

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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SENATE DRS35172-MC-73 (03/04)

Short Title: Providing Access To Entrepreneurs/Sm Business. (Public)

Sponsors: Senators Barringer, Hise, and Gunn (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENACT THE NORTH CAROLINA PROVIDING ACCESS TO CAPITAL FOR  
3 ENTREPRENEURS AND SMALL BUSINESS ACT.

4 Whereas, start-up companies and small businesses play a critical role in creating  
5 new jobs and sources of revenue within our State; and

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

9 Whereas, by promoting local investment opportunities and local crowdfunding, the  
10 General Assembly can give new and existing businesses access to additional financing tools,  
11 can assist in democratizing access to capital, and can facilitate investment by North Carolina  
12 residents in North Carolina businesses; and

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

18 The General Assembly of North Carolina enacts:

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

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

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

24 "**§ 78A-17.1. Invest NC exemption.**

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

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

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

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



- 1                   a.     One million dollars (\$1,000,000), less the aggregate amount received  
2                   for all sales of securities by the issuer made in reliance upon this  
3                   exemption within the 12 months before the first offer or sale made in  
4                   reliance upon this exemption, if the issuer has not undergone and  
5                   made available to each prospective investor and the Administrator  
6                   the documentation resulting from a financial audit or review with  
7                   respect to its most recently completed fiscal year and meeting  
8                   generally accepted accounting principles.
- 9                   b.     Two million dollars (\$2,000,000), less the aggregate amount received  
10                  for all sales of securities by the issuer made in reliance upon this  
11                  exemption within the 12 months before the first offer or sale made in  
12                  reliance upon this exemption, if the issuer has undergone and made  
13                  available to each prospective investor and the Administrator the  
14                  documentation resulting from a financial audit or review with respect  
15                  to its most recently completed fiscal year and meeting generally  
16                  accepted accounting principles.
- 17                  (4)    The issuer has not accepted more than five thousand dollars (\$5,000) from  
18                  any single purchaser in an offering made in reliance upon this exemption in  
19                  any 12-month period unless the purchaser is an accredited investor as  
20                  defined by rule 501 of SEC regulation D, 17 C.F.R. § 230.501.
- 21                  (5)    Not less than 10 days prior to the commencement of an offering of securities  
22                  in reliance on this exemption or the use of any publicly available Web site in  
23                  connection with any such offering, the issuer shall file a notice with the  
24                  Administrator, in writing or in electronic form as specified by the  
25                  Administrator, containing the following:
- 26                   a.     A notice of claim of exemption from registration, specifying that the  
27                   issuer will be conducting an offering in reliance upon this exemption,  
28                   accompanied by the filing fee as specified in this section.
- 29                   b.     A copy of the disclosure statement to be provided to prospective  
30                   investors in connection with the offering, containing the following:
- 31                           1.     A description of the company, its type of entity, the address  
32                           and telephone number of its principal office, its history, its  
33                           business plan, and the intended use of the offering proceeds,  
34                           including any amounts to be paid, as compensation or  
35                           otherwise, to any owner, executive officer, director,  
36                           managing member, or other person occupying a similar status  
37                           or performing similar functions on behalf of the issuer.
- 38                           2.     The identity of all persons owning more than ten percent  
39                           (10%) of the ownership interests of any class of securities of  
40                           the company.
- 41                           3.     The identity of the executive officers, directors, managing  
42                           members, and other persons occupying a similar status or  
43                           performing similar functions in the name of and on behalf of  
44                           the issuer, including their titles and their prior experience.
- 45                           4.     The terms and conditions of the securities being offered and  
46                           of any outstanding securities of the company, the minimum  
47                           and maximum amount of securities being offered, if any, and  
48                           either the percentage ownership of the company represented  
49                           by the offered securities or the valuation of the company  
50                           implied by the price of the offered securities.

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

EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME."

- (8) The issuer shall require each purchaser to certify in writing "I understand and acknowledge that:
- a. I am investing in a high-risk, speculative business venture. I may lose all of my investment, and I can afford the loss of my investment.
  - b. This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and that no such person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.
  - c. The securities I am acquiring in this offering are illiquid, that there is no ready market for the sale of such securities, that it may be difficult or impossible for me to sell or otherwise dispose of this investment, and that, accordingly, I may be required to hold this investment indefinitely.
  - d. I may be subject to tax on my share of the taxable income and losses of the company, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the company."
- (9) If the offer or sale of securities is made through an Internet Web site, the following requirements apply:
- a. Prior to the offer of an investment opportunity to residents of this State through a Web site, the issuer shall provide to the Web site and to the Administrator evidence that the issuer is organized under North Carolina law and that it is authorized to do business within the State.
  - b. The issuer shall obtain from each purchaser of a security under this section evidence that the purchaser is a resident of North Carolina and, if applicable, an accredited investor.
  - c. The Web site operator shall register with the Administrator by filing a statement that it is a business entity that is organized under North Carolina law and that it is authorized to do business within the State and that it is being utilized to offer and sell securities pursuant to this exemption. As part of the registration, the Web site shall notify the Administrator of its and the issuer's identity, location, and contact information.
  - d. The issuer and the Web site must keep and maintain records of the offers and sales of securities effected through the Web site and must provide ready access to the records to the Administrator, upon request. The Administrator may access, inspect, and review any Web site and its records.
- (10) All payments for purchase of securities must be directed to and held by the bank or depository institution subject to the provisions of sub-subdivision (a)(5)c. of this section. The bank or depository institution shall notify the Administrator of the receipt of payments for securities and the identity and residence of the investors. The information shall be confidential and considered trade secrets within the scope of G.S. 132-1.2 while in the possession of the Administrator.

