

**AMENDMENT IN THE NATURE OF A SUBSTITUTE TO  
H.R. 2930  
OFFERED BY MR. MCHENRY OF NORTH  
CAROLINA**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Entrepreneur Access  
3 to Capital Act”.

**4 SEC. 2. CROWDFUNDING EXEMPTION.**

5 (a) SECURITIES ACT OF 1933.—Section 4 of the Se-  
6 curities Act of 1933 (15 U.S.C. 77d) is amended by add-  
7 ing at the end the following:

8 “(6) transactions involving the issuance of secu-  
9 rities for which—

10 “(A) the aggregate annual amount raised  
11 through the issue of the securities is  
12 \$5,000,000 or less;

13 “(B) individual investments in the securi-  
14 ties are limited to an aggregate annual amount  
15 equal to the lesser of—

16 “(i) \$10,000; and

1                   “(ii) 10 percent of the investor’s an-  
2                   nual income;

3                   “(C) in the case of a transaction involving  
4                   an intermediary between the issuer and the in-  
5                   vestor, such intermediary complies with the re-  
6                   quirements under section 4A(a); and

7                   “(D) in the case of a transaction not in-  
8                   volving an intermediary between the issuer and  
9                   the investor, the issuer complies with the re-  
10                  quirements under section 4A(b).”.

11               (b)     REQUIREMENTS     TO     QUALIFY     FOR  
12     CROWDFUNDING     EXEMPTION.—The Securities Act of  
13     1933 is amended by inserting after section 4 the following:  
14     **“SEC. 4A. REQUIREMENTS WITH RESPECT TO CERTAIN**  
15                   **SMALL TRANSACTIONS.**

16               “(a)     REQUIREMENTS ON INTERMEDIARIES.—For  
17     purposes of section 4(6), a person acting as an inter-  
18     mediary in a transaction involving the issuance of securi-  
19     ties shall comply with the requirements of this subsection  
20     if the intermediary—

21                   “(1)     warns investors, including on the  
22                   intermediary’s website, of the speculative nature  
23                   generally applicable to investments in startups,  
24                   emerging businesses, and small issuers, including  
25                   risks in the secondary market related to illiquidity;

1           “(2) warns investors that they are subject to  
2           the restriction on sales requirement described under  
3           subsection (e);

4           “(3) takes reasonable measures to reduce the  
5           risk of fraud with respect to such transaction;

6           “(4) provides the Commission with the  
7           intermediary’s physical address, website address,  
8           and the names of the intermediary and employees of  
9           the person, and keep such information up-to-date;

10          “(5) provides the Commission with continuous  
11          investor-level access to the intermediary’s website;

12          “(6) requires each potential investor to answer  
13          questions demonstrating competency in—

14                 “(A) recognition of the level of risk gen-  
15                 erally applicable to investments in startups,  
16                 emerging businesses, and small issuers;

17                 “(B) risk of illiquidity; and

18                 “(C) such other areas as the Commission  
19                 may determine appropriate;

20          “(7) requires the issuer to state a target offer-  
21          ing amount and withhold capital formation proceeds  
22          until aggregate capital raised from investors other  
23          than the issuer is no less than 60 percent of the tar-  
24          get offering amount;

1           “(8) carries out a background check on the  
2 issuer’s principals;

3           “(9) outsources cash-management functions to  
4 a qualified third party custodian, such as a tradi-  
5 tional broker or dealer or insured depository institu-  
6 tion;

7           “(10) maintains such books and records as the  
8 Commission determines appropriate;

9           “(11) makes available on the intermediary’s  
10 website a method of communication that permits the  
11 issuer and investors to communicate with one an-  
12 other; and

13           “(12) does not offer investment advice.

