

Article 8.

Miscellaneous Provisions.

§ 78A-63. Scope of the Chapter; service of process.

(a) G.S. 78A-8, 78A-10, 78A-13, 78A-14, 78A-24, 78A-31, 78A-36(a), and 78A-56 apply to persons who sell or offer to sell when (i) an offer to sell is made in this State, or (ii) an offer to buy is made and accepted in this State.

(b) G.S. 78A-8, 78A-10, 78A-36(a) and 78A-56(b) apply to persons who buy or offer to buy when (i) an offer to buy is made in this State, or (ii) an offer to sell is made and accepted in this State.

(b1) G.S. 78A-12 applies when any act instrumental to effecting prohibited conduct is done 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 (i) originates from this State or (ii) 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 (i) is communicated to the offeror in this State and (ii) 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 (i) 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 (ii) 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 or notice filing 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 (i) 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 address on file with the Administrator, and (ii) 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 (i) 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 (ii) 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 G.S. 25-8-102. (1927, c. 149, s. 24; 1955, c. 436, s. 10; 1973, c. 1380; 1975, c. 144, s. 4; 1997-181, s. 27; 1997-419, ss. 12, 13; 2001-436, s. 13; 2003-413, ss. 13-15.)

§ 78A-64. 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. (1973, c. 1380.)

§ 78A-65. Repeal and saving provisions.

(a) The Securities Law of the State of North Carolina, G.S. 78-1 through 78-25, 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 April 1, 1975, 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 April 1, 1975.

(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 April 1, 1975, 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 April 1, 1975, are governed by G.S. 78A-48, 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 April 1, 1975. (1973, c. 1380.)

§ 78A-66. Jurisdictional limitations.

Nothing in this Chapter affects the Viatical Settlements Act or the jurisdiction of the North Carolina Department of Insurance. (2001-436, s. 14.)