

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 1455

Short Title: Strengthen Securities Fraud Enforcement Laws. (Public)

Sponsors: Senators Rand, Dalton; Ballance, Carter, Garrou, Reeves, and Thomas.

Referred to: Judiciary I.

June 18, 2002

A BILL TO BE ENTITLED
AN ACT TO STRENGTHEN THE LAWS TO PREVENT SECURITIES FRAUD.
The General Assembly of North Carolina enacts:

SECTION 1. G.S. 78A-56(a) reads as rewritten:

"(a) Any person who:

(1) Offers or sells a security in violation of G.S. 78A-8(1), 78A-8(3), 78A-10(b), 78A-12, 78A-13, 78A-14, 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 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 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 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~~security, together with punitive damages. 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."

SECTION 2. G.S. 78A-56(b) reads as rewritten:

"(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

1 misleading (the seller not knowing of the untruth or omission), and who does not sustain
2 the burden of proof that he did not know, and in the exercise of reasonable care could
3 not have known, of the untruth or omission, shall be liable to the person selling the
4 security to him, who may sue either at law or in equity to recover the security, plus any
5 income received by the purchaser thereon, upon tender of the consideration received, or
6 for damages if the purchaser no longer owns the ~~security~~security, together with punitive
7 damages. Damages are the excess of the value of the security when the purchaser
8 disposed of it, plus interest at the legal rate from the date of disposition, over the
9 consideration paid for the security."

10 **SECTION 3.** G.S. 78A-56(f) reads as rewritten:

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

13 **SECTION 4.** G.S. 78A-57 reads as rewritten:

14 "(a) Any person who willfully violates any provision of this Chapter except G.S.
15 78A-8, 78A-9, 78A-11, 78A-12, 78A-13, or 78A-14 or who willfully violates any rule
16 or order under this Chapter, or who willfully violates G.S. 78A-9 knowing the statement
17 made to be false or misleading in any material respect, shall upon conviction be
18 punished as a Class I felon; but no person may be imprisoned for the violation of any
19 rule or order if he proves that he had no knowledge of the rule or order.

20 (a1) Any person who willfully violates G.S. 78A-8, 78A-11, 78A-12, 78A-13, or
21 78A-14 shall, upon conviction be punished as a Class H felon shall be guilty of a felony.
22 If the total value of the consideration involved in the violation or violations is one
23 hundred thousand dollars (\$100,000) or more, the person is guilty of a Class C felony. If
24 the total value of the consideration involved in the violation or violations is less than
25 one hundred thousand dollars (\$100,000), the person is guilty of a Class H felony.

26 (b) The Administrator may refer such evidence as is available concerning
27 violations of this Chapter or of any rule or order hereunder to the proper district
28 attorney, who may, with or without such a reference, institute the appropriate criminal
29 proceedings under this Chapter. Upon receipt of such reference, the district attorney
30 may request that a duly employed attorney of the Administrator prosecute or assist in
31 the prosecution of such violation or violations on behalf of the State. Upon approval of
32 the Administrator, such employee may be appointed a special prosecutor for the district
33 attorney to prosecute or assist in the prosecution of such violations without receiving
34 compensation from the district attorney. Such special prosecutor shall have all the
35 powers and duties prescribed by law for district attorneys and such other powers and
36 duties as are lawfully delegated to such special prosecutor by the district attorney for
37 violations of this Chapter.

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

40 (d) As used in the section, the phrase "total value of consideration" means in the
41 case of a wrongful sale of securities, the value of consideration paid to the seller, and in
42 the case of a wrongful purchase of securities, the value of the securities purchased."

43 **SECTION 5.** G.S. 78A-28(b) reads as rewritten:

1 "(b) Every person filing a registration statement shall pay a filing fee of two
2 thousand dollars (\$2,000). When a registration statement is withdrawn before the
3 effective date or a pre-effective stop order is entered under G.S. 78A-29, the
4 Administrator shall retain the filing fee. A registration statement relating to redeemable
5 securities to be offered for a period in excess of one year, other than securities covered
6 under federal law, must be renewed annually by payment of a renewal fee of ~~one~~
7 ~~hundred dollars (\$100.00)~~two hundred dollars (\$200.00) and by filing any documents or
8 reports that the Administrator may by rule or order require."

9 **SECTION 6.** G.S. 78A-28(j) reads as rewritten:

10 "(j) A registration statement filed in accordance with subsection (b) of this section
11 may be amended after its effective date to increase the securities specified as proposed
12 to be offered. Such an amendment becomes effective when the Administrator so orders.
13 Every person filing such an amendment shall pay a filing fee of ~~fifty dollars~~
14 ~~(\$50.00)~~one hundred dollars (\$100.00) with respect to the additional securities proposed
15 to be offered."

