

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 680
Committee Substitute Favorable 5/9/13
PROPOSED COMMITTEE SUBSTITUTE H680-PCS70460-ROf-29

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



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1 the first offer or sale made in reliance upon this exemption, if the
2 issuer has not undergone and made available to each prospective
3 investor and the Administrator the documentation resulting from a
4 financial audit with respect to its most recently completed fiscal year
5 and meeting generally accepted accounting principles.

6 b. Two million dollars (\$2,000,000), less the aggregate amount received
7 for all sales of securities by the issuer within the 12 months before
8 the first offer or sale made in reliance upon this exemption, if the
9 issuer has undergone and made available to each prospective investor
10 and the Administrator the documentation resulting from a financial
11 audit with respect to its most recently completed fiscal year and
12 meeting generally accepted accounting principles.

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

16 (5) Not less than 10 days prior to the commencement of an offering of securities
17 in reliance on this exemption or the use of any publicly available Web site in
18 connection with any such offering, the issuer shall file a notice with the
19 Administrator, in writing or in electronic form as specified by the
20 Administrator, containing the following:

21 a. A notice of claim of exemption from registration, specifying that the
22 issuer will be conducting an offering in reliance upon this exemption,
23 accompanied by the filing fee as specified in this section.

24 b. A copy of the disclosure statement to be provided to prospective
25 investors in connection with the offering, containing the following:

26 1. A description of the company, its type of entity, the address
27 and telephone number of its principal office, its history, its
28 business plan, and the intended use of the offering proceeds,
29 including any amounts to be paid, as compensation or
30 otherwise, to any owner, executive officer, director,
31 managing member, or other person occupying a similar status
32 or performing similar functions on behalf of the issuer.

33 2. The identity of all persons owning more than ten percent
34 (10%) of the ownership interests of any class of securities of
35 the company.

36 3. The identity of the executive officers, directors, managing
37 members, and other persons occupying a similar status or
38 performing similar functions in the name of and on behalf of
39 the issuer, including their titles and their prior experience.

40 4. The terms and conditions of the securities being offered and
41 of any outstanding securities of the company, the minimum
42 and maximum amount of securities being offered, if any, and
43 either the percentage ownership of the company represented
44 by the offered securities or the valuation of the company
45 implied by the price of the offered securities.

46 5. The identity of any person who has been or will be retained
47 by the issuer to assist the issuer in conducting the offering
48 and sale of the securities, including any Web sites, but
49 excluding persons acting solely as accountants or attorneys
50 and employees whose primary job responsibilities involve the
51 operating business of the issuer rather than assisting the issuer

- 1 in raising capital, and for each person identified in response
2 to this paragraph, a description of the consideration being
3 paid to such person for such assistance.
4 6. A description of any litigation or legal proceedings involving
5 the company or its management.
6 7. The names and addresses, including URL, of any Web sites
7 that will be used in connection with the offering.
8 c. An escrow agreement with a bank or other depository institution
9 located within this State in which the investor funds will be
10 deposited, providing that all offering proceeds will be released to the
11 issuer only when the aggregate capital raised from all investors is
12 equal to or greater than the minimum target offering amount
13 specified in the business plan as necessary to implement the business
14 plan and that all investors may cancel their commitments to invest if
15 that target offering amount is not raised by the time stated in the
16 disclosure document.
17 (6) The issuer is not, either before or as a result of the offering, an investment
18 company, as defined in section 3 of the Investment Company Act of 1940,
19 15 U.S.C. § 8a-3, or an entity that would be an investment company but for
20 the exclusions provided in section 3(c) of the act, or subject to the reporting
21 requirements of section 13 or 15(d) of the Securities Exchange Act of 1934,
22 15 U.S.C. § 78m and 78o(d).
23 (7) The issuer shall inform all prospective purchasers under this section that the
24 securities have not been registered under federal or State securities law and
25 that the securities are subject to limitations on resale. The issuer shall display
26 the following legend conspicuously on the cover page of the disclosure
27 document:
28 "IN MAKING AN INVESTMENT DECISION, INVESTORS
29 MUST RELY ON THEIR OWN EXAMINATION OF THE
30 ISSUER AND THE TERMS OF THE OFFERING, INCLUDING
31 THE MERITS AND RISKS INVOLVED. THESE SECURITIES
32 HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR
33 STATE SECURITIES COMMISSION OR REGULATORY
34 AUTHORITY. FURTHERMORE, THE FOREGOING
35 AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR
36 DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY
37 REPRESENTATION TO THE CONTRARY IS A CRIMINAL
38 OFFENSE. THESE SECURITIES ARE SUBJECT TO
39 RESTRICTIONS ON TRANSFERABILITY AND RESALE AND
40 MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS
41 PERMITTED BY SUBSECTION (E) OF SEC RULE 147, 17 C.F.R.
42 § 230.147(E) AS PROMULGATED UNDER THE SECURITIES
43 ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE
44 SECURITIES LAWS, PURSUANT TO REGISTRATION OR
45 EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE
46 THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL
47 RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD
48 OF TIME."
49 (8) The issuer shall require each purchaser to certify in writing "I understand
50 and acknowledge that:

