

NORTH CAROLINA GENERAL ASSEMBLY
1973 SESSION

CHAPTER 1380
SENATE BILL 589

AN ACT TO REPEAL CHAPTER 78 OF THE GENERAL STATUTES AND TO CREATE A
NEW CHAPTER 78 CONCERNING SECURITIES LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 78-1 through and including G.S. 78-24, as the same appears in Volume 2C and the 1971 Cumulative Supplement of the General Statutes is hereby repealed, and a new Chapter to be known as Chapter 78 is hereby created and shall read as follows:

"Article 1.

"Title and Definitions.

"§ 78-1. **Title.** — This Chapter shall be known and may be cited as the North Carolina Securities Act.

"§ 78-2. **Definitions.** — When used in this Chapter, unless the context otherwise requires:

(a) 'Administrator' means the official designated in Section 78-19(a).

(b) 'Dealer' means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. 'Dealer' does not include (1) a salesman, (2) a bank, savings institution, or trust company, (3) a person who has no place of business in this State if (A) he effects transactions in this State exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) in the case of a person registered as a dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 and in one or more states, during any period of 12 consecutive months he does not effect more than 15 purchases or sales in this State in any manner with persons other than those specified in clause (A), whether or not the dealer or any of the purchasers or sellers is then present in this State, or (4) an issuer if (A) the security is exempted under clauses (1), (2), (3), (10), (11), (13), or (14) of Section 78-6, or the transaction is exempted under Section 78-7, and such exemption has not been denied or revoked under Section 78-8, or (B) the security is registered under this Chapter and it is offered and sold through a registered dealer, or (C) all of the following conditions are met: (i) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective purchaser in this State, and (ii) the total amount of the offering, and the total number of purchasers, both within and without this State, does not exceed five hundred thousand dollars (\$500,000) and 100, respectively.

(c) 'Fraud', 'deceit', and 'defraud' are not limited to common-law deceit.

(d) 'Guaranteed' means guaranteed as to payment of principal, interest, or dividends.

(e) 'Issuer' means any person who issues or proposes to issue any security, except that (1) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management, or unit type, the term 'issuer' means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other

agreement or instrument under which the security is issued; and (2) with respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payments out of production under such titles or leases, there is not considered to be any 'issuer'.

(f) 'Non-issuer' means not directly or indirectly for the benefit of the issuer.

(g) 'Person' means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(h) (1) 'Sale' or 'sell' includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) 'Offer' or 'offer to sell' includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(4) A purported gift of assessable stock is considered to involve an offer and sale.

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(6) The terms defined in this subsection and the term 'purchase' as used in this Chapter do not include

(A) any bona fide loan, pledge, or other transaction creating a bona fide security interest; (B) any stock split and any security dividend, whether the corporation distributing the dividend is the issuer of the security or not, if nothing of value is given by security holders for the dividend other than the surrender of a right to a cash or property dividend when each security holder may elect to take the dividend in cash or property or in securities; (C) any transaction incident to a class vote by security holders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation; or (D) any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash.

(i) 'Salesman' means any individual other than a dealer who represents a dealer or issuer in effecting or attempting to effect purchases or sales of securities. 'Salesman' does not include an individual who represents an issuer in (1) effecting transactions in a security exempted by clauses (1), (2), (3), (10), (11), (13), or (14) of Section 78-6, (2) effecting transactions exempted by Section 78-7, or (3) effecting transactions meeting the requirements of Section 78-2(b)(4) (C), or (4) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this State. A partner, officer, or director of a dealer or issuer, or a person occupying a similar status or performing similar functions, is a salesman only if he otherwise comes within this definition.

(j) 'Securities Act of 1933', 'Securities Exchange Act of 1934', 'Public Utility Holding Company Act of 1935', 'Investment Company Act of 1940', and 'Internal Revenue Code' mean the federal statutes of those names as amended before or after the effective date of this Chapter.

(k) 'Security' means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement;

collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract, including without limitation any investment contract taking the form of a whiskey warehouse receipt or other investment of money in whiskey or malt beverages; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a 'security', or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. 'Security' does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay (i) a fixed sum of money either in a lump sum or periodically for life or for some other specified period, or (ii) benefits or payments or value which vary so as to reflect investment results of any segregated portfolio of investments or of a designated separate account or accounts in which amounts received or retained in connection with any of such contracts have been placed if the delivering or issuing insurance company has currently satisfied the Commissioner of Insurance that it is in compliance with G.S. 58-79.2.

(l) 'State' means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

"Article 2.

"Fraudulent and Other Prohibited Practices.

"§ 78-3. **Sales and purchases.** — It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly:

- (1) to employ any device, scheme, or artifice to defraud,
- (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading or,
- (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

"§ 78-4. **Misleading filings.** — It is unlawful for any person to make or cause to be made, in any document filed with the Administrator or in any proceeding under this Chapter, any statement which is, at the time and in the light of the circumstances under which it is made false or misleading in any material respect.

