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SENATE BILL 481
Finance Committee Substitute Adopted 6/15/16

Short Title: Fund Small Businesses/Publish DOR Rulings.

(Public)

Sponsors:

Referred to:

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.

b. Two million dollars (\$2,000,000), less the aggregate amount received for all sales of securities by the issuer made in reliance upon this



1 exemption within the 12 months before the first offer or sale made in
2 reliance upon this exemption, if the issuer has undergone and made
3 available to each prospective investor and the Administrator the
4 documentation resulting from a financial audit or review with respect to
5 its most recently completed fiscal year and meeting generally accepted
6 accounting principles.

7 (4) The issuer has not accepted more than five thousand dollars (\$5,000) from any
8 single purchaser in an offering made in reliance upon this exemption in any
9 12-month period unless the purchaser is an accredited investor as defined by
10 rule 501 of SEC regulation D, 17 C.F.R. § 230.501.

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

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

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

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

28 2. The identity of all persons owning more than ten percent (10%)
29 of the ownership interests of any class of securities of the
30 company.

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

35 4. The terms and conditions of the securities being offered and of
36 any outstanding securities of the company, the minimum and
37 maximum amount of securities being offered, if any, and either
38 the percentage ownership of the company represented by the
39 offered securities or the valuation of the company implied by the
40 price of the offered securities.

41 5. The identity of any person who has been or will be retained by
42 the issuer to assist the issuer in conducting the offering and sale
43 of the securities, including any Web sites, but excluding persons
44 acting solely as accountants or attorneys and employees whose
45 primary job responsibilities involve the operating business of the
46 issuer rather than assisting the issuer in raising capital, and for
47 each person identified in response to this sub-sub-subdivision, a
48 description of the consideration being paid to such person for
49 such assistance.

50 6. A description of any litigation or legal proceedings involving the
51 company or its management.

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

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

1 the issuer shall be exempt from the registration provisions of G.S. 78A-36,
2 provided that the person does not receive, directly or indirectly, any
3 commission or remuneration for offering and selling securities of the issuer
4 pursuant to this exemption.

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

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

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

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

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

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

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

50 (f) Rules. – To effectuate the general purpose of this section, the Administrator may adopt
51 rules and issue orders that are necessary or appropriate in the public interest or for the protection

1 of investors. The Administrator may also adopt rules and issue orders coordinating the
2 interpretation and administration of this section with the related federal law and regulations.

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

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

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

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

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

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

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

35 36 **PART II. PUBLIC DISCLOSURE OF WRITTEN DETERMINATIONS MADE BY THE** 37 **DEPARTMENT OF REVENUE**

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

40 **§ 105-264.2. Publication of written determinations.**

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

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

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

- 1 (1) The names, addresses, and other identifying details of the taxpayer to whom the
2 written determination pertains.
- 3 (2) The names, addresses, and other identifying details of any other person
4 referenced in the written determination.
- 5 (3) Information specifically exempted from disclosure by State or federal law.
- 6 (4) Trade secrets and commercial or financial information obtained from a person
7 that is privileged or confidential.
- 8 (d) Liability. – The Secretary must determine the appropriate extent of the redactions. The
9 Secretary is not liable for failure to make redactions unless the Secretary fails to make the
10 redactions in intentional and willful disregard of this section, has agreed to redact the information,
11 or has been ordered by a court to make the redaction.
- 12 (e) Definitions. – The following definitions apply in this section:
- 13 (1) Alternative apportionment ruling. – Written advice issued by the Secretary to a
14 taxpayer pursuant to a written request by the taxpayer for alternative
15 apportionment under G.S. 105-130.4(t1) or under G.S. 105-122(c1).
- 16 (2) Background file document. – Any one or more of the following:
- 17 a. The request for the written determination.
- 18 b. Any written materials submitted in support of the request.
- 19 c. Any communication between the Department and persons outside the
20 Department in connection with the written determination.
- 21 d. Any information submitted by the taxpayer in response to a request
22 from the Department for information that is required to provide the
23 written determination.
- 24 (3) Private letter ruling. – Written advice issued by the Secretary to a taxpayer
25 pursuant to a written request by the taxpayer for specific advice under
26 G.S. 105-264(b).
- 27 (4) Redetermination private letter ruling. – Written advice issued by the Secretary
28 to a corporation under G.S. 105-130.5A concerning one or more of the
29 following:
- 30 a. Specific advice requested in writing by a corporation as to whether a
31 redetermination of a corporation's State net income or a combined return
32 is required by the Secretary, as provided under G.S. 105-130.5A(m).
- 33 b. A determination and agreement made jointly between the Secretary and
34 a corporation to an alternative filing methodology that accurately reports
35 State net income, as provided under G.S. 105-130.5A(c).
- 36 (5) Written determination. – Any one or more of the following:
- 37 a. An alternative apportionment ruling.
- 38 b. A private letter ruling.
- 39 c. A redetermination private letter ruling."

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

41 "(d) Fee. – The Secretary may charge a fee for providing ~~specific written advice~~ a written
42 determination at the request of a taxpayer. The fee is a receipt of the Department and must be
43 applied to the costs of providing the ~~specific advice~~ written determination. The proceeds of the
44 fee must be credited to a special account within the Department and do not revert but remain in the
45 special account until spent by the Department for the costs of providing the ~~specific advice~~
46 written determination. The Secretary may adopt a tiered fee structure based on the taxpayer's
47 income or gross receipts, the relative complexity of the advice requested, or the tax schedule for
48 which advice is requested. The fee shall not be less than one hundred dollars (\$100.00) or more
49 than five thousand dollars (\$5,000). The fee may be waived by the Secretary. The term "written
50 determination" has the same meaning as defined in G.S. 105-264.2."

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

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

7 ...

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

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

16 **SECTION 8.(b)** There is appropriated from the General Fund to the Department of
17 Revenue the sum of ten thousand dollars (\$10,000) for the 2016-2017 fiscal year for the purpose
18 of implementing the requirements of this section.

19
20 **PART III. EFFECTIVE DATE**

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