- 1 a. I am investing in a high-risk, speculative business venture. I may lose
2 all of my investment, and I can afford the loss of my investment.
- 3 b. This offering has not been reviewed or approved by any state or
4 federal securities commission or other regulatory authority and that
5 no such person or authority has confirmed the accuracy or
6 determined the adequacy of any disclosure made to me relating to
7 this offering.
- 8 c. The securities I am acquiring in this offering are illiquid, that there is
9 no ready market for the sale of such securities, that it may be difficult
10 or impossible for me to sell or otherwise dispose of this investment,
11 and that, accordingly, I may be required to hold this investment
12 indefinitely.
- 13 d. I may be subject to tax on my share of the taxable income and losses
14 of the company, whether or not I have sold or otherwise disposed of
15 my investment or received any dividends or other distributions from
16 the company.
- 17 (9) If the offer and sale of securities is made through an Internet Web site, the
18 following requirements apply:
- 19 a. Prior to the offer of an investment opportunity to residents of this
20 State through a Web site, the issuer shall provide to the Web site and
21 to the Administrator evidence that the issuer is organized under
22 North Carolina law and that it is authorized to do business within the
23 State.
- 24 b. The issuer shall obtain from each purchaser of a security under this
25 section evidence that the purchaser is a resident of North Carolina
26 and, if applicable, an accredited investor.
- 27 c. The Web site operator shall register with the Administrator by filing
28 a statement that it is a business entity that is organized under North
29 Carolina law and that it is authorized to do business within the State
30 and that it is being utilized to offer and sell securities pursuant to this
31 exemption. As part of the registration, the Web site shall notify the
32 Administrator of its and the issuer's identity, location, and contact
33 information.
- 34 d. The issuer and the Web site must keep and maintain records of the
35 offers and sales of securities effected through the Web site and must
36 provide ready access to the records to the Administrator, upon
37 request. The Administrator may access, inspect, and review any Web
38 site and its records.
- 39 (10) All payments for purchase of securities must be directed to and held by the
40 bank or depository institution subject to the provisions of sub-subdivision
41 (a)(5)c. of this section. The bank or depository institution shall notify the
42 Administrator of the receipt of payments for securities and the identity and
43 residence of the investors. The information shall be confidential and
44 considered trade secrets within the scope of G.S. 132-1.2 while in the
45 possession of the Administrator.
- 46 (11) No offers or sales of a security shall be made through an Internet Web site
47 unless the Web site is registered with the Administrator pursuant to
48 sub-subdivision (a)(9)c. of this section. The Web site shall not be subject to
49 the registration provisions of G.S. 78A-36 provided that all of the following
50 apply:
- 51 a. It does not offer investment advice or recommendations.

