

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:

~~Representatives Murry, Moffitt, Shepard, and Hastings (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General
Assembly Web Site.~~

Referred to:

~~Commerce and Job Development.~~

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO ENACT THE JUMP-START OUR BUSINESS START-UPS ACT.

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

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

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

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

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 78A-17 is amended by adding a new subdivision to read: "(20) Any offer or sale of a security by an issuer if the offer or sale is conducted in accordance with G.S. 78A-17.1."

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

"§ 78A-~~17.119~~. Invest NC Exemption.

(a) Exemption. - Except as otherwise provided in this Chapter, an From Registration Requirements. - The offer or sale of a security by an issuer is shall be exempt from G.S. 78A-24 the requirements of Article 4 of this Chapter, and G.S. 78A-49(d) any seller who represents an issuer in an offer or sale shall be exempt from the requirements of Article 5 of this Chapter, if the offer or sale is conducted in accordance with each of the following requirements:

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

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

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

a. One million dollars (\$1,000,000), less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption, if the issuer has not undergone and provided the documentation resulting from a financial audit performed the previous year and meeting generally accepted accounting principles.

b. Two million dollars (\$2,000,000), less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption, if the issuer has undergone and provided the documentation resulting from a financial audit performed the previous year and meeting generally accepted accounting principles.

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

(5) Not less than 10 days prior to~~Before~~ the commencement of an offering of securities in reliance on this exemption~~use of any general solicitation or the twenty-fifth sale of the security, whichever occurs first~~, the issuer shall file a notice with the Administrator~~Commissioner~~, in writing or in electronic form as specified~~prescribed~~ by the Administrator, containing the following:

a. A notice~~Commissioner~~, specifying that the issuer will be~~is~~ conducting an offering in reliance upon this exemption, accompanied by the filing fee as specified in this section.

b. A copy of the disclosure statement to be provided to investors in connection with the offering, containing information material to the offering, including the following subjects:

1. A description of the company, its history, its business plan, and the intended use of the offering proceeds.

2. The principal owners of the company.

3. The managers of the company, their titles,~~containing the names and their prior experience.~~

4. The terms and conditions of the securities being offered and of any outstanding securities of the company.

5. The identity of any person~~addresses of the issuer, all persons, including internet Web sites,~~ who will be offering and selling the securities, including any Web sites.

6. Any litigation or legal proceedings involving the company~~involved in the offer~~ or its management.

7. The risk factors and any other material information, either adverse or favorable, that will or could affect the company or its business, or any material information which would tend to make any representations about the company or investment misleading or incomplete.

c. An escrow agreement with a sale of securities on behalf of the issuer,~~and the bank or other depository institution~~ located within this

State in which the investor funds will be deposited, providing that all offering proceeds will be released to the issuer only when the aggregate capital raised from all investors is equal to or greater than the minimum target offering amount specified in the business plan as necessary to implement the business plan, and that all investors may cancel their commitments to invest if that target offering amount is not raised by the time stated in the disclosure document.

(6) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the Investment Company Act of 1940, 15 U.S.C. § 8a-3, or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m and 78o(d). ~~(7)~~

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

"IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY~~resales contained in~~ subsection (e) of SEC rule 147, 17 C.F.R. § 230.147(E) AS PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE 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) 230.147(e)~~-~~

~~(8)~~ The issuer requires from all purchasers in writing in a separate written document by the time of the sale the following statement: "I acknowledge that I am investing in a high-risk, speculative business venture, that I may lose all of my investment, and that I can afford the loss of my investment. I understand this offering has not been reviewed by the State, and no authority has expressed an opinion on the merits of this offering." An investor who has signed the acknowledgment contained in this subdivision may not bring an action against the company or any director or officer of the company except in the case of fraud or breach of fiduciary duty, provided that the issuer is able to produce the signed acknowledgement.

~~(9)~~ If the offer and sale of securities is made through~~by~~ an internet Web site, the following requirements apply:

a. Web site must require as a condition of buyer registration on the site evidence or certification that the buyer is a North Carolina resident. Issuers registering to offer a security on a Web site under this subdivision must provide evidence or a certification that they are organized under and authorized to do business within the State of North Carolina at the time of registration. The Commissioner may inspect or review any Web site. Prior to the offer of~~offering~~ 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, ~~a Web site~~ operator shall provide to the Administrator evidence 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. 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 ~~inform the Commissioner of the existence of the Web site~~ and must provide ready ~~shall give the Commissioner~~ access to the records to the Administrator, upon request. The Administrator may access, inspect, and review any Web site and its records.

e. 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.

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

a. It does not offer investment advice or recommendations.

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

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

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

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

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

(b) Indexing. - The caps provided in ~~subdivisions~~subsection (a)(3) of this section shall be cumulatively adjusted for inflation every fifth year.

(c) Report. - An issuer of a security, the offer and sale of which is exempt under this section, shall provide a quarterly report to the issuer's ~~investors~~shareholders until no securities issued under this section are outstanding. The report required by this ~~subsections~~subdivision shall be free of charge. An issuer may satisfy the reporting requirement of this ~~subsections~~subdivision by making the information available on an internet Web site address if the information

is made available within 45 days of the end of each fiscal quarter and remains available ~~until the succeeding quarterly report is issued. for at least 60 days.~~ An issuer must provide a written copy of the report to any ~~investor shareholder~~ upon request. The report must contain each of the following:

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

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

The issuer shall file each such quarterly report with the Administrator.

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

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

~~(1) Has filed a registration statement which is the subject to any disqualification contained in 18 NCAC 06A .1207(a) (1) through (a) (6) of any pending proceeding or contained in Rule 262 a examination under section 8 of the Securities Act of 1933 or has been the subject of any refusal order or stop order thereunder.~~

~~(2) Is subject to any pending proceeding under SEC rule 258 promulgated under the Securities Act of 1933 (17 , or any similar section adopted under section 3(b) of the Securities Act of 1933, or to an order entered thereunder.~~

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

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

~~(5) Is subject to a United States Postal Service false representation order entered under 39 U.S.C.F.R. § 230.262). -§ 3005, or is subject to a temporary restraining order or preliminary injunction entered under 39 U.S.C. § 3007 with respect to conduct alleged to have violated 39 U.S.C. § 3005.~~

The provisions of this subsection shall not apply if (i) upon a showing of good cause and without prejudice to any other action by the ~~Administrator~~Commissioner, the ~~Administrator~~Commissioner determines that it is not necessary under the circumstances that an exemption be denied

and (ii) the issuer establishes that it made factual inquiry into whether any disqualification existed under this subsection but did not know, and in the exercise of reasonable care could not have known, that a disqualification existed under this subsection. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

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

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

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

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

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

(1) At least 15 business days prior to adopting a rule, submit the rule and a notice of public hearing to the Codifier of Rules. The Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet within five business days.

(2) At least 15 business days prior to adopting a rule, notify persons on the mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of the Secretary's intent to adopt a rule and of the public hearing.

(3) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.

(4) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

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

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

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