, partner, trustee, or individual occupying similar status or performing similar functions with respect to the issuer or to a person owning ten percent (10%) or more of the outstanding shares of any class or classes of securities of the issuer.

(e) Disqualification. – The exemption allowed by this section shall not apply if any of the following applies to an issuer or person affiliated with the issuer or offering, within five years prior to the offering:

1. Has filed a registration statement which is the subject of any pending proceeding or examination under section 8 of the Securities Act of 1933 or has been the subject of any refusal order or stop order thereunder.

2. Is subject to any pending proceeding under SEC rule 258 promulgated under the Securities Act of 1933, or any similar section adopted under section 3(b) of the Securities Act of 1933, or to an order entered thereunder.

3. Has been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or involving the making of any false filing related to the offer or sale of any security.

4. Is subject to any order, judgment, or decree of any court of competent jurisdiction or regulatory authority (including non-U.S. regulatory authorities) preliminarily, temporarily, or permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing related to the offer or sale of any security.

5. Is subject to a United States Postal Service false representation order entered under 39 U.S.C. § 3005, or is subject to a temporary restraining order or preliminary injunction entered under 39 U.S.C. § 3007 with respect to conduct alleged to have violated 39 U.S.C. § 3005.

The provisions of this subsection shall not apply if (i) upon a showing of good cause and without prejudice to any other action by the Commissioner, the Commissioner determines that it is not necessary under the circumstances that an exemption be denied and (ii) the issuer establishes that it made factual inquiry into whether any disqualification existed under this subsection but did not know, and in the exercise of reasonable care could not have known, that a disqualification existed under this subsection. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

(f) Rules. – The Commissioner may adopt rules to protect investors who purchase securities under this section."

SECTION 2. This act is effective when it becomes law.