1           (11) No offers or sales of a security shall be made through an Internet Web site  
2 unless the Web site is registered with the Administrator pursuant to  
3 sub-subdivision (a)(9)c. of this section. The Web site shall not be subject to  
4 the registration provisions of G.S. 78A-36 provided that all of the following  
5 apply:

- 6           a. It does not offer investment advice or recommendations.  
7           b. It does not solicit purchases, sales, or offers to buy the securities  
8 offered or displayed on the Web site.  
9           c. It does not compensate employees, agents, or other persons for the  
10 solicitation or based on the sale of securities displayed or referenced  
11 on the Web site.  
12           d. It is not compensated based on the amount of securities sold, and it  
13 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           (12) 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           (13) The issuer must provide a copy of the disclosure document provided to the  
24 Administrator pursuant to sub-subdivision (a)(5)b. of this section to each  
25 prospective investor at the time the offer of securities is made to the  
26 prospective investor. In addition to the information described in  
27 sub-subdivision (a)(5)b. of this section, the disclosure document provided to  
28 the Administrator and to prospective investors should include additional  
29 information material to the offering, including, where appropriate, a  
30 discussion of significant factors that make the offering speculative or risky.  
31 This discussion must be concise and organized logically and should not  
32 present risks that could apply to any issuer or any offering.

33           (b) Indexing. – The dollar limitations provided in subdivision (a)(3) of this section shall  
34 be cumulatively adjusted every fifth year by the Administrator to reflect the change in the  
35 Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics,  
36 setting each dollar limitation to the nearest fifty thousand dollars (\$50,000).

37           (c) Report. – An issuer of a security, the offer and sale of which is exempt under this  
38 section, shall provide a quarterly report to the issuer's investors until no securities issued under  
39 this section are outstanding. The report required by this subsection shall be free of charge. An  
40 issuer may satisfy the reporting requirement of this subsection by making the information  
41 available on an Internet Web site if the information is made available within 45 days of the end  
42 of each fiscal quarter and remains available until the succeeding quarterly report is issued. An  
43 issuer shall file each such quarterly report with the Administrator and must provide a written  
44 copy of the report to any investor upon request. The report must contain each of the following:

- 45           (1) Compensation received by each director and executive officer, including  
46 cash compensation earned since the previous report and on an annual basis  
47 and any bonuses, stock options, other rights to receive securities of the issuer  
48 or any affiliate of the issuer, or other compensation received.  
49           (2) An analysis by management of the issuer of the business operations and  
50 financial condition of the issuer.

1       (d) Offers and Sales to Controlling Persons. – The exemption provided in this section  
2 shall not be used in conjunction with any other exemption under this Chapter, except offers and  
3 sales to controlling persons shall not count toward the limitations in subdivision (3) or (4) of  
4 subsection (a) of this section. A controlling person is an officer, director, partner, trustee, or  
5 individual occupying similar status or performing similar functions with respect to the issuer or  
6 to a person owning ten percent (10%) or more of the outstanding shares of any class or classes  
7 of securities of the issuer.

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

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

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

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

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

35       **SECTION 4.** Notwithstanding any provision of Article 2A of Chapter 150B of the  
36 General Statutes, within 12 months of the effective date of this act, the Secretary of State shall  
37 adopt rules to implement the provisions of this act in accordance with the following procedure:

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

1           A rule adopted in accordance with this section becomes effective on the first day of  
2 the month following the month the Secretary adopts the rule and submits the rule to the  
3 Codifier of Rules for entry into the North Carolina Administrative Code.

4           **SECTION 5.** Any rule adopted more than 12 months after the effective date of this  
5 act shall comply with the requirements of Article 2A of Chapter 150B of the General Statutes.

6           **SECTION 6.** Section 4 of this act is effective when the act becomes law and  
7 expires 12 months after that date. Section 5 of this act becomes effective 12 months after the  
8 effective date of this act. The remainder of this act is effective when the act becomes law.