"§ 78-5. **Unlawful representations concerning registration or exemption.** — (a) Neither (1) the fact that an application for registration under Article 5 or a registration statement under Article 4 has been filed nor (2) the fact that a person or security is effectively registered constitutes a finding by the Administrator that any document filed under this Chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the Administrator has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(b) It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection (a).

"Article 3.

"Exemptions.

"§ 78-6. **Exempt securities.** — The following securities are exempted from Section 78-9 and Section 78-23(d):

- (1) any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;
- (2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency of one or more of the

- foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;
- (3) any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state;
 - (4) any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this State;
 - (5) any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this State; but this exemption does not apply to an annuity contract, investment contract, or similar security under which the promised payments are not fixed in dollars but are substantially dependent upon the investment results of a segregated fund or account invested in securities unless the issuing or delivering company has satisfied the Commissioner of Insurance that it is in compliance with G.S. 58-79.2;
 - (6) any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this State;
 - (7) any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (A) subject to the jurisdiction of the Interstate Commerce Commission; (B) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act; (C) regulated in respect of its rates and charges by a governmental authority of the United States or any state; or (D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;
 - (8) any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange or on any other national securities exchange registered under the Securities Exchange Act of 1934 and designated by rule of the Administrator; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing;
 - (9) any security issued by any person organized under the laws of this State or having its principal office in this State and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association;
 - (10) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;
 - (11) any investment contract and any stock option plan qualified under Subchapter D of Chapter One of Subtitle A of the Internal Revenue Code, or

- other comparable provision enacted in lieu thereof, and issued in connection with an employees' stock purchase, stock option, savings, pension, profit-sharing, or similar benefit plan;
- (12) any bond or note secured by lien on vessels shown by policies of marine insurance taken out in responsible companies to be of value, after deducting any and all other indebtedness secured by prior lien, of not less than one hundred twenty-five percent (125%) of the par amount of such bonds or notes;
 - (13) any capital stock issued by a professional corporation organized pursuant to the provisions of the Professional Corporation Act, Chapter 55B;
 - (14) Any security issued by (1) any mutual association or agricultural marketing association organized or domesticated and existing under Subchapter IV or Subchapter V, respectively, of Chapter 54 of the General Statutes of North Carolina; or (2) any electric or telephone membership corporation organized or domesticated and existing under Chapter 117 of the General Statutes of North Carolina.

"§ 78-7. Exempt transactions. — The following transactions are exempted from Section 78-9 and Section 78-23(d):

- (1) any isolated non-issuer transaction, whether effected through a dealer or not;
- (2) any non-issuer distribution other than by a controlling person of an outstanding security if (A) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (B) a registered dealer files with the Administrator such information relating to the issuer as the Administrator may by rule or order require, or (C) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;
- (3) any non-issuer transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy; but the Administrator may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the dealer for a specified period;
- (4) any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
- (5) any transaction in a bond or other evidence of indebtedness secured by a lien or security interest in real or personal property, or by an agreement for the sale of real estate or chattels, if the entire security interest or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;
- (6) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
- (7) any transaction executed by a person holding a bona fide security interest without any purpose of evading this Chapter;
- (8) any offer or sale to a corporation, bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial

- institution or institutional buyer, or to a dealer, whether the purchaser is acting for itself or in some fiduciary capacity;
- (9) any transaction pursuant to an offer directed by the offeror to not more than 25 persons (including those designated in paragraph (8)) in this State during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in this State, if the seller reasonably believes that all the buyers in this State are purchasing for investment; provided, however, the Administrator may by rule or order as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption; provided further, the Administrator may by rule or order exempt any transaction or type of transaction that is exempted from the provisions of Section 5 of the Securities Act of 1933 by virtue of any rule, or rules, promulgated, either before or after the effective date of this Chapter, by the Securities and Exchange Commission under Section 4(2) of such Act;
 - (10) any offer or sale of preorganization certificates or subscriptions if (A) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (B) the total amount of the offering, and the total number of purchasers, both within and without this State, does not exceed five hundred thousand dollars (\$500,000) and 100, respectively, (C) no certificate or subscription is binding on the subscriber for more than six months after the date of execution of the first certificate or subscription; provided, however, that if a registration statement relating to the securities to be issued is filed under Section 78-12 within such six-month period certificates or subscriptions may continue to be binding on the subscribers until 10 days after such registration statement becomes effective or until effectiveness is denied, and (D) no payment is made by any subscriber;
 - (11) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, non-transferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if (A) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this State, or (B) the issuer first files a notice specifying the terms of the offer and the Administrator does not by order disallow the exemption within the next ten full business days;
 - (12) any offer (but not a sale) of a security for which registration statements have been filed under both this Chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act;
 - (13) any offer or sale by a domestic corporation of its own securities if (A) the corporation was organized for the purpose of promoting community, agricultural or industrial development of the area in which the principal office is located, (B) the offer or sale has been approved by resolution of the county commissioners of the county in which its principal office is located, and, if located in a municipality or within two miles of the boundaries thereof, by resolution of the governing body of such municipality, and (C) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this State;
 - (14) any offer, sale or issuance of securities pursuant to an investment contract or stock option plan which is exempt under the provisions of Section 78-6(11) of this Chapter.

