

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**SENATE BILL 795  
Judiciary I Committee Substitute Adopted 4/23/01  
House Committee Substitute Favorable 6/12/01**

Short Title: Repeal Chapter 78B/Amend Securities Act.

(Public)

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Sponsors:

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Referred to:

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April 3, 2001

A BILL TO BE ENTITLED

1  
2 AN ACT TO REPEAL CHAPTER 78B OF THE GENERAL STATUTES, THE  
3 TENDER OFFER DISCLOSURES ACT; TO AMEND CHAPTER 78A OF THE  
4 GENERAL STATUTES, THE NORTH CAROLINA SECURITIES ACT; AND TO  
5 AMEND CHAPTER 55 OF THE GENERAL STATUTES, THE NORTH  
6 CAROLINA BUSINESS CORPORATION ACT.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Chapter 78B of the General Statutes is repealed.

9 **SECTION 2.** G.S. 78A-2(2)e. reads as rewritten:

10 "e. A person who acts as a business broker with respect to a  
11 transaction involving the offer or sale of all of the stock or other  
12 equity interests in any closely held corporation provided that  
13 such stock or other equity interest is sold to no more than one  
14 person, as that term is defined herein."

15 **SECTION 3.** G.S. 78A-2 is amended by adding a new subdivision to read:

16 "(2a) 'Entity' includes a corporation, joint-stock company, limited liability  
17 company, business trust, limited partnership or other partnership in  
18 which the interests of the partners are evidenced by a security, trust in  
19 which the interests of the beneficiaries are evidenced by a security, any  
20 other unincorporated organization in which two or more persons have  
21 a joint or common economic interest evidenced by a security, and  
22 government or political subdivision of a government."

23 **SECTION 4.** G.S. 78A-2(4) reads as rewritten:

24 "(4) 'Guaranteed' means guaranteed as to payment of principal, interest, ~~or~~  
25 dividends, dividends, or other distributions."

26 **SECTION 5.** G.S. 78A-2(7) reads as rewritten:

27 "(7) 'Person' means an individual, ~~a corporation, a partnership, an~~  
28 ~~association, a joint stock company, a trust where the interests of the~~

1 beneficiaries are evidenced by a security, an unincorporated  
2 organization, a government, or a political subdivision of a  
3 government.an entity, a partnership in which the interests of the  
4 partners are not evidenced by a security, a trust in which the interests  
5 of the beneficiaries are not evidenced by a security, or an  
6 unincorporated organization."

7 **SECTION 6.** G.S. 78A-2(8) reads as rewritten:

- 8 "(8) a. 'Sale' or 'sell' includes every contract of sale of, contract to sell,  
9 or disposition of, a security or interest in a security for value.  
10 b. 'Offer' or 'offer to sell' includes every attempt or offer to dispose  
11 of, or solicitation of an offer to buy, a security or interest in a  
12 security for value.  
13 c. Any security given or delivered with, or as a bonus on account  
14 of, any purchase of securities or any other thing is considered to  
15 constitute part of the subject of the purchase and to have been  
16 offered and sold for value.  
17 d. A purported gift of assessable stock or other ownership interest  
18 obligating the owner to make future payments is considered to  
19 involve an offer and sale.  
20 e. Every sale or offer of a warrant or right to purchase or subscribe  
21 to another security of the same or another issuer, as well as  
22 every sale or offer of a security which gives the holder a present  
23 or future right or privilege to convert into another security of  
24 the same or another issuer, is considered to include an offer of  
25 the other security.  
26 f. The terms defined in this subdivision and the term 'purchase' as  
27 used in this Chapter do not include any of the following:  
28 1. Any bona fide loan, pledge, or other transaction creating  
29 a bona fide security ~~interest;~~interest.  
30 2. Any stock split and any security ~~dividend,~~dividend or  
31 distribution, whether the ~~corporation~~entity distributing  
32 the dividend or distribution is the issuer of the security or  
33 not, if nothing of value is given by security holders for  
34 the dividend or distribution other than the surrender of a  
35 right to a cash or property dividend or distribution when  
36 each security holder may elect to take the dividend or  
37 distribution in cash or property or in ~~securities;~~securities.  
38 3. ~~Any transaction incident to a class vote by security~~  
39 ~~holders, pursuant to the certificate of incorporation or the~~  
40 ~~applicable corporation statute, on a merger,~~  
41 ~~consolidation, reclassification of securities, or sale of~~

- 1 corporate assets in consideration of the issuance of  
2 securities of another corporation; or  
3 4. Any transaction incident to a judicially approved  
4 reorganization in which a security is issued in exchange  
5 for one or more outstanding securities, claims or  
6 property interests, or partly in such exchange and partly  
7 for cash."

8 **SECTION 7.** G.S. 78A-16(11) reads as rewritten:

9 "(11) Any interest in an employees' stock or equity purchase, ~~stock~~ option,  
10 savings, pension, profit-sharing or other similar benefit plan;"

11 **SECTION 8.** G.S. 78A-17(8) reads as rewritten:

12 "(8) Any offer or sale to ~~a corporation~~ an entity which has a net worth in  
13 excess of one million dollars (\$1,000,000) as determined by generally  
14 accepted accounting principles, bank, savings institution, trust  
15 company, insurance company, investment company as defined in the  
16 Investment Company Act of 1940, pension or profit-sharing trust, or  
17 other financial institution or institutional buyer, or to a dealer, whether  
18 the purchaser is acting for itself or in some fiduciary capacity;"

19 **SECTION 9.** G.S. 78A-17(13) reads as rewritten:

20 "(13) Any offer or sale by a domestic ~~corporation~~ entity of its own securities  
21 if (i) the ~~corporation~~ entity was organized for the purpose of promoting  
22 community, agricultural or industrial development of the area in which  
23 the principal office is located, (ii) the offer or sale has been approved  
24 by resolution of the county commissioners of the county in which its  
25 principal office is located, and, if located in a municipality or within  
26 two miles of the boundaries thereof, by resolution of the governing  
27 body of such municipality, and (iii) no commission or other  
28 remuneration is paid or given directly or indirectly for soliciting any  
29