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March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA PROVIDING ACCESS TO CAPITAL FOR  
ENTREPRENEURS AND SMALL BUSINESS ACT AND TO PROVIDE PUBLIC  
DISCLOSURE OF WRITTEN DETERMINATIONS MADE BY THE DEPARTMENT OF  
REVENUE.

The General Assembly of North Carolina enacts:

**PART I. THE NORTH CAROLINA PROVIDING ACCESS TO CAPITAL FOR  
ENTREPRENEURS AND SMALL BUSINESS ACT**

**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-17.1. Invest NC exemption.**

(a) Exemption. – Except as otherwise provided in this Chapter, an offer or sale of a security by an issuer is exempt from G.S. 78A-24 and G.S. 78A-49(d) 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/or 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/or 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 made in reliance upon this exemption within the 12 months before the first offer or sale made in reliance upon this exemption, if the issuer has not undergone and made available to each prospective investor and the Administrator the documentation resulting from a financial audit or review with respect to its most recently completed fiscal year and meeting generally accepted accounting principles.



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

- 1                                   6.     A description of any litigation or legal proceedings involving the  
2   company or its management.
- 3                                   7.     The names and addresses, including URL, of any Web sites that  
4   will be used in connection with the offering.
- 5                                   c.     An escrow agreement with a bank or other depository institution located  
6   within this State or approved by the Administrator in which the investor  
7   funds will be deposited, providing that all offering proceeds will be  
8   released to the issuer only when the aggregate capital raised from all  
9   investors is equal to or greater than the minimum target offering amount  
10    specified in the disclosure document provided to the Administrator  
11    pursuant to sub-subdivision (a)(5)b. of this section and that all investors  
12    may cancel their commitments to invest if that target offering amount is  
13    not raised by the time stated in the disclosure document.
- 14                                   (6)   The issuer is not, either before or as a result of the offering, an investment  
15    company, as defined in section 3 of the Investment Company Act of 1940, 15  
16    U.S.C. § 8a-3, or an entity that would be an investment company but for the  
17    exclusions currently provided in section 3(c) of the Act, or subject to the  
18    reporting requirements of section 13 or 15(d) of the Securities Exchange Act of  
19    1934, 15 U.S.C. § 78m and 78o(d).
- 20                                   (7)   The issuer shall inform all prospective purchasers under this section that the  
21    securities have not been registered under federal or State securities law and that  
22    the securities are subject to limitations on resale. The issuer shall display the  
23    following legend conspicuously on the cover page of the disclosure document:  
24    "IN MAKING AN INVESTMENT DECISION, INVESTORS MUST  
25    RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND  
26    THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND  
27    RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN  
28    RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES  
29    COMMISSION OR REGULATORY AUTHORITY.  
30    FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT  
31    CONFIRMED THE ACCURACY OR DETERMINED THE  
32    ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO  
33    THE CONTRARY IS A CRIMINAL OFFENSE. THESE  
34    SECURITIES ARE SUBJECT TO RESTRICTIONS ON  
35    TRANSFERABILITY AND RESALE AND MAY NOT BE  
36    TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER  
37    THE SECURITIES ACT OF 1933, AS AMENDED, AND THE  
38    APPLICABLE STATE SECURITIES LAWS, PURSUANT TO  
39    REGISTRATION OR EXEMPTION THEREFROM. INVESTORS  
40    SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO  
41    BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN  
42    INDEFINITE PERIOD OF TIME."
- 43                                   (8)   The issuer shall require each purchaser to certify in writing "I understand and  
44    acknowledge that:
- 45    a.     I am investing in a high-risk, speculative business venture. I may lose  
46    all of my investment, and I can afford the loss of my investment.
- 47    b.     This offering has not been reviewed or approved by any state or federal  
48    securities commission or other regulatory authority and that no such  
49    person or authority has confirmed the accuracy or determined the  
50    adequacy of any disclosure made to me relating to this offering.

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

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

7           (13) The issuer must provide a copy of the disclosure document provided to the  
8 Administrator pursuant to sub-subdivision (a)(5)b. of this section to each  
9 prospective investor at the time the offer of securities is made to the prospective  
10 investor. In addition to the information described in sub-subdivision (a)(5)b. of  
11 this section, the disclosure document provided to the Administrator and to  
12 prospective investors should include additional information material to the  
13 offering, including, where appropriate, a discussion of significant factors that  
14 make the offering speculative or risky. This discussion must be concise and  
15 organized logically and should not present risks that could apply to any issuer  
16 or any offering.

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

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

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

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

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

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

1        (f) Rules. – To effectuate the general purpose of this section, the Administrator may adopt  
2 rules and issue orders that are necessary or appropriate in the public interest or for the protection  
3 of investors. The Administrator may also adopt rules and issue orders coordinating the  
4 interpretation and administration of this section with the related federal law and regulations.

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

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

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

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

- 21        (1) At least 15 business days prior to adopting a rule, submit the rule and a notice  
22 of public hearing to the Codifier of Rules. The Codifier of Rules shall publish  
23 the proposed rule and the notice of public hearing on the Internet within five  
24 business days.
- 25        (2) At least 15 business days prior to adopting a rule, notify persons on the mailing  
26 list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties  
27 of the Secretary's intent to adopt a rule and of the public hearing.
- 28        (3) Accept written comments on the proposed rule for at least 15 business days  
29 prior to adoption of the rule.
- 30        (4) Hold at least one public hearing on the proposed rule no less than five days  
31 after the rule and notice have been published.