"§ 78-8. Denial and revocation of exemptions. — (a) The Administrator may by order deny or revoke any exemption specified in clauses (8), (9), or (11) of Section 78-6 or in Section 78-7 with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the Administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the Administrator shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of an opportunity for hearing to all interested persons, may not modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated Section 78-9 or 78-23(d) by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

(b) In any proceeding under this Chapter, the burden of providing an exemption or an exception from a definition is upon the person claiming it.

"Article 4.

"Registration of Securities.

"§ 78-9. Registration requirement. — It is unlawful for any person to offer or sell any security in this State unless (1) it is registered under this Chapter or (2) the security or transaction is exempted under Section 78-6 or Section 78-7 and such exemption has not been denied or revoked under Section 78-8.

"§ 78-10. Registration by notification. — (a) The following securities may be registered by notification whether or not they are also eligible for registration by coordination under Section 78-11:

- (1) any security whose issuer and any predecessors have been in continuous operation for at least five years if (A) there has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision, and (B) the issuer and any predecessors during the past three fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, (i) which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and equal at least five percent (5%) of the amount of such outstanding securities (as measured by the maximum offering price or the market price on a day, selected by the registrant, within 30 days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within 90 days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price), or (ii) which, if the issuer and any predecessors have not had any security of the type specified in clause (i) outstanding for three full fiscal years, equal at least five percent (5%) of the amount (as measured in clause (i)) of all securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this State) are issued;

- (2) any security (other than a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease) registered for non-issuer distribution if (A) any security of the same class has been registered under this Chapter or a predecessor law within five years of the date of filing the registration statement, or (B) the security being registered was originally issued within five years of the date of filing the registration statement pursuant to an exemption under this Chapter or a predecessor law;
- (3) any bonds or notes secured by a first mortgage upon agricultural lands used and valuable for agricultural purposes (not including oil, gas or mining property or leases) and the principal value of the bonds or notes does not exceed sixty percent (60%) of the then fair market value of the lands and improvements thereon;
- (4) any bonds or notes secured by a first mortgage on city, town, or village real estate situated in any state or in Canada if the principal value of the bonds and notes does not exceed sixty percent (60%) of the fair market value of the land and improvements thereon and the real estate is used principally to produce through rental a net annual income or has a fair net rental value at least equal to the annual interest on the bonds and notes, plus not less than three percent (3%) of the principal of said mortgage indebtedness;
- (5) any bond or note secured by a first lien on collateral pledged as security with a bank or trust company as trustee, which bank or trust company is incorporated under the laws of and subject to examination and supervision by the United States or by a state of the United States, and which collateral shall consist of (i) a principal amount of first mortgage bonds or notes meeting the requirements of G.S. 78-10(a)(3) or G.S. 78-10(a)(4) or (ii) a principal amount of obligations of the United States or (iii) cash equal to not less than one hundred percent (100%) of the principal secured, or (iv) a principal amount of obligations meeting the requirements of (i), (ii) or (iii) of this subsection in any combination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Section 78-13(c) and the consent to service of process required by Section 78-27(f):

- (1) a statement demonstrating eligibility for registration by notification;
- (2) with respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state (or foreign jurisdiction) and the date of its organization; and the general character and location of its business;
- (3) with respect to any person on whose behalf any part of the offering is to be made in a non-issuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;
- (4) a description of the security being registered;
- (5) the information and documents specified in clauses (8), (10) and (12) of Section 78-12(b); and
- (6) in the case of any registration under Section 78-10(a)(2) which does not also satisfy the conditions of Section 78-10(a)(1), a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last

fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than two years.

(c) If no stop order is in effect and no proceeding is pending under Section 78-14, a registration statement under this section automatically becomes effective at three o'clock Eastern Standard Time in the afternoon of the tenth full business day after the filing of the registration statement or the last amendment, or at such earlier time as the Administrator determines.

"§ 78-11. Registration by coordination. — (a) Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Section 78-13(c) and the consent to service of process required by Section 78-27(f):

- (1) three copies of the latest form of prospectus filed under the Securities Act of 1933;
- (2) a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;
- (3) if the Administrator requests, any other information or copies of any other documents filed under the Securities Act of 1933; and
- (4) an undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied: (1) no stop order is in effect and no proceeding is pending under Section 78-14; (2) the registration statement has been on file with the Administrator for at least 10 days; and (3) a statement of the maximum proposed offering price and the maximum underwriting discounts and commissions expressed as a percentage of the final offering price has been on file for two full business days or such shorter period as the Administrator permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the Administrator by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. 'Price amendment' means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the Administrator may enter a stop order without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if he promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order is void as of the time of its entry. The Administrator may by rule or otherwise waive either or both of the conditions specified in clauses (2) and (3). If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement

automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the Administrator of the date when the federal registration statement is expected to become effective, the Administrator shall promptly advise the registrant by telephone or telegraph, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under Section 78-14; but this advice by the Administrator does not preclude the institution of such a proceeding at any time.

