

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 817
HOUSE BILL 1117

AN ACT TO AMEND THE NORTH CAROLINA SECURITIES ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 78A-2(1) is rewritten to read:

"(1) 'Administrator' means the Secretary of State."

Sec. 2. G.S. 78A-2(2)d.1. as the same appears in Volume 2C of the General Statutes is amended by rewriting the first line to read:

"1. The security is exempted under subdivisions (1), (2), (3), (4), (7), (9), (10),".

Sec. 3. G.S. 78A-2(9) is amended by deleting the words "or issuer" in the first and third sentences of the subdivision and by deleting the second sentence in its entirety and by inserting the word "executive" between "partner," and "officer" in the third sentence.

Sec. 4. G.S. 78A-16(7) is amended by inserting the following language between "holding company" and "which is":

"of one of the foregoing".

Sec. 5. G.S. 78A-16(9) is amended by deleting the words "under the laws of this State or having its principal office in this State" and by adding at the end, before the semicolon, the words "provided, however, that the Administrator may by rule or order impose conditions upon this exemption either generally or in relation to specific securities or transactions".

Sec. 6. G.S. 78A-17(8) is amended by inserting the following language between "corporation" and the comma:

"which has a net worth in excess of one million dollars (\$1,000,000) as determined by generally accepted accounting principles".

Sec. 7. G.S. 78A-17(10) is rewritten to read:

"(10) Any offer or sale of a preorganizational certificate or subscription if: (i) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber; (ii) no public advertising or solicitation is used in connection with the offer or sale; (iii) the number of subscribers does not exceed 10 and the number of offerees does not exceed 25; and (iv) no payment is made by any subscriber."

Sec. 8. G.S. 78A-36(b) is amended by deleting the words "or issuer" in the first, third, and fifth sentences thereof and by deleting the words "or a particular issuer" in the second sentence of the subsection.

Sec. 9. G.S. 78A-37(a) is amended by inserting the word "executive" between "partner," and "officer" in the last sentence of the subsection.

Sec. 10. G.S. 78A-37(d) is amended by inserting the words "to post surety bonds in amounts up to one hundred thousand dollars (\$100,000)" between "dealers" and "and" in the first sentence of the subsection and by rewriting "twenty-five thousand dollars (\$25,000)" in the third sentence as follows:

"one hundred thousand dollars (\$100,000)".

Sec. 11. G.S. 78A-39 is amended by inserting the word "censure," between "suspension" and "cancellation" in the catch line.

Sec. 12. G.S. 78A-39(a), as the same appears in Volume 2C of the General Statutes, is amended by inserting the following language between "or revoke any registration" and "if he finds" in the second and fifty-first lines of the subsection:

"in whole or in part or restrict or limit as to any person, office, function, or activity or censure the registrant".

Sec. 13. G.S. 78A-39(a)(2)b. is amended by inserting the following language between "law" and the semicolon:

"or any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, or the Commodity Exchange Act".

Sec. 14. G.S. 78A-39(a) is further amended by deleting "30" in the last line of the subsection and inserting in lieu thereof "120".

Sec. 15. G.S. 78A-39(e) is amended by deleting "30" both times that it appears in the first sentence of the subsection and inserting in lieu thereof "90".

Sec. 16. G.S. 78A-40(c) is amended by inserting "censure," between the words "suspension," and "cancellation".

Sec. 17. G.S. 78A-45(a) is rewritten to read as follows:

"(a) This Chapter shall be administered by the Secretary of State. The Secretary of State as Administrator may delegate all or part of the authority under this Chapter to the Deputy Securities Administrator including, but not limited to, the authority to conduct hearings, make, execute and issue final agency orders and decisions. The Secretary of State may appoint such clerks and other assistants as may from time to time be needed."

Sec. 18. G.S. 78A-47 is amended by rewriting the catch line to read "Injunctions; cease and desist orders.", by designating the present section as subsection (a), and by adding a new subsection (b) to read:

"(b)(1) If the Administrator determines after giving notice of and opportunity for a hearing, that any person has engaged in 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 order such person to cease and desist from such unlawful act or practice and take such affirmative action as in the judgment of the Administrator will carry out the purposes of this Chapter.

(2) If the Administrator makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under G.S. 78A-47(b)(1), the Administrator may issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the Administrator shall promptly notify in writing the person subject to the order that such order has been entered, the reasons therefor, and that within 20 days after the receipt of a written request from such person the matter shall be set down for hearing to determine whether or not the order shall become

permanent and final. If no hearing is requested and none is ordered by the Administrator, the order shall remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after giving notice of an opportunity for a hearing to the person subject to the order, shall by written findings of fact and conclusion of law, vacate, modify, or make permanent the order.

(3) No order under subsection (b), except an order issued pursuant to G.S. 78A-47(b)(2), may be entered without prior notice of an opportunity for hearing. The Administrator may vacate or modify an order under this subsection (b) upon his finding that the conditions which required such an order have changed and that it is in the public interest to so vacate or modify.

(4) A final order issued pursuant to the provisions of subsection (b) shall be subject to review as provided in G.S. 78A-48."

Sec. 19. The first sentence of G.S. 78A-48(a) is amended by deleting the words "any county" and inserting in lieu thereof "Wake County" and by deleting the words "within 60 days after the entry of the order" and inserting in lieu thereof "within 30 days after a written copy of the decision is served upon the person by personal service or by registered mail".

Sec. 20. G.S. 78A-56(a) is rewritten to read:

"(a) Any person who:

- (1) Offers or sells a security in violation of G.S. 78A-10(b), 78A-24, or 78A-36(a), or of any rule or order under G.S. 78A-49(d) which requires the affirmative approval of sales literature before it is used, or of any condition imposed under G.S. 78A-27(d) or G.S. 78A-28(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 were 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 did not act in reckless disregard, 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 the legal rate 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 as provided by G.S. 24-1 from the date of disposition."

Sec. 21. G.S. 78A-56(g)(1) is amended by deleting "six percent (6%) per year" and inserting in lieu thereof "at the legal rate as provided by G.S. 24-1".

Sec. 22. This act shall become effective upon ratification except for Section 5 which shall become effective on October 1, 1983.

In the General Assembly read three times and ratified, this the 19th day of July, 1983.