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NC's crowdfunding law: What it means, an attorney's view



By BENJII JONES, Smith Anderson law firm

Tags: Startups, Venture & Innovation

Editor's note: The General Assembly's passage of the NC PACES Act is big news for the state's startups and non-accredited investors. "After 3.5 years in the making, intrastate investment crowdfunding is finally coming to North Carolina!" says lawyer and crowdfunding supporter Benji Jones. Se explains what the law means once it is signed - as expected - by Gov. Pat McCrory.

RALEIGH, N.C. - We Made It! NC PACES Act to Become Law

The NC PACES Act: "Providing Access to Capital for Entrepreneurs and Small Business" has been passed by the NC House by a vote of 114 to 0, the NC Senate by a vote of 49 to 0, and is now headed to Governor McCrory for his signature. After 3.5 years in the making, intrastate investment crowdfunding is finally coming to North Carolina!

Senator Tamara Barringer, co-sponsor of the bill, states: "The NC PACES Act has passed the North Carolina House and Senate unanimously, paving the way for small businesses to raise much needed capital, providing jobs and opportunities for North Carolinians."

(Note: See links with this post regarding the advance and passage of the bill as well as the reaction of the North Carolina Secretary of State to the PACES Act.)

What does this mean?

A North Carolina business will be able to raise up to \$1 million in any 12-month period (or up to \$2 million with audited or reviewed financial statements) from investors who are North Carolina residents. There are no wealth or income limitations on who can invest; however, investors who are not "accredited" may only invest \$5,000 in a particular venture in any 12-month period.

Companies will be permitted to promote the offering publicly, after filing a notice (as well as substantive disclosures) with the Securities Division of the North Carolina Secretary of State. A fee of \$150 will also be charged. Companies are required to communicate in writing the business plan, financials, use of funds, and risks of the offering. Investors are required to certify in writing at the time of sale that they understand the risks of purchasing unregistered securities and that they may lose their entire investment.

Companies may (but are not required to) use a professional crowdfunding intermediary that meets the requirements established by NC PACES and related rules. They are required to establish an escrow to hold funds prior to closing.

Companies that issue securities under NC PACES will be obligated to provide quarterly reports to investors discussing management compensation, operating results, and financial condition, etc.

When can we start?

Companies can start gathering materials, preparing disclosures, and consulting advisors now. However, you will not be able to formally pursue investors under NC PACES until the Securities Division of the North Carolina Secretary of State's office adopts specific rules to implement the provisions of the Act. The Secretary of State's office has played a critical role in formulating this exemption and, although the law gives it a 12-month period to act, hopefully, it will give implementation of these rules highest priority.

There are some details to iron out so stay tuned here for more updates.

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Benji Jones is a partner at the Smith Anderson law firm with extensive experience in representing companies in exempt and non-exempt securities offerings. Feel free to reach out directly to the author with questions or comments.

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