"§ 78-12. Registration by qualification. — (a) Any security may be registered by qualification upon the following conditions:

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in Section 78-13(c) and the consent to service of process required by Section 78-27(f):

- (1) with respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;
- (2) with respect to every director and officer of the issuer or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him as of a specified date within 30 days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;
- (3) with respect to persons covered by clause (2): the remuneration paid during the past 12 months or fiscal year and estimated to be paid during the next fiscal year, directly or indirectly, by the issuer (together with all predecessors, parents, subsidiaries, and affiliates) to all those persons in the aggregate;
- (4) with respect to any person owning of record or beneficially if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer: the information specified in clause (2) other than his occupation;
- (5) with respect to every promoter if the issuer was organized within the past three years: the information specified in clause (2), any amount paid to him within that period or intended to be paid to him, and the consideration for any such payment;
- (6) with respect to any person on whose behalf any part of the offering is to be made in a non-issuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected; and a statement of his reasons for making the offering;
- (7) the capitalization and long-term debt (on both current and a pro forma basis) of the issuer and any significant subsidiary including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which

- the issuer or any subsidiary has issued any of its securities within the past three years or is obligated to issue any of its securities;
- (8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees(including separately, cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;
 - (9) the estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amount of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition(including the cost of borrowing money to finance the acquisition);
 - (10) a description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in clauses (2), (4), (5), (6), or (8) and by any person who holds or will hold ten percent (10%) or more in the aggregate of any such options;
 - (11) the dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets(including any such litigation or proceeding known to be contemplated by governmental authorities);
 - (12) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;
 - (13) a specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;

- (14) a signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer;
- (15) the written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement;
- (16) a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant; and
- (17) such additional information as the Administrator requires by rule or order.

(c) A registration statement under this section becomes effective when the Administrator so orders.

(d) The Administrator may by rule or order require as a condition of registration under this section that a prospectus containing any designated part of the information specified in subsection (b) be sent or given to each person to whom an offer is made before or concurrently with (1) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution, (2) the confirmation of any sale made by or for the account of any such person, (3) payment pursuant to any such sale, or (4) delivery of the security pursuant to any such sale, whichever first occurs.

§ 78-13. Provisions applicable to registration generally. — (a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered dealer.

(b) Every person filing a registration statement shall pay a filing fee of twenty-five dollars (\$25.00), plus a registration fee of one-tenth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in this State, but the registration fee shall in no case be less than twenty-five dollars (\$25.00) or more than two hundred fifty dollars (\$250.00). When a registration statement is withdrawn before the effective date or a preeffective stop order is entered under Section 78-14, the Administrator shall retain the filing fee. In the case of a registration statement relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940, the Administrator may by rule or order prescribe the maximum amount of securities (but in no event less than two hundred fifty thousand dollars (\$250,000)) that may be offered upon payment of the maximum registration fee, and prescribe different amounts for different classes of issuers.

(c) Every registration statement shall specify (1) the amount of securities to be offered in this State; (2) the states in which a registration statement or similar document in connection with the offering has been or is expected to be filed; and (3) any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the Securities and Exchange Commission.

(d) Any document filed under this Chapter or a predecessor law within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(e) The Administrator may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(f) In the case of a non- issuer distribution, information may not be required under Section 78-12 or 78-13(i) unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(g) The Administrator may by rule or order require as a condition of registration by qualification or coordination (1) that any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds from the sale of the registered security in this State be impounded until the issuer receives a specified amount from the sale of the securities either in this State or elsewhere. The Administrator may by rule or order determine the conditions of any escrow or impounding required hereunder, but he may not reject a depository solely because of location in another state.

(h) Every registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time a stop order is in effect under Section 78-14. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any non- issuer transaction (1) so long as the registration statement is effective and (2) between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under Section 78-14 (if the registration statement did not relate in whole or in part to a non- issuer distribution) and one year from the effective date of the registration statement. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the Administrator.

(i) So long as a registration statement is effective, the Administrator may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose progress of the offering.

(j) A registration statement relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940, may be amended after its effective date so as to increase the securities specified as proposed to be offered. Such an amendment becomes effective when the Administrator so orders. Every person filing such an amendment shall pay a registration fee, calculated in the manner specified in subsection (b), and such filing fee not to exceed twenty five dollars (\$25.00) as the Administrator may by rule or order require, with respect to the additional securities proposed to be offered.

