

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 318*

Short Title: Securities Act Amendments/AB.

(Public)

Sponsors: Senator Reeves.

Referred to: Commerce.

March 6, 1997

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE NORTH CAROLINA SECURITIES ACT TO THE
NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996.

The General Assembly of North Carolina enacts:

Section 1. G.S. 78A-2(9) reads as rewritten:

"(9) 'Salesman' means any individual other than a dealer who represents a dealer in effecting or attempting to effect purchases or sales of securities. 'Salesman' does not include an individual who represents (i) an issuer in effecting transfers in securities described in sub-subdivision (2)d. of this section or in effecting transactions in a covered security as described in Section 18(b)(3) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(3)] and Section 18(b)(4)(D) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(4)(d)]; or (ii) a dealer in effecting transactions in this State limited to those transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934 [15 U.S.C. § 78o(h)(2)]. A partner, executive officer, or director of a dealer, or a person occupying a similar status or performing similar functions, is a salesman only if he otherwise comes within this definition."

Section 2. G.S. 78A-2 is amended by adding a new subdivision to read:

1 Securities and Exchange Commission under the Securities Act of 1933,
2 which shall be filed concurrently with the Administrator.

3 (3) A report of the value of securities covered under federal law that are
4 offered or sold in this State.

5 (b) With regard to any security that is covered under Section 18(b)(4)(D) of the
6 Securities Act of 1933 [15 U.S.C. § 77r(b)(4)(d)], the Administrator, by rule or order,
7 may require the issuer to file a notice on SEC Form D [17 C.F.R. § 239.500] and a
8 consent to service of process signed by the issuer no later than 15 days after the first sale
9 of the security in this State. The Administrator may, by rule, establish a fee to recover
10 costs for filing required by this section, not to exceed one hundred fifty dollars (\$150.00).

11 (c) The Administrator, by rule or order, may require the filing of any document
12 filed with the Securities and Exchange Commission under the Securities Act of 1933,
13 with respect to a security covered under Section 18(b)(3) or (4) of the Securities Act of
14 1933 [15 U.S.C. § 77r(b)(3) or (4)]. The Administrator may, by rule, establish a fee to
15 recover costs for any filing required under this section, not to exceed one hundred fifty
16 dollars (\$150.00).

17 (d) The Administrator may issue a stop order suspending the offer and sale of a
18 security covered under 18(b)(1) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(1)], if
19 the Administrator finds that (i) the order is in the public interest, and (ii) there is a failure
20 to comply with any condition established under this section.

21 (e) The Administrator, by rule or order, may waive any of the requirements set by
22 this section."

23 Section 7. G.S. 78A-38 reads as rewritten:

24 **"§ 78A-38. Post-registration provisions.**

25 (a) Every registered dealer shall make and keep such accounts, correspondence,
26 memoranda, papers, books, and other records as the Administrator by rule prescribes.
27 prescribes, except as provided by Section 15 of the Securities Exchange Act of 1934 [15
28 U.S.C. § 78o]. All records so required shall be preserved for three years unless the
29 Administrator by rule prescribes otherwise for particular types of records.

30 (b) Every registered dealer shall file such financial reports as the Administrator by
31 rule prescribes. prescribes, except as provided by Section 15 of the Securities Exchange
32 Act of 1934 [15 U.S.C. § 78o].

33 (c) If the information contained in any document filed with the Administrator is or
34 becomes inaccurate or incomplete in any material respect, the registrant shall promptly
35 file a correcting amendment unless notification of the correction has been given under
36 G.S. 78A-36(b).

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

1 and any national securities exchange or national securities association registered under
2 the Securities Exchange Act of 1934."

3 Section 8. G.S. 78A-49(d) reads as rewritten:

4 "(d) The Administrator may by rule or order require the filing of any prospectus,
5 pamphlet, circular, form letter, advertisement, or other sales literature or advertising
6 communication addressed or intended for distribution to prospective investors, unless the
7 security or transaction is exempted by G.S. 78A-16 or 78A-17 (except 78A-17(9), (17))
8 and such exemption has not been denied or revoked under ~~G.S. 78A-18~~. G.S. 78A-18 or is
9 a security covered under federal law."

10 Section 9. G.S. 78A-63(a) reads as rewritten:

11 "(a) Sections 78A-8, 78A-10, 78A-24, 78A-31, 78A-36(a), and 78A-56 apply to
12 persons who sell or offer to sell when (i) an offer to sell is made in this State, or (ii) an
13 offer to buy is made and accepted in this State."

14 Section 10. G.S. 78A-63(f) reads as rewritten:

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

31 Section 11. Section 3 of this act becomes effective October 10, 1999. The
32 remainder of this act becomes effective October 1, 1997, and applies to securities offered
33 or sold on or after that date.