



# SENATE BILL 481: Providing Access To Entrepreneurs/Sm Business

2015-2016 General Assembly

<b>Committee:</b>	Senate Re-ref to Judiciary I. If fav, re-ref to Finance	<b>Date:</b>	April 14, 2015
<b>Introduced by:</b>	Sens. Barringer, Hise, Gunn	<b>Prepared by:</b>	Brad Krehely
<b>Analysis of:</b>	First Edition		Committee Counsel

**SUMMARY:** *Senate Bill 481 allows certain North Carolina businesses to raise funds by the sale of securities under certain circumstances by exempting the businesses from the registration and filing requirements of the North Carolina securities law.*

**BILL ANALYSIS:** Senate Bill 481 does the following.

**Section 1** would add a new exemption to the list of transactions that are exempt from the registration and filing requirements for the offer or sale of securities.

**Section 2** creates the Invest NC exemption that requires:

- **NC Issuer** – The issuer must be a North Carolina business entity formed under the laws of the State and registered with the Secretary of State.
- **Intrastate Offering** – The transaction must meet the federal exemption for an intrastate offering, which means that the issuer and all purchasers must be located in NC, that purchasers cannot transfer the securities for a period of time, that a certain percentage of the proceeds must be used in the State, and that the issuer cannot sell or have an economic impact outside the state.
- **\$1/\$2 Million Maximum Per Offering** – If the issuer has not undergone a financial audit, the maximum amount of cash raised under the exemption must not exceed \$1 million minus the amount received in the 12 months before the exemption. If the issuer has undergone a financial audit, the maximum amount allowed is \$2 million minus the amount received in the 12 months before the exemption. Offers and sales to controlling persons of the issuer are exempt from the funding cap. The funding cap will be adjusted for inflation every fifth year.
- **\$5,000 Maximum Per Purchaser** – The issuer has not accepted more than \$5,000 from a single purchaser, unless the purchaser is an accredited investor.
- **Notice to Secretary of State** – The issuer must file a notice with the Secretary of State no less than 10 days before beginning to offer securities under the exemption. The notice must include a disclosure statement with specified financial information that will be provided to investors and an escrow agreement between the issuer and a NC bank providing that funds received from investors will be held until the minimum target offering amount is reached and that investors may cancel their purchase if the target is not reached.
- **Issuer Not Investment Company** – The issuer may not be an investment company.
- **Notice of Unregistered Securities and Limitations on Resale** – The issuer must conspicuously display on the cover of the disclosure document a notice to investors that the securities being offered have not been registered under federal or State law, that the investor bears the risk of the investment, and that the securities are subject to limitations on resale.

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# Senate Bill 481

Page 2

- **Written Acknowledgement by Purchaser** – The issuer shall require each purchaser to certify in writing that the purchaser understands and acknowledges the securities are a high-risk speculative business venture; no state or federal governmental authority has reviewed the offering; the securities are illiquid; and the purchaser may be subject to tax on a share of the taxable income and losses of the company whether or not the purchaser sold or otherwise disposed of the securities.
- **Registration and Recordkeeping by Internet Web Sites** – If the offer and sale are made through an internet web site, the issuer and the website must provide certain information to the Secretary of State, including evidence that both are NC businesses and that all purchasers are NC residents.
- **Notice and Recordkeeping by Escrow Holder** – The bank holding the escrow funds shall notify the Secretary of State of the receipt of payments for securities and the identity and residence of the investors.
- **Registration Exemption for Web Site** – The web site is exempt from the requirement to register as a dealer or salesperson if the web site meets specified conditions.
- **Registration Exemption for Issuer's Employees** – The executives and management of the issuer are exempt from the requirement to register as a dealer or salesperson as long as they do not receive any remuneration or commission for offering and selling securities under the exemption.
- **Quarterly Reporting** – The issuer must provide a quarterly report to investors until no securities issued under the exemption are outstanding.
- **Disqualification** – The exemption does not apply if the issuer or someone affiliated with the issuer is subject to any disqualification under State or federal law.
- **Rules** – The Secretary of State may adopt rules to implement the exemption and protect investors.
- **Filing Fee** – The Secretary of State may charge a nonrefundable filing fee of \$150 for filing the exemption notice.

**Section 3** makes a conforming change to the subsection relating to the informational filing requirement.

**Section 4** authorizes the Secretary of State to adopt rules to implement this act on an expedited basis for the first year. The section provides for a 15-day notice and comment period and requires the Secretary to hold at least one public hearing on the rules. The rules are not subject to review by the Rules Review Commission and become effective on the first day of the month following the date the rules are adopted and sent to the Codifier of Rules for entry into the Administrative Code. This provision expires 12 months after the effective date of the act.

**Section 5** provides that any rule adopted more than 12 months after the act's effective date must comply with rulemaking under the Administrative Procedure Act. (effective 12 months after the act becomes law).

**EFFECTIVE DATE:** Except as noted above, the act is effective when it becomes law.

Karen Cochrane-Brown and Greg Roney, Staff Attorneys for the Research Division, contributed substantially to this summary.