"§ 78-14. Denial, suspension, and revocation of registration. — (a) The Administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds (1) that the order is in the public interest and (2) that:

- (A) the registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under Section 78-13(j) as of its effective date, or any report under Section 78-13(i) is

- incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact; or
- (B) any provision of this Chapter or any rule, order, or condition lawfully imposed under this Chapter has been willfully violated, in connection with the offering, by (i) the person filing the registration statement, (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (iii) any underwriter; or
 - (C) the security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but (i) the Administrator may not institute a proceeding against an effective registration statement under clause (C) more than one year from the date of the order or injunction relied on, and (ii) he may not enter an order under clause (C) on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section; or
 - (D) the issuer's enterprise or method of business includes or would include activities which are illegal where performed; or
 - (E) the offering has worked or tended to work a fraud upon purchasers or would so operate; or (F) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options; or
 - (G) when a security is sought to be registered by notification, it is not eligible for such registration; or
 - (H) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by Section 78-11(b)(4); or
 - (I) the applicant or registrant has failed to pay the proper fees; but the Administrator may enter only a denial-order under this clause and he shall vacate any such order when the deficiency has been corrected.

The Administrator may not institute a stop-order proceeding against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective unless the proceeding is instituted within the next 30 days.

- (b) The following provisions govern the application of Section 78-14(a)(2)(F):
 - (1) The Administrator may not enter a stop order against a registration statement based on one or more of the grounds set forth in clause (F) of Section 78-14(a)(2) if the offering, or the dealer, or any dealers, making or participating in the offering, is subject to rules, promulgated by any national securities association registered with the Securities and Exchange Commission pursuant to Section 15A of the Securities Exchange Act of 1934, providing safeguards against unreasonable profits or unreasonable rates or commissions or other charges, and such rules are complied with.
 - (2) The Administrator may by rule or order require such evidence of compliance with such rules as he may deem advisable.
- (c) The Administrator may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section.

Upon the entry of the order, the Administrator shall promptly notify each person specified in subsection (d) that it has been entered and of the reasons therefor and that within 15 days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of an opportunity for hearing to each person specified in subsection (d), may modify or vacate the order or extend it until final determination.

(d) No stop order may be entered under any part of this section except the first sentence of subsection (c) without (1) appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered, (2) opportunity for hearing, and (3) written findings of fact and conclusions of law.

(e) The Administrator may vacate or modify a stop order if he finds that the conditions which prompted entry have changed or that it is otherwise in the public interest to do so.

"Article 5.

"Registration of Dealers and Salesmen.

"§ 78-15. Registration requirement. — (a) It is unlawful for any person to transact business in this State as a dealer or salesman unless he is registered under this Chapter. No dealer shall be eligible for registration under this Chapter, or for renewal of registration hereunder, unless such dealer is at the time registered as a dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

(b) It is unlawful for any dealer or issuer to employ a salesman unless the salesman is registered. The registration of a salesman is not effective during any period when he is not associated with a particular dealer registered under this Chapter or a particular issuer. When a salesman begins or terminates those activities which make him a salesman, the salesman as well as the dealer or issuer shall promptly notify the Administrator.

The Administrator may by rule or order require the return of a salesman's license upon the termination of those activities which make him a salesman or, if such return is impossible, require evidence satisfactory to the Administrator of such impossibility.

(c) Every registration expires on the thirty-first day of March of each year (or such other date not more than one year from its effective date as the Administrator may by rule or order provide) unless renewed.

"§ 78-16. Registration procedure. — (a) A dealer or salesman may obtain an initial or renewal registration by filing with the Administrator an application together with a consent to service of process pursuant to Section 78-27(f). The application shall contain whatever information the Administrator by rule requires concerning such matters as (1) the applicant's form and place of organization; (2) the applicant's proposed method of doing business; (3) the qualifications and business history of the applicant; in the case of a dealer, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer, and a representation that the applicant dealer is duly registered as a dealer under the Securities Exchange Act of 1934; (4) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and (5) the applicant's financial condition and history. If no denial order is in effect and no proceeding is pending under Section 78-18, registration becomes effective at noon of the thirtieth day after an application is filed. The Administrator may by rule or order specify an earlier effective date, and he may by order defer the effective date until noon of the thirtieth day after the filing of any amendment. Registration of a dealer automatically constitutes registration of any salesman who is a partner, officer, or director, or a person occupying a similar status or performing similar functions.

(b) Every applicant for initial or renewal registration shall pay a filing fee of fifty dollars (\$50.00) in the case of a dealer and ten dollars (\$10.00) in the case of a salesman. The

Administrator may by rule reduce the registration fee proportionately when the registration will be in effect for less than a full year.