14           “(b) REQUIREMENTS ON ISSUERS IF NO INTER-  
15 MEDIARY.—For purposes of section 4(6), an issuer who  
16 offers securities without an intermediary shall comply with  
17 the requirements of this subsection if the issuer—

18           “(1) warns investors, including on the issuer’s  
19 website, of the speculative nature generally applica-  
20 ble to investments in startups, emerging businesses,  
21 and small issuers, including risks in the secondary  
22 market related to illiquidity;

23           “(2) warns investors that they are subject to  
24 the restriction on sales requirement described under  
25 subsection (e);

1           “(3) takes reasonable measures to reduce the  
2 risk of fraud with respect to such transaction;

3           “(4) provides the Commission with the issuer’s  
4 physical address, website address, and the names of  
5 the principals and employees of the issuers, and  
6 keeps such information up-to-date;

7           “(5) provides the Commission with continuous  
8 investor-level access to the issuer’s website;

9           “(6) requires each potential investor to answer  
10 questions demonstrating competency in—

11               “(A) recognition of the level of risk gen-  
12 erally applicable to investments in startups,  
13 emerging businesses, and small issuers;

14               “(B) risk of illiquidity; and

15               “(C) such other areas as the Commission  
16 may determine appropriate;

17           “(7) states a target offering amount and with-  
18 holds capital formation proceeds until the aggregate  
19 capital raised from investors other than the issuer is  
20 no less than 60 percent of the target offering  
21 amount;

22           “(8) outsources cash-management functions to  
23 a qualified third party custodian, such as a tradi-  
24 tional broker or dealer or insured depository institu-  
25 tion;

1           “(9) maintains such books and records as the  
2           Commission determines appropriate;

3           “(10) makes available on the issuer’s website a  
4           method of communication that permits the issuer  
5           and investors to communicate with one another;

6           “(11) does not offer investment advice; and

7           “(12) discloses to potential investors, on the  
8           issuer’s website, that the issuer has an interest in  
9           the issuance.

10          “(c) VERIFICATION OF INCOME.—For purposes of  
11          section 4(6), an issuer or intermediary may rely on certifi-  
12          cations provided by an investor to verify the investor’s in-  
13          come.

14          “(d) RESTRICTION ON SALES.—With respect to a  
15          transaction involving the issuance of securities described  
16          under section 4(6), an investor may not sell such securities  
17          during the 1-year period beginning on the date of pur-  
18          chase, unless such securities are sold to—

19                 “(1) the issuer of such securities; or

20                 “(2) an accredited investor.

21          “(e) CONSTRUCTION.—

22                 “(1) NO TREATMENT AS BROKER.—With re-  
23                 spect to a transaction described under section 4(6)  
24                 involving an intermediary, such intermediary shall

1 not be treated as a broker under the securities laws  
2 solely by reason of participation in such transaction.

3 “(2) NO PRECLUSION OF OTHER CAPITAL RAIS-  
4 ING.—Nothing in this section or section 4(6) shall  
5 be construed as preventing an issuer from raising  
6 capital through methods not described under section  
7 4(6).”.

8 (c) RULEMAKING.—Not later than 90 days after the  
9 date of the enactment of this Act, the Securities and Ex-  
10 change Commission shall issue such rules as may be nec-  
11 essary to carry out section 4A of the Securities Act of  
12 1933. In issuing such rules, the Commission shall carry  
13 out the cost-benefit analysis required under section 2(b)  
14 of such Act.

15 **SEC. 3. EXCLUSION OF CROWDFUNDING INVESTORS FROM**  
16 **SHAREHOLDER CAP.**

17 Section 12(g)(5) of the Securities Exchange Act of  
18 1934 (15 U.S.C. 78l(g)(5)) is amended—

19 (1) by striking “For the purposes” and insert-  
20 ing:

21 “(A) IN GENERAL.—For the purposes”;

22 and

23 (2) by adding at the end the following:

24 “(B) EXCLUSION FOR PERSONS HOLDING  
25 CERTAIN SECURITIES.—For purposes of this

1 subsection, the term ‘held of record’ shall not  
2 include holders of securities issued pursuant to  
3 transactions described under section 4(6) of the  
4 Securities Act of 1933.”.

5 **SEC. 4. PREEMPTION OF STATE LAW.**

6 Section 18(b)(4) of the Securities Act of 1933 (15  
7 U.S.C. 77r(b)(4)) is amended—

8 (1) by redesignating subparagraphs (C) and  
9 (D) as (D) and (E), respectively; and

10 (2) by inserting after subparagraph (B) the fol-  
11 lowing:

12 “(C) section 4(6);”.

