

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2002-189
SENATE BILL 1455**

AN ACT TO AUTHORIZE THE GENERAL STATUTES COMMISSION AND OTHER INTERESTED PARTIES TO STUDY THE PROVISIONS OF SENATE BILL 1455, 4TH EDITION, STRENGTHEN SECURITIES FRAUD ENFORCEMENT LAWS, INTRODUCED IN THE 2001 GENERAL ASSEMBLY, AND TO MAKE RECOMMENDATIONS TO THE 2003 REGULAR SESSION OF THE 2003 GENERAL ASSEMBLY; TO INCREASE CERTAIN FILING AND RENEWAL FEES WITH THE SECRETARY OF STATE; TO FUND ADDITIONAL SECURITIES INVESTIGATOR POSITIONS; TO PROHIBIT THE STATE FROM CONTRACTING WITH BUSINESSES THAT HAVE ANY OFFICERS OR DIRECTORS WHO HAVE BEEN CONVICTED OF SECURITIES FRAUD; TO PROHIBIT THE STATE FROM CONTRACTING WITH VENDORS THAT ARE INCORPORATED IN A TAX HAVEN COUNTRY BUT THE UNITED STATES IS THE PRINCIPAL MARKET FOR THE PUBLIC TRADING OF THEIR CORPORATION'S STOCK; AND TO AUTHORIZE THE STATE TREASURER, IN CONSULTATION WITH THE SECRETARY OF STATE, AND THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE CREATION OF A PENSION ASSURANCE FUND TO PROTECT THE RETIREMENT SAVINGS AND INVESTMENTS OF THE CITIZENS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes Commission is directed to study the provisions of Senate Bill 1455, 4th Edition, Strengthen Securities Fraud Enforcement Laws, introduced in the 2001 General Assembly, in consultation with the Department of the Secretary of State, the Securities Industry Association, the North Carolina Bar Association, and other interested parties, and to make recommendations to the 2003 Regular Session of the 2003 General Assembly.

SECTION 2. G.S. 78C-17(b) reads as rewritten:

"(b) Every applicant for initial or renewal registration shall pay a filing fee of ~~two~~ three hundred dollars (~~\$200.00~~)(\$300.00) in the case of an investment adviser, and forty-five dollars (\$45.00) in the case of an investment adviser representative. When an application is denied or withdrawn, the Administrator shall retain the fee."

SECTION 3. G.S. 78C-17(b1) reads as rewritten:

"(b1) Every person acting as an investment adviser covered under federal law in this State shall pay an initial filing fee of ~~two~~ three hundred dollars (~~\$200.00~~)(\$300.00) and a renewal notice filing fee of ~~two~~ three hundred dollars (~~\$200.00~~)(\$300.00)."

SECTION 4. G.S. 78A-31(a)(4), as amended by Section 29A.37 of Senate Bill 1115 of the 2001 General Assembly, reads as rewritten:

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

(4) A notice filing pursuant to this section shall expire on December 31 of each year or some other date not more than one year from its effective date as the Administrator may by rule or order provide. A notice filing

of the offer of securities covered under federal law that are to be offered for a period in excess of one year shall be renewed annually by payment of a renewal fee of two hundred fifty dollars ~~(\$200.00)~~(\$250.00) and by filing any documents and reports that the Administrator may by rule or order require consistent with this section. The renewal shall be effective upon the expiration of the prior notice period."

SECTION 5. Article 3 of Chapter 143 is amended by adding a new section to read:

"§ 143-59.2. Certain vendors prohibited from contracting with State.

(a) Ineligible Vendors. – A vendor is not entitled to enter into a contract for goods or services with any department, institution, or agency of the State government subject to the provisions of this Article if any officer or director of the vendor, or any owner if the vendor is an unincorporated business entity, within 10 years immediately prior to the date of the bid solicitation, has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934.

(b) Vendor Certification. – The Secretary of Administration shall require each vendor submitting a bid or contract to certify that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violation referenced in subsection (a) of this section within 10 years immediately prior to the date of the bid solicitation. Any person who submits a certification required by this subsection known to be false shall be guilty of a Class I felony.

(c) Void Contracts. – A contract entered into in violation of this section is void. A contract that is void under this section may continue in effect until an alternative can be arranged when: (i) immediate termination would result in harm to the public health or welfare, and (ii) the continuation is approved by the Secretary of Administration. Approval of continuation of contracts under this subsection shall be given for the minimum period necessary to protect the public health or welfare."

SECTION 6. G.S. 143-59.1 reads as rewritten:

"§ 143-59.1. Contracts with certain foreign vendors.

(a) Ineligible Vendors. – The Secretary of Administration and other entities to which this Article applies shall not contract for goods or services with either of the following:

(1) A vendor if the vendor or an affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina. The Secretary of Revenue shall provide the Secretary of Administration periodically with a list of vendors to which this section applies.

(2) A vendor or an affiliate of the vendor that is incorporated in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the corporation's stock.

(b) Vendor Certification. – The Secretary of Administration shall require each vendor submitting a bid or contract to certify that the vendor is not an ineligible vendor as set forth in subsection (a) of this section. Any person who submits a certification required by this subsection known to be false shall be guilty of a Class I felony.

(c) Definitions. – The following definitions apply in this section:

(1) ~~For the purpose of this section, the term "affiliate" has the meaning provided~~ Affiliate. – As defined in G.S. 105-163.010.

(2) Tax haven country. – Means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, and the Republic of the Seychelles."

SECTION 7. The State Treasurer, in consultation with the Secretary of State, shall study the best methods for creating and funding a Pension Assurance Fund, including the use of damages awarded in actions involving securities fraud brought by the State or by private individuals, and for paying claims from the Fund. The Legislative Research Commission may also study this issue. The State Treasurer and the Secretary of State shall develop legislative recommendations based on the study and report their recommendations to the General Assembly on or before March 1, 2003, and if the Legislative Research Commission authorizes a study of this issue, the State Treasurer shall also forward a copy of its report to that committee.

SECTION 8. There is hereby appropriated to the Office of the Secretary of State for the 2002-2003 fiscal year the sum of one hundred fifty-one thousand one hundred twenty-five dollars (\$151,125) for recurring expenses and fifteen thousand nine hundred ninety dollars (\$15,990) for nonrecurring expenses for three additional unsworn securities investigators in the Securities Division.

SECTION 9. Sections 2, 3, and 4 of this act become effective November 1, 2002, and apply to fees assessed on or after that date. Sections 5 and 6 of this act become effective December 1, 2002, and apply to contracts entered into on or after that date. Section 8 of this act becomes effective November 1, 2002. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of October, 2002.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 4:59 p.m. this 31st day of October, 2002