

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE DRH10242-MC-185 (04/05)

Short Title: Jump-Start Our Business Start-Ups Act. (Public)

Sponsors: Representatives Murry, Moffitt, Shepard, and Hastings (Primary Sponsors).

Referred to:

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 equity crowd funding unencumbered by excessive
15 government regulation; Now, therefore,

16 The General Assembly of North Carolina enacts:

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

19 **"§ 78A-19. Invest NC Exemption.**

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

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

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

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

33 a. One million dollars (\$1,000,000), less the aggregate amount received
34 for all sales of securities by the issuer within the 12 months before
35 the first offer or sale made in reliance upon this exemption, if the
36 issuer has not undergone and provided the documentation resulting



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- 1 from a financial audit performed the previous year and meeting
2 generally accepted accounting principles.
- 3 b. Two million dollars (\$2,000,000), less the aggregate amount received
4 for all sales of securities by the issuer within the 12 months before
5 the first offer or sale made in reliance upon this exemption, if the
6 issuer has undergone and provided the documentation resulting from
7 a financial audit performed the previous year and meeting generally
8 accepted accounting principles.
- 9 (4) The issuer has not accepted more than two thousand dollars (\$2,000) from
10 any single purchaser unless the purchaser is an accredited investor as defined
11 by rule 501 of SEC regulation D, 17 C.F.R. 230.501.
- 12 (5) Before the use of any general solicitation or the twenty-fifth sale of the
13 security, whichever occurs first, the issuer shall file a notice with the
14 Commissioner, in writing or in electronic form prescribed by the
15 Commissioner, specifying that the issuer is conducting an offering in
16 reliance upon this exemption and containing the names and addresses of the
17 issuer, all persons, including internet Web sites, who will be involved in the
18 offer or sale of securities on behalf of the issuer, and the bank or other
19 depository institution in which investor funds will be deposited.
- 20 (6) The issuer is not, either before or as a result of the offering, an investment
21 company, as defined in section 3 of the Investment Company Act of 1940,
22 15 U.S.C. § 8a-3, or subject to the reporting requirements of section 13 or
23 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m and 78o(d).
- 24 (7) The issuer informs all purchasers that the securities have not been registered
25 under the Act and that the securities are subject to the limitation on resales
26 contained in subsection (e) of SEC rule 147, 17 C.F.R. 230.147(e).
- 27 (8) The issuer requires from all purchasers in writing in a separate written
28 document by the time of the sale the following statement: "I acknowledge
29 that I am investing in a high-risk, speculative business venture, that I may
30 lose all of my investment, and that I can afford the loss of my investment. I
31 understand this offering has not been reviewed by the State, and no authority
32 has expressed an opinion on the merits of this offering." An investor who
33 has signed the acknowledgment contained in this subdivision may not bring
34 an action against the company or any director or officer of the company
35 except in the case of fraud or breach of fiduciary duty, provided that the
36 issuer is able to produce the signed acknowledgement.
- 37 (9) If the sale of securities is by an internet Web site, the Web site must require
38 as a condition of buyer registration on the site evidence or certification that
39 the buyer is a North Carolina resident. Issuers registering to offer a security
40 on a Web site under this subdivision must provide evidence or a certification
41 that they are organized under and authorized to do business within the State
42 of North Carolina at the time of registration. The Commissioner may inspect
43 or review any Web site. Prior to offering an investment opportunity to
44 residents of this State, a Web site operator shall inform the Commissioner of
45 the existence of the Web site and shall give the Commissioner access to the
46 site.
- 47 (b) Indexing. – The caps provided in subsection (a) of this section shall be cumulatively
48 adjusted for inflation every fifth year.
- 49 (c) Report. – An issuer of a security, the offer and sale of which is exempt under this
50 section, shall provide a quarterly report to the issuer's shareholders until no securities issued
51 under this section are outstanding. The report required by this subdivision shall be free of

1 charge. An issuer may satisfy the reporting requirement of this subdivision by making the
2 information available on an internet Web site address if the information is made available
3 within 45 days of the end of each fiscal quarter and remains available for at least 60 days. An
4 issuer must provide a written copy of the report to any shareholder upon request. The report
5 must contain each of the following:

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

10 (2) An analysis by management of the issuer of the business operations and
11 financial condition of the issuer.

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

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

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

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

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

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

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

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

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

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