16 **SECTION 7.** G.S. 78A-31(a) reads as rewritten:

17 "(a) The Administrator, by rule or order, may require the filing of any of the
18 following documents with regard to a security covered under section 18(b)(2) of the
19 Securities Act of 1933 (15 U.S.C. § 77r(b)(2)):

- 20 (1) Prior to the initial offer of the security in this State, all documents that
21 are part of a federal registration statement filed with the Securities and
22 Exchange Commission under the Securities Act of 1933, or, in lieu
23 thereof, a form prescribed by the Administrator, together with a
24 consent to service of process signed by the issuer and with the
25 payment of a notice filing fee of two thousand dollars (\$2,000).
- 26 (2) After the initial offer of the security in this State, all documents that
27 are part of an amendment to a federal registration statement filed with
28 the Securities and Exchange Commission under the Securities Act of
29 1933, or, in lieu thereof, a form prescribed by the Administrator, which
30 shall be filed concurrently with the Administrator.
- 31 (3) A report of the value of securities covered under federal law that are
32 offered or sold in this State.
- 33 (4) A notice filing pursuant to this section shall expire on December 31 of
34 each year or some other date not more than one year from its effective
35 date as the Administrator may by rule or order provide. A notice filing
36 of the offer of securities covered under federal law that are to be
37 offered for a period in excess of one year shall be renewed annually by
38 payment of a renewal fee of ~~one hundred dollars (\$100.00)~~two
39 hundred dollars (\$200.00) and by filing any documents and reports that
40 the Administrator may by rule or order require consistent with this
41 section. The renewal shall be effective upon the expiration of the prior
42 notice period.
- 43 (5) A notice filed in accordance with this section may be amended after its
44 effective date to increase the securities specified as proposed to be

1 offered. An amendment becomes effective upon receipt by the
2 Administrator. Every person submitting an amended notice filing shall
3 pay a filing fee of ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100.00)
4 with respect to the additional securities proposed to be offered."

5 **SECTION 8.** G.S. 78C-38(a) reads as rewritten:

6 "(a) Any person who:

7 (1) Engages in the business of advising others, for compensation, either
8 directly or through publications or writings, as to the value of
9 securities or as to the advisability of investing in, purchasing, or selling
10 securities, or who, for compensation and as a part of a regular
11 business, issues or promulgates analyses or reports concerning
12 securities, in violation of G.S. 78C-8(b), ~~G.S. 78C-16(a)~~ G.S.
13 78C-16(a), (a1), or (b) (an action pursuant to a violation of G.S.
14 78C-16(b) may not be maintained except by those persons who
15 directly received advice from the unregistered investment adviser
16 representative), G.S. 78C-10(b), or of any rule or order under G.S.
17 78C-30(d) which requires the affirmative approval of sales literature
18 before it is used, or

19 (2) Receives, directly or indirectly, any consideration from another person
20 for advice as to the value of securities or their purchase or sale,
21 whether through the issuance of analyses, reports or otherwise and
22 employs any device, scheme, or artifice to defraud such other person
23 or engages in any act, practice or course of business which operates or
24 would operate as a fraud or deceit on such other person, in violation of
25 G.S. 78C-8(a)(1) or (2),

26 is liable to any person who is given such advice in such violation, who may sue either at
27 law or in equity to recover (i) the consideration paid for such advice together with
28 interest thereon at the legal rate as provided in G.S. 24-1 from the date of payment of
29 the consideration, plus (ii) the actual damages to such person proximately caused by
30 such violation, plus (iii) costs of the action and reasonable attorneys' ~~fees~~ fees, together
31 with punitive damages. An action based on violation of G.S. 78C-8(b) may not prevail
32 where the person accused of the violation sustains the burden of proof that he did not
33 know, and in the exercise of reasonable care could not have known of the existence of
34 the facts by reason of which the liability is alleged to exist."

35 **SECTION 9.** G.S. 78C-39(a) reads as rewritten:

36 "(a) Any person who willfully violates any provision of this Chapter except G.S.
37 78C-8(a)(1), 78C-8(a)(2), 78C-8(b), or 78C-9 or who willfully violates G.S. 78C-9
38 knowing the statement made to be false or misleading in any material respect, shall
39 upon conviction be punished as a Class I felon.

40 (a1) Any person who willfully violates G.S. 78C-8(a)(1), 78C-8(a)(2), or 78C-8(b)
41 ~~shall, upon conviction, be punished as a Class H felon.~~ shall be guilty of a felony. If the
42 actual losses caused by the violation or violations are one hundred thousand dollars
43 (\$100,000) or more, the person is guilty of a Class C felony. If the actual losses caused

1 by the violation or violations are less than one hundred thousand dollars (\$100,000) the
2 person is guilty of a Class H felony."

3 **SECTION 10.** G.S. 78D-24(a) reads as rewritten:

4 "(a) Any person who willfully violates any provision of this Chapter shall, upon
5 conviction, be punished as a Class ~~F~~H felon."

6 **SECTION 11.** There is hereby appropriated to the Office of the Secretary of
7 State for the 2002-2003 fiscal year the sum of two hundred twenty-six thousand six
8 hundred ninety-two dollars (\$226,692) for recurring expenses and fifteen thousand nine
9 hundred ninety dollars (\$15,990) for nonrecurring expenses for three additional
10 unsworn securities investigators in the Securities Division.

11 **SECTION 12.** Sections 4, 9, and 10 of this act become effective December
12 1, 2002, and apply to acts committed on or after that date. Sections 5, 6, 7, and 11 of
13 this act become effective July 1, 2002. The remainder of this act is effective when it
14 becomes law.