(c) A registered dealer may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

(d) The Administrator may by rule require registered dealers and salesmen to post surety bonds in amounts up to ten thousand dollars (\$10,000), and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any registrant whose net capital, which may be defined by rule, exceeds twenty-five thousand dollars (\$25,000). Every bond shall provide for suit thereon by any person who has a cause of action under Section 78-25 and, if the Administrator by rule or order requires, by any person who has a cause of action not arising under this Chapter. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two years after the sale or other act upon which it is based.

"§ 78-17. Post-registration provisions. — (a) Every registered dealer shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the Administrator by rule prescribes. All records so required shall be preserved for three years unless the Administrator by rule prescribes otherwise for particular types of records.

(b) Every registered dealer shall file such financial reports as the Administrator by rule prescribes.

(c) If the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under Section 78-15(b).

(d) All the records referred to in subsection (a) are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this State, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Administrator, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

"§ 78-18. Denial, revocation, suspension, cancellation, and withdrawal of registration. —

(a) The Administrator may by order deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a dealer, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer:

- (A) has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or
- (B) has willfully violated or willfully failed to comply with any provision of this Chapter or a predecessor law or any rule or order under this Chapter or a predecessor law; or
- (C) has been convicted, within the past 10 years, of any misdemeanor involving a security or any aspect of the securities business, or any felony; or
- (D) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business; or

- (E) is the subject of an order of the Administrator denying, suspending, or revoking registration as a dealer or salesman; or
- (F) is the subject of an order entered within the past five years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking registration as a dealer or salesman, or the substantial equivalent of those terms as defined in this Chapter, or is the subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States Post Office fraud order; but (i) the Administrator may not institute a revocation or suspension proceeding under clause (F) more than one year from the date of the order relied on, and (ii) he may not enter an order under clause (F) on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under this section; or
- (G) has engaged in dishonest or unethical practices in the securities business; or
- (H) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the Administrator may not enter an order against a dealer under this clause without a finding of insolvency as to the dealer; or
- (I) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b).

The Administrator may by order deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest and (2) that the applicant or registrant:

- (J) has failed reasonably to supervise his salesmen if he is a dealer; or
- (K) has failed to pay the proper filing fee; but the Administrator may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected.

The Administrator may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within the next 30 days.

(b) The following provisions govern the application of Section 78-18(a)(2)(I):

- (1) The Administrator may not enter an order against a dealer on the basis of the lack of qualification of any person other than (A) the dealer himself if he is an individual or (B) a salesman of the dealer.
- (2) The Administrator may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both or, in the case of a dealer if he is registered and in good standing under the Securities Exchange Act of 1934.
- (3) The Administrator shall consider that a salesman who will work under 757 the supervision of a registered dealer need not have the same qualifications as a dealer.
- (4) The Administrator may by rule provide for an examination which may be written or oral or both, to be taken by any class of or all applicants.

(c) The Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that within 15 days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the Administrator,

the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the Administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a dealer or salesman, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the Administrator may by order cancel the registration or application.

(e) Withdrawal from registration as a dealer or salesman becomes effective 30 days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a revocation or suspension proceeding under Section 7818(a)(2)(B) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(f) No order may be entered under any part of this section except the first sentence of subsection (c) without (1) appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is a salesman), (2) opportunity for hearing, and (3) written findings of fact and conclusions of law.

"Article 6.

"Administration and Review.

"§ 78-19. Administration of act. — (a) This Chapter shall be administered by the Secretary of State and such deputies and assistants as he shall designate. The Secretary of State may appoint such clerks and other assistants as may from time to time be needed.

(b) It is unlawful for the Administrator or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the Administrator and which is not made public. No provision of this Chapter authorizes the Administrator or any of his officers or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this Chapter. No provision of this Chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the Administrator or any of his officers or employees.

(c) All fees provided for under this Chapter shall be collected by the Administrator and shall be paid over to the State Treasurer to go into the general fund.

"§ 78-20. Investigations and subpoenas. — (a) The Administrator in his discretion (1) may make such public or private investigations within or outside of this State as he deems necessary to determine whether any person has violated or is about to violate any provision of this Chapter or any rule or order hereunder, or to aid in the enforcement of this Chapter or in the prescribing of rules and forms hereunder, (2) may require or permit any person to file a statement in writing, under oath or otherwise as the Administrator determines, as to all the facts and circumstances concerning the matter to be investigated, and (3) may publish information concerning any violation of this Chapter or any rule or order hereunder.

(b) For the purpose of any investigation or proceeding under this Chapter, the Administrator or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Administrator deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the Administrator, may issue to the person an order requiring him to appear before the Administrator, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(d) No person is excused from attending and testifying or from producing any document or record before the Administrator, or in obedience to subpoena of the Administrator or any officer designated by him, or in any proceeding instituted by the Administrator, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

"§ 78-21. Injunctions. — Whenever it appears to the Administrator that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Chapter or any rule or order hereunder, he may in his discretion bring an action in any court of competent jurisdiction to enjoin the acts or practices and to enforce compliance with this Chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the Administrator to post a bond.

