

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 849
HOUSE BILL 975

AN ACT TO IMPROVE THE NORTH CAROLINA SECURITIES ACT AND THE
BUSINESS CORPORATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 78A-2(2)d. is amended: (i) on line 2 of sub-subdivision 1. by adding the number "(5)", after number "(4)"; (ii) by deleting the present sub-subdivision 3. and substituting therefor the following rewritten sub-subdivision 3.:

"3. 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; (ii) the total amount of the offering, both within and without this State, does not exceed two million five hundred thousand dollars (\$2,500,000); and (iii) the total number of purchasers, both within and without this State, does not exceed 100. Provided, however, the Administrator may by rule or order waive the condition imposed by subdivision (iii) hereof; or and, (iii) by adding a new sub-subdivision 4. as follows:

"4. The security is issued by an open-end management company that is registered under the Investment Company Act of 1940 and so long as no sales load is paid or given, directly or indirectly."

Sec. 2. G.S. 78A-18(b) is amended by deleting the existing subsection (b) and substituting therefor as follows:

"(b) In a civil or administrative proceeding brought under this Chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it. In a criminal proceeding brought under this Chapter, the State has no initial burden of producing evidence to show that the defendant's actions do not fall within the exemption or exception; however, once the defendant introduces evidence to show that his conduct is within the exemption or exception, the burden of persuading the trier of fact that the exemption or exception does not apply falls upon the State."

Sec. 3. G.S. 78A-40(c) is amended by deleting the words "denial, revocation, suspension, cancellation or withdrawal by the Administrator of a registration of a dealer or salesman" and substituting therefor the words "exercise of the authority of the Administrator".

Sec. 4. G.S. 78A-46 is amended by adding a new subsection (d) as follows:

"(d) The Administrator may act under subsection (b) or apply under subsection (c) to enforce subpoenas in this State at the request of a securities agency or administrator of any state if the alleged activities constituting a violation for which the information is sought would be a violation of this Chapter or any rule hereunder if the alleged activities had occurred in this State."

Sec. 5. G.S. 78A-48(a) is amended by adding the words "or certified" before the word "mail" in the fifth line and by adding the words "and shall file in court the additional evidence" after the word "evidence" in the third from the last line of subsection (a).

Sec. 6. G.S. 78A-49(d) is amended by adding "(except 78A-17(9), (17))" after "78A-17" in the fifth line of subsection (d).

Sec. 7. G.S. 78A-57(a) is amended by deleting in lines 5, 6 and 7 the words "fined not more than five thousand dollars (\$5,000) or imprisoned in the State prison not more than five years, or both;" and substituting therefor the words "punished as a Class I felon;" .

Sec. 8. G.S. 78A-30(b) and (c) is amended by adding the following sentences to the end of subsection (b) and by inserting the word "business" after the number "10" in the first line of subsection (c):

"Provided, however, if the securities or the transaction regarding which the fairness hearing is sought are otherwise exempt from the registration provisions of this Chapter: (1) the Administrator shall have until 45 days after the filing of the application and supporting documents to hold a hearing on the application for approval; and (2) the hearing on the application shall not be held until at least 10 business days after the filing of the application."

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of August, 1987.