

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 680
Committee Substitute Favorable 5/9/13

Short Title: Jump-Start Our Business Start-Ups Act.

(Public)

Sponsors:

Referred to:

April 11, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE JUMP-START OUR BUSINESS START-UPS ACT.

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

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

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

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

16 The General Assembly of North Carolina enacts:

17 **SECTION 1.** G.S. 78A-17 is amended by adding a new subdivision to read:

18 "(20) Any offer or sale of a security by an issuer if the offer or sale is conducted in
19 accordance with G.S. 78A-17.1."

20 **SECTION 2.** Article 3 of Chapter 78A of the General Statutes is amended by
21 adding a new section to read:

22 "**§ 78A-17.1. Invest NC exemption.**

23 (a) Exemption. – Except as otherwise provided in this Chapter, an offer or sale of a
24 security by an issuer is exempt from G.S. 78A-24 and G.S. 78A-49(d) if the offer or sale is
25 conducted in accordance with each of the following requirements:

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

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

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

34 a. One million dollars (\$1,000,000), less the aggregate amount received
35 for all sales of securities by the issuer within the 12 months before
36 the first offer or sale made in reliance upon this exemption, if the



- 1 issuer has not undergone and provided the documentation resulting
2 from a financial audit performed the previous year and meeting
3 generally accepted accounting principles.
4 b. Two million dollars (\$2,000,000), less the aggregate amount received
5 for all sales of securities by the issuer within the 12 months before
6 the first offer or sale made in reliance upon this exemption, if the
7 issuer has undergone and provided the documentation resulting from
8 a financial audit performed the previous year and meeting generally
9 accepted accounting principles.
10 (4) The issuer has not accepted more than two thousand dollars (\$2,000) from
11 any single purchaser unless the purchaser is an accredited investor as defined
12 by rule 501 of SEC regulation D, 17 C.F.R. § 230.501.
13 (5) Not less than 10 days prior to the commencement of an offering of securities
14 in reliance on this exemption, the issuer shall file a notice with the
15 Administrator, in writing or in electronic form as specified by the
16 Administrator, containing the following:
17 a. A notice specifying that the issuer will be conducting an offering in
18 reliance upon this exemption, accompanied by the filing fee as
19 specified in this section.
20 b. A copy of the disclosure statement to be provided to investors in
21 connection with the offering, containing information material to the
22 offering, including the following subjects:
23 1. A description of the company, its history, its business plan,
24 and the intended use of the offering proceeds.
25 2. The principal owners of the company.
26 3. The managers of the company, their titles, and their prior
27 experience.
28 4. The terms and conditions of the securities being offered and
29 of any outstanding securities of the company.
30 5. The identity of any person who will be offering and selling
31 the securities, including any Web sites.
32 6. Any litigation or legal proceedings involving the company or
33 its management.
34 7. The risk factors and any other material information, either
35 adverse or favorable, that will or could affect the company or
36 its business, or any material information which would tend to
37 make any representations about the company or investment
38 misleading or incomplete.
39 c. An escrow agreement with a bank or other depository institution
40 located within this State in which the investor funds will be
41 deposited, providing that all offering proceeds will be released to the
42 issuer only when the aggregate capital raised from all investors is
43 equal to or greater than the minimum target offering amount
44 specified in the business plan as necessary to implement the business
45 plan, and that all investors may cancel their commitments to invest if
46 that target offering amount is not raised by the time stated in the
47 disclosure document.
48 (6) The issuer is not, either before or as a result of the offering, an investment
49 company, as defined in section 3 of the Investment Company Act of 1940,
50 15 U.S.C. § 8a-3, or subject to the reporting requirements of section 13 or
51 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m and 78o(d).