- 1 b. It does not solicit purchases, sales, or offers to buy the securities
2 offered or displayed on the Web site.
- 3 c. It does not compensate employees, agents, or other persons for the
4 solicitation or based on the sale of securities displayed or referenced
5 on the Web site.
- 6 d. It is not compensated based on the amount of securities sold, and it
7 does not hold, manage, possess, or otherwise handle investor funds
8 or securities.
- 9 e. It does not engage in such other activities as the Administrator, by
10 rule, determines appropriate.
- 11 (12) An executive officer, director, managing member, or person occupying a
12 similar status or performing similar functions in the name of and on behalf
13 of the issuer shall be exempt from the registration provisions of
14 G.S. 78A-36, provided that the person does not receive, directly or
15 indirectly, any commission or remuneration for offering and selling
16 securities of the issuer pursuant to this exemption.
- 17 (13) The issuer must provide a copy of the disclosure document provided to the
18 Administrator pursuant to sub-subdivision (a)(5)b. of this section to each
19 prospective investor at the time the offer of securities is made to the
20 prospective investor. In addition to the information described in
21 sub-subdivision (a)(5)b. of this section, the disclosure document provided to
22 the Administrator and to prospective investors should include additional
23 information material to the offering, including, where appropriate, a
24 discussion of significant factors that make the offering speculative or risky.
25 This discussion must be concise and organized logically and should not
26 present risks that could apply to any issuer or any offering.
- 27 (b) Indexing. – The dollar limitations provided in subdivision (a)(3) of this section shall
28 be cumulatively adjusted every fifth year by the Administrator to reflect the change in the
29 Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics,
30 setting each dollar limitation to the nearest fifty thousand dollars (\$50,000).
- 31 (c) Report. – An issuer of a security, the offer and sale of which is exempt under this
32 section, shall provide a quarterly report to the issuer's investors until no securities issued under
33 this section are outstanding. The report required by this subsection shall be free of charge. An
34 issuer may satisfy the reporting requirement of this subsection by making the information
35 available on an Internet Web site address if the information is made available within 45 days of
36 the end of each fiscal quarter and remains available until the succeeding quarterly report is
37 issued. An issuer shall file each such quarterly report with the Administrator and must provide
38 a written copy of the report to any investor upon request. The report must contain each of the
39 following:
- 40 (1) Compensation received by each director and executive officer, including
41 cash compensation earned since the previous report and on an annual basis
42 and any bonuses, stock options, other rights to receive securities of the issuer
43 or any affiliate of the issuer, or other compensation received.
- 44 (2) An analysis by management of the issuer of the business operations and
45 financial condition of the issuer.
- 46 (d) Offers and Sales to Controlling Persons. – The exemption provided in this section
47 shall not be used in conjunction with any other exemption under this Chapter, except offers and
48 sales to controlling persons shall not count toward the limitation in subdivision (3) of
49 subsection (a) of this section. A controlling person is an officer, director, partner, trustee, or
50 individual occupying similar status or performing similar functions with respect to the issuer or

1 to a person owning ten percent (10%) or more of the outstanding shares of any class or classes
2 of securities of the issuer.

3 (e) Disqualification. – The exemption allowed by this section shall not apply if an
4 issuer or person affiliated with the issuer or offering is subject to any disqualification contained
5 in 18 NCAC 06A .1207(a)(1) through (a)(6) or contained in Rule 262 as promulgated under the
6 Securities Act of 1933 (17 C.F.R. § 230.262). The provisions of this subsection shall not apply
7 if (i) upon a showing of good cause and without prejudice to any other action by the
8 Administrator, the Administrator determines that it is not necessary under the circumstances
9 that an exemption be denied and (ii) the issuer establishes that it made factual inquiry into
10 whether any disqualification existed under this subsection but did not know, and in the exercise
11 of reasonable care could not have known, that a disqualification existed under this subsection.
12 The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer
13 and the other offering participants.

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

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

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

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

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

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

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

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

3 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
4 law and expires on July 1, 2017.