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

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

## 37 38 **PART II. PUBLIC DISCLOSURE OF WRITTEN DETERMINATIONS MADE BY THE** 39 **DEPARTMENT OF REVENUE**

40        **SECTION 5.** Article 9 of Chapter 105 of the General Statutes is amended by adding a  
41 new section to read:

### 42 **"§ 105-264.2. Publication of written determinations.**

43        (a) Written Determinations. – A written determination applies the tax law to a specific set  
44 of existing facts furnished by a particular taxpayer. A written determination is applicable only to  
45 the individual taxpayer addressed and as such has no precedential value except to the taxpayer to  
46 whom the determination is issued.

47        (b) Publication. – The text of a written determination must be published on the  
48 Department's Web site within 90 days of the date the determination is provided to the taxpayer.  
49 The text of a written determination must be redacted as provided in subsection (c) of this section  
50 before it is published. The publication requirement of this section does not include disclosure of  
51 background file documents.

1       (c) Redacted Written Determinations. – The Secretary must redact all of the following  
2 from a written determination before it is published:

- 3           (1) The names, addresses, and other identifying details of the taxpayer to whom the  
4 written determination pertains.  
5           (2) The names, addresses, and other identifying details of any other person  
6 referenced in the written determination.  
7           (3) Information specifically exempted from disclosure by State or federal law.  
8           (4) Trade secrets and commercial or financial information obtained from a person  
9 that is privileged or confidential.

10       (d) Liability. – The Secretary must determine the appropriate extent of the redactions. The  
11 Secretary is not liable for failure to make redactions unless the Secretary fails to make the  
12 redactions in intentional and willful disregard of this section, has agreed to redact the information,  
13 or has been ordered by a court to make the redaction.

14       (e) Definitions. – The following definitions apply in this section:

- 15           (1) Alternative apportionment ruling. – Written advice issued by the Secretary to a  
16 taxpayer pursuant to a written request by the taxpayer for alternative  
17 apportionment under G.S. 105-130.4(t1) or under G.S. 105-122(c1).  
18           (2) Background file document. – Any one or more of the following:  
19           a. The request for the written determination.  
20           b. Any written materials submitted in support of the request.  
21           c. Any communication between the Department and persons outside the  
22 Department in connection with the written determination.  
23           d. Any information submitted by the taxpayer in response to a request  
24 from the Department for information that is required to provide the  
25 written determination.  
26           (3) Private letter ruling. – Written advice issued by the Secretary to a taxpayer  
27 pursuant to a written request by the taxpayer for specific advice under  
28 G.S. 105-264(b).  
29           (4) Redetermination private letter ruling. – Written advice issued by the Secretary  
30 to a corporation under G.S. 105-130.5A concerning one or more of the  
31 following:  
32           a. Specific advice requested in writing by a corporation as to whether a  
33 redetermination of a corporation's State net income or a combined return  
34 is required by the Secretary, as provided under G.S. 105-130.5A(m).  
35           b. A determination and agreement made jointly between the Secretary and  
36 a corporation to an alternative filing methodology that accurately reports  
37 State net income, as provided under G.S. 105-130.5A(c).  
38           (5) Written determination. – Any one or more of the following:  
39           a. An alternative apportionment ruling.  
40           b. A private letter ruling.  
41           c. A redetermination private letter ruling."

42       **SECTION 6.** G.S. 105-264(d) reads as rewritten:

43       "(d) Fee. – The Secretary may charge a fee for providing ~~specific written advice~~ a written  
44 determination at the request of a taxpayer. The fee is a receipt of the Department and must be  
45 applied to the costs of providing the ~~specific advice~~ written determination. The proceeds of the  
46 fee must be credited to a special account within the Department and do not revert but remain in the  
47 special account until spent by the Department for the costs of providing the ~~specific advice~~  
48 written determination. The Secretary may adopt a tiered fee structure based on the taxpayer's  
49 income or gross receipts, the relative complexity of the advice requested, or the tax schedule for  
50 which advice is requested. The fee shall not be less than one hundred dollars (\$100.00) or more

1 than five thousand dollars (\$5,000). The fee may be waived by the Secretary. The term "written  
2 determination" has the same meaning as defined in G.S. 105-264.2."

3 **SECTION 7.** G.S. 105-259(b)(27) reads as rewritten:

4 "(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has  
5 access to tax information in the course of service to or employment by the State may not disclose  
6 the information to any other person except as provided in this subsection. Standards used or to be  
7 used for the selection of returns for examination and data used or to be used for determining the  
8 standards may not be disclosed for any purpose. All other tax information may be disclosed only if  
9 the disclosure is made for one of the following purposes:

10 ...

11 (27) To provide a publication or written determination required under this Chapter.  
12 The term "written determination" has the same meaning as defined in  
13 G.S. 105-264.2."

14 **SECTION 8.** The Department of Revenue must publish on its Web site the text of any  
15 written determination issued on or after January 1, 2010, and before the enactment of this act,  
16 within 120 days of the enactment of this act. The text of the written determination must be  
17 redacted to remove identifying taxpayer information before being published as provided in  
18 G.S. 105-264.2, as enacted by this act.

19  
20 **PART III. EFFECTIVE DATE**

21 **SECTION 9.** This act is effective when it becomes law.