1 (7) The issuer shall inform all purchasers under this section that the securities
2 have not been registered under federal or State securities law and that the
3 securities are subject to limitations on resale. The issuer shall display the
4 following legend conspicuously on the cover page of the disclosure
5 document:

6 "IN MAKING AN INVESTMENT DECISION, INVESTORS
7 MUST RELY ON THEIR OWN EXAMINATION OF THE
8 ISSUER AND THE TERMS OF THE OFFERING, INCLUDING
9 THE MERITS AND RISKS INVOLVED. THESE SECURITIES
10 HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR
11 STATE SECURITIES COMMISSION OR REGULATORY
12 AUTHORITY. FURTHERMORE, THE FOREGOING
13 AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR
14 DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY
15 REPRESENTATION TO THE CONTRARY IS A CRIMINAL
16 OFFENSE. THESE SECURITIES ARE SUBJECT TO
17 RESTRICTIONS ON TRANSFERABILITY AND RESALE AND
18 MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS
19 PERMITTED BY SUBSECTION (E) OF SEC RULE 147, 17 C.F.R.
20 § 230.147(E) AS PROMULGATED UNDER THE SECURITIES
21 ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE
22 SECURITIES LAWS, PURSUANT TO REGISTRATION OR
23 EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE
24 THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL
25 RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD
26 OF TIME."

27 (8) If the offer and sale of securities is made through an Internet Web site, the
28 following requirements apply:

- 29 a. Prior to the offer of an investment opportunity to residents of this
30 State through a Web site, the issuer shall provide to the Web site and
31 to the Administrator evidence that the issuer is organized under
32 North Carolina law and that it is authorized to do business within the
33 State.
- 34 b. The issuer shall obtain from each purchaser of a security under this
35 section evidence that the purchaser is a resident of North Carolina
36 and, if applicable, an accredited investor.
- 37 c. The Web site operator shall provide to the Administrator evidence
38 that it is a business entity that is organized under North Carolina law
39 and that it is authorized to do business within the State and that it is
40 being utilized to offer and sell securities pursuant to this exemption.
41 The Web site shall notify the Administrator of its and the issuer's
42 identity, location, and contact information.
- 43 d. The issuer and the Web site must keep and maintain records of the
44 offers and sales of securities effected through the Web site and must
45 provide ready access to the records to the Administrator, upon
46 request. The Administrator may access, inspect, and review any Web
47 site and its records.
- 48 e. All payments for purchase of securities must be directed to and held
49 by the bank or depository institution subject to the provisions of
50 sub-subdivision (a)(5)c. of this section. The bank or depository
51 institution shall notify the Administrator of the receipt of payments

1 for securities and the identity and residence of the investors. The
2 information shall be confidential and considered trade secrets within
3 the scope of G.S. 132-1.2 while in the possession of the
4 Administrator.

5 (9) The Web site shall not be subject to the registration provisions of
6 G.S. 78A-36 provided that all of the following apply:

7 a. It does not offer investment advice or recommendations.

8 b. It does not solicit purchases, sales, or offers to buy the securities
9 offered or displayed on the Web site.

10 c. It does not compensate employees, agents, or other persons for the
11 solicitation or based on the sale of securities displayed or referenced
12 on the Web site.

13 d. It does not hold, manage, possess, or otherwise handle investor funds
14 or securities.

15 e. It does not engage in such other activities as the Administrator, by
16 rule, determines appropriate.

17 (10) An executive officer, director, managing member, or person occupying a
18 similar status or performing similar functions in the name of and on behalf
19 of the issuer shall be exempt from the registration provisions of
20 G.S. 78A-36, provided that the person does not receive, directly or
21 indirectly, any commission or remuneration for offering and selling
22 securities of the issuer pursuant to this exemption.

23 (b) Indexing. – The caps provided in subdivision (a)(3) of this section shall be
24 cumulatively adjusted for inflation every fifth year.