"§ 78-22. Judicial review of orders. — (a) Any person aggrieved by a final order of the Administrator may obtain a review of the order in the Superior Court of Wake County by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the Administrator, and thereupon the Administrator shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The findings of the Administrator as to the facts, if supported by competent, material and substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional material evidence, and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the Administrator, the court may order the additional evidence to be taken before the Administrator and to be adduced upon the hearing in such manner and upon such conditions as the court considers proper. The Administrator may modify his findings and order by reason of the additional evidence together with any modified or new findings or order. The judgment of the court is final, subject to review by the Court of Appeals.

(b) The commencement of proceedings under subsection (a) does not, unless specifically ordered by the court, operate as a stay of the Administrator's order.

"§ 78-23. Rules, forms, orders, and hearings.— (a) The Administrator may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this Chapter, including rules and forms governing registration statements, applications, and reports, and defining any terms, whether or not used in this Chapter, insofar as the definitions are not inconsistent with the provisions of this Chapter. For the purpose of rules and forms the Administrator may classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes.

(b) No rule, form, or order may be made, amended, or rescinded unless the Administrator finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and

provisions of this Chapter. In prescribing rules and forms the Administrator may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(c) The Administrator may by rule or order prescribe (1) the form and content of financial statements required under this Chapter, (2) the circumstances under which consolidated financial statements shall be filed, and (3) whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting practices.

(d) The Administrator may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, unless the security or transaction is exempted by Section 78-6 or Section 78-7 and such exemption has not been denied or revoked under Section 78-8.

(e) All rules and forms of the Administrator shall be published.

(f) No provision of this Chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the Administrator, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(g) Every hearing in an administrative proceeding shall be public unless the Administrator in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.

"§ 78-24. Administrative files and opinions. — (a) A document is filed when it is received by the Administrator.

(b) The Administrator shall keep a register of all applications for registration and registration statements which are or have been effective under this Chapter and all denial, suspension, or revocation orders which have been entered under this Chapter. The register shall be open for public inspection.

(c) The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the Administrator prescribes.

(d) Upon request and at such reasonable charges as he prescribes, the Administrator shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this Chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

(e) The Administrator in his discretion may honor requests from interested persons for interpretative opinions.

"Article 7.

"Civil Liabilities and Criminal Penalties.

"§ 78-25. Civil Liabilities. — (a) Any person who

- (1) offers or sells a security in violation of Sections 785(b), 78-9, or 78-15(a), or of any rule or order under Section 78-23(d) which requires the affirmative approval of sales literature before it is used, or of any condition imposed under Section 78-12(d) or 78-13(g), or
- (2) offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the purchaser not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable to the person purchasing the security from him,

who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent (6%) per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at the legal rate from the date of disposition.

(b) Any person who purchases a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, shall be liable to the person selling the security to him, who may sue either at law or in equity to recover the security, plus any income received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages are the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security.

(c) Every person who directly or indirectly controls a person liable under subsection (a) or (b), every partner, officer, or director of such a person, every person occupying a similar status or performing similar functions, every employee of such a person who materially aids in the act or transaction, and every dealer or salesman who materially aids in the sale are also liable jointly and severally with and to the same extent as such person, unless the person who is so liable sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(d) Any tender specified in this section may be made at any time before entry of judgment. Tender shall require only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable.

(e) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(f) No person may sue under this section more than two years after the sale or contract of sale.

(g) (1) No purchaser may sue under this section if, before suit is commenced, the purchaser has received a written offer stating the respect in which liability under this section may have arisen and fairly advising the purchaser of his rights; offering to repurchase the security for cash payable on delivery of the security equal to the consideration paid, together with interest at six percent (6%) per year from the date of payment, less the amount of any income received on the security or, if the purchaser no longer owns the security, offering to pay the purchaser upon acceptance of the offer an amount in cash equal to the damages computed in accordance with subsection (a); and stating that the offer may be accepted by the purchaser at any time within 30 days of its receipt; and the purchaser has failed to accept such offer in writing within the specified period.

(2) No seller may sue under this section if, before suit is commenced, the seller has received a written offer stating the respect in which liability under this section may have arisen and fairly advising the seller of his rights; offering to return the security plus the amount of any income received thereon upon payment of the consideration received, or, if the purchaser no longer owns the security, offering to pay the seller upon acceptance of the offer an

amount in cash equal to the damages computed in accordance with subsection (b); and providing that the offer may be accepted by the seller at any time within 30 days of its receipt; and the seller has failed to accept such offer in writing within the specified period.

- (3) Offers shall be in the form and contain the information the Administrator by rule prescribes. Every offer under subsection (g) shall be delivered to the offeree or sent by certified mail addressed to him at his last known address. If an offer is not performed in accordance with its terms, suit by the offeree under this section shall be permitted without regard to this subsection.

(h) No person who has made or engaged in the performance of any contract in violation of any provision of this Chapter or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

(i) Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this Chapter or any rule or order hereunder is void.

