

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE DRH20019-MC-31 (01/26)

Short Title: NC Intrastate Private Capital Act. (Public)

Sponsors: Representatives Millis and Collins (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA INTRASTATE PRIVATE CAPITAL ACT.

3 Whereas, it is the policy of the State of North Carolina to provide greater economic
4 opportunities for the citizens of the State by encouraging and promoting the expansion of
5 existing business and creation of new business ventures; and

6 Whereas, the enactment of this act is necessary to provide greater opportunities for
7 economic growth, job creation, and wage growth for the North Carolina citizen; and

8 Whereas, enabling qualified North Carolina companies to raise an unlimited amount
9 of capital from North Carolina resident investors and enabling North Carolina resident
10 accredited investors to invest an unlimited amount of capital in an unlimited number of
11 qualified North Carolina companies serves these interests of the State by better allowing
12 funding of new and existing business ventures; Now, therefore,
13 The General Assembly of North Carolina enacts:

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

16 "**§ 78A-17A. Intrastate private capital exemption.**

17 (a) Definitions. – The following definitions apply in this section:

- 18 (1) Accredited investor. – An investor meeting the standards and criteria defined
19 in section 501 of SEC Regulation D.
20 (2) Disclosure brochure. – A brochure made available by the North Carolina
21 Securities Administrator and entitled "Investing In North Carolina Private
22 Companies" for use by investors, companies, and professional business
23 intermediaries engaged in a North Carolina private intrastate securities
24 offering.
25 (3) Non-accredited investor. – A natural person with income less than two
26 hundred thousand dollars (\$200,000) per year, or with a net liquid worth less
27 than one million dollars (\$1,000,000).
28 (4) Qualified North Carolina private company. – A for-profit, private company
29 registered and domiciled in the State of North Carolina.
30 (5) Qualified North Carolina resident investor. – A citizen domiciled within
31 North Carolina who files North Carolina income taxes.
32 (6) Qualified security. – Any note, stock, treasury stock bond, debenture,
33 evidence of indebtedness, certificate of interest or participation in any
34 profit-sharing agreement, preorganization certificate or subscription,
35 transferable share, investment contract, certificate of deposit for a security,
36 certificate of interest or participation in a patent or application therefor or in



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1 royalty or other payments under such a patent or application, or, in general,
2 any interest or instrument commonly known as a security or any certificate
3 for, receipt for, guarantee of, or option, warrant, or right to subscribe to or
4 purchase any of the foregoing of a North Carolina company or enterprise.

5 (b) Exemption from Registration Requirement. – The offer or sale of a security by an
6 issuer shall be exempt from the requirements of Article 4 of this Chapter, and any seller who
7 represents an issuer in an offer or sale shall be exempt from the requirements of Article 5 of
8 this Chapter, if the following requirements are met:

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

12 (2) A North Carolina non-accredited investor has not invested more than five
13 thousand dollars (\$5,000) in a single North Carolina "qualified" company
14 per year.

15 (3) No commission, fee, or other remuneration, is paid or given, directly or
16 indirectly, for a person's participation in the offer or sale of qualified
17 intrastate securities for the issuer, unless the person is registered under this
18 Chapter as a broker-dealer, an investment advisor, or private equity firm.

19 (4) All investment funds and capital received from qualified investors by a
20 qualified company are deposited into a bank or depository institution
21 authorized to do business in North Carolina, and all the use of funds are used
22 in accordance with representations made to investors.

23 (5) Fifteen days before a public general solicitation or advertising, the issuer
24 provides a Form D notice to the North Carolina Securities Division in
25 writing or in electronic form specifying that the issuer is conducting an
26 offering in reliance upon this exemption and containing the following:

27 a. The names and addresses of the issuer; all persons who will be
28 involved in the offer or sale of securities on behalf of the issuer; and
29 the bank, broker-dealer, or other depository institution in which
30 investor funds will be deposited.

31 b. The term sheet provided to investors regarding the terms and
32 conditions of the offering.

33 c. The disclosure brochure.

34 (6) The issuer is not and does not become, as a result of the offering, an SEC
35 registered investment company, as defined in section 3 of the Investment
36 Company Act of 1940, 15 U.S.C. § 80a-3, or a company subject to the
37 reporting requirements of section 13 or 15(d) of the Securities Exchange Act
38 of 1934, 15 U.S.C. § 78m and 78o(d).

39 (7) The issuer informs all purchasers in writing that the securities have not been
40 registered under this Chapter and may be restricted for resale.

41 (8) The issuer obtains from each investor a copy of the disclosure brochure that
42 is signed and that indicates the accreditation status of the investor.

43 (9) The issuer, prior to accepting or depositing investor funds or capital,
44 provides to each investor a copy of the term sheet and the private placement
45 memo related to the terms and conditions of the offering.

46 (10) If the issuer is a private equity fund company, the following requirements
47 are met:

48 a. The private equity fund company is a state-chartered economic,
49 business, and industrial development company that provides financial
50 or managerial assistance to qualified business enterprises.

- 1 b. The private equity fund company engages in the transaction of
2 business pursuant to the exemption from registration under the
3 Investment Company Act of 1940 afforded to economic, business,
4 and industrial development companies, as provided for by section
5 6(a)(5) of the Investment Company Act of 1940, as amended (15
6 U.S.C. Sec. 80a-6(a)).
- 7 c. Securities of the private equity fund companies are sold to North
8 Carolina resident accredited investors or to qualified institutional
9 buyers, as defined under Rule 144A of the Securities Act of 1933.
- 10 d. Federal- or State-registered investment advisors who provide advice
11 and fund management for the private equity fund company (i) are
12 licensed in the State and file Form ADV Part I and Part II with the
13 North Carolina Securities Division and (ii) are not subject to
14 statutory disqualifications contained under the JOBS Act of 2012.
- 15 (c) North Carolina Securities Division. – The North Carolina Securities Division of the
16 Department of the Secretary of State is authorized to adopt rules for the carrying out and
17 enforcement of the provisions of this section and to register and regulate intrastate regional
18 private equity fund companies, pursuant to rules contained in Title II of the JOBS Act of 2012
19 and Regulation D Rule 506(c).
- 20 The North Carolina Securities Administrator shall prepare a disclosure brochure form
21 suitable for use of the disclosure brochure in conformity with this section. The disclosure
22 brochure shall require an investor to identify whether the investor is accredited or
23 non-accredited.
- 24 (d) Applicability. – Nothing in this section shall be construed to interfere with the
25 applicability to investment advisers to private equity fund companies of the general anti-fraud
26 requirements of Rule 206(4)-8 under the Investment Advisers Act of 1940 and to the anti-fraud
27 provisions of this Chapter. G.S. 78A-8 and G.S. 78A-56(a)(2) apply to this section."

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