25 (c) Report. – An issuer of a security, the offer and sale of which is exempt under this
26 section, shall provide a quarterly report to the issuer's investors until no securities issued under
27 this section are outstanding. The report required by this subsection shall be free of charge. An
28 issuer may satisfy the reporting requirement of this subsection by making the information
29 available on an Internet Web site address if the information is made available within 45 days of
30 the end of each fiscal quarter and remains available until the succeeding quarterly report is
31 issued. An issuer must provide a written copy of the report to any investor upon request. The
32 report must contain each of the following:

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

37 (2) An analysis by management of the issuer of the business operations and
38 financial condition of the issuer. The issuer shall file each such quarterly
39 report with the Administrator.

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

47 (e) Disqualification. – The exemption allowed by this section shall not apply if an
48 issuer or person affiliated with the issuer or offering is subject to any disqualification contained
49 in 18 NCAC 06A .1207(a)(1) through (a)(6) or contained in Rule 262 as promulgated under the
50 Securities Act of 1933 (17 C.F.R. § 230.262). The provisions of this subsection shall not apply
51 if (i) upon a showing of good cause and without prejudice to any other action by the

1 Administrator, the Administrator determines that it is not necessary under the circumstances
2 that an exemption be denied and (ii) the issuer establishes that it made factual inquiry into
3 whether any disqualification existed under this subsection but did not know, and in the exercise
4 of reasonable care could not have known, that a disqualification existed under this subsection.
5 The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer
6 and the other offering participants.

7 (f) Rules. – The Administrator may adopt rules to implement the provisions of this
8 section and to protect investors who purchase securities under this section.

9 (g) Fee. – The Administrator shall charge a nonrefundable filing fee of one hundred
10 fifty dollars (\$150.00) for filing an exemption notice required by subsection (a) of this section.
11 The fees paid to the Administrator pursuant to this subsection shall be used to pay the costs
12 incurred in administering and enforcing this Chapter. The revenue derived from the fee shall be
13 credited to a nonreverting agency revenue account."

14 **SECTION 3.** G.S. 78A-49(d) reads as rewritten:

15 "(d) The Administrator may by rule or order require the filing of any prospectus,
16 pamphlet, circular, form letter, advertisement, or other sales literature or advertising
17 communication addressed or intended for distribution to prospective investors, unless the
18 security or transaction is exempted by ~~G.S. 78A-16 or 78A-17 (except 78A-17(9), (17), and~~
19 ~~(19))~~G.S. 78A-16, G.S. 78A-17 (except G.S. 78A-17(9), (17), (19), and (20)) and such
20 exemption has not been denied or revoked under G.S. 78A-18 or the security is a security
21 covered under federal law or the transaction is with respect to a security covered under federal
22 law."

23 **SECTION 4.(a)** Notwithstanding any provision of Article 2A of Chapter 150B of
24 the General Statutes, within 12 months of the effective date of this act, the Secretary of State
25 shall adopt rules to implement the provisions of this act in accordance with the following
26 procedure:

- 27 (1) At least 15 business days prior to adopting a rule, submit the rule and a
28 notice of public hearing to the Codifier of Rules. The Codifier of Rules shall
29 publish the proposed rule and the notice of public hearing on the Internet
30 within five business days.
- 31 (2) At least 15 business days prior to adopting a rule, notify persons on the
32 mailing list maintained pursuant to G.S. 150B-21.2(d) and any other
33 interested parties of the Secretary's intent to adopt a rule and of the public
34 hearing.
- 35 (3) Accept written comments on the proposed rule for at least 15 business days
36 prior to adoption of the rule.
- 37 (4) Hold at least one public hearing on the proposed rule no less than five days
38 after the rule and notice have been published.

39 A rule adopted in accordance with this section becomes effective on the first day of
40 the month following the month the Secretary adopts the rule and submits the rule to the
41 Codifier of Rules for entry into the North Carolina Administrative Code. Any rule adopted
42 more than 12 months after the effective date of this act shall comply with the requirement of
43 Article 2A of Chapter 150B of the General Statutes.

44 **SECTION 4.(b)** This section is effective when it becomes law and expires 12
45 months after the effective date of this act.

46 **SECTION 5.** This act is effective when it becomes law and expires on July 1,
47 2017.