(j) The rights and remedies provided by this Chapter are in addition to any other rights or remedies that may exist at law or in equity, but this Chapter does not create any cause of action not specified in this section or Section 78-16(e).

"§ 78-26. Criminal penalties. — (a) Any person who willfully violates any provision of this Chapter except Section 78-4, or who willfully violates any rule or order under this act, or who willfully violates Section 78-4 knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than five thousand dollars (\$5,000) or imprisoned in the State prison not more than five years, or both; but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order.

(b) The Administrator may refer such evidence as is available concerning violations of this Chapter or of any rule or order hereunder to the Attorney General or the proper district solicitor, who may, with or without such a reference, institute the appropriate criminal proceedings under this Chapter.

(c) Nothing in this Chapter limits the power of the State to punish any person for any conduct which constitutes a crime by statute or at common law.

"Article 8.

"Miscellaneous Provisions.

"§ 78-27. Scope of the act and service of process. — (a) Sections 78-3, 78-5, 78-9, 78-15(a), and 78-25 apply to persons who sell or offer to sell when (1) an offer to sell is made in this State, or (2) an offer to buy is made and accepted in this State.

(b) Sections 78-3, 78-5, and 78-15(a) apply to persons who buy or offer to buy when (1) an offer to buy is made in this State, or (2) an offer to sell is made and accepted in this State.

(c) For the purpose of this section, an offer to sell or to buy is made in this State, whether or not either party is then present in this State, when the offer (1) originates from this State or (2) is directed by the offeror to this State and received at the place to which it is directed (or at any post office in this State in the case of a mailed offer).

(d) For the purpose of this section, an offer to buy or to sell is accepted in this State when acceptance (1) is communicated to the offeror in this State and (2) has not previously been communicated to the offeror, orally, or in writing, outside this State; and acceptance is communicated to the offeror in this State, whether or not either party is then present in this State when the offeree directs it to the offeror in this State reasonably believing the offeror to be in this State and it is received at the place to which it is directed (or at any post office in this State in the case of a mailed acceptance).

(e) An offer to sell or to buy is not made in this State when (1) the publisher circulates or there is circulated on his behalf in this State any bona fide newspaper or other publication of

general, regular, and paid circulation which is not published in this State, or which is published in this State but has had more than two-thirds of its circulation outside this State during the past 12 months, or (2) a radio or television program originating outside this State is received in this State.

(f) Every applicant for registration under this Chapter and every issuer who proposes to offer a security in this State through any person acting on an agency basis in the common-law sense shall file with the Administrator, in such form as he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor or administrator which arises under this Chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless (1) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the Administrator, and (2) the plaintiff's affidavit of compliance with the subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(g) When any person, including any nonresident of this State, engages in conduct prohibited or made actionable by this Chapter or any rule or order hereunder, and he has not filed a consent to service of process under subsection(f) and personal jurisdiction over him cannot otherwise be obtained in this State, that conduct shall be considered equivalent to his appointment of the Administrator or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor executor or administrator which grows out of that conduct and which is brought under this Chapter or any rule or order hereunder with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the Administrator, and it is not effective unless (1) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(h) When process is served under this section, the court, or the Administrator in a proceeding before him, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

(i) Interest charged by a broker or dealer registered under the Securities Exchange Act of 1934, as amended, or registered under this Chapter, as now or hereafter amended, on a debit balance in an account for a customer, shall be exempt from the provisions of Chapter 24 of the North Carolina General Statutes if such debit balance is payable at will without penalty and is secured by securities as defined in the Uniform Commercial Code, Article 8. Investment Securities, G.S. 25-8-101 through G.S. 25-8-406.

"§ 78-28. Statutory policy. — This Chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of this Chapter with the related federal regulation.

"§ 78-29. Severability of provisions. — If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or application of the Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

"§ 78-30. **Repeal and saving provisions.** — (a) The Securities Law of the State of North Carolina, G.S. 78-1 through 78-24, is repealed except as saved in this section.

(b) Prior law exclusively governs all suits, actions, prosecution, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this Chapter, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued and in any event within two years after the effective date of this Chapter.

(c) All effective registrations under prior law, all administrative orders relating to such registrations, and all conditions imposed upon such registrations remain in effect so long as they would have remained in effect if this Chapter had not been passed. They are considered to have been filed, entered, or imposed under this Chapter, but are governed by prior law.

(d) Prior law applies in respect to any offer or sale made within one year after the effective date of this Chapter pursuant to an offering begun in good faith before its effective date on the basis of an exemption available under prior law.

(e) Judicial review of all administrative orders as to which review proceedings have not been instituted by the effective date of this Chapter are governed by Section 78-22, except that no review proceeding may be instituted unless the petition is filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within 60 days after the effective date of this Chapter."

Sec. 2. This act shall become effective on April 1, 1975.

In the General Assembly read three times and ratified, this the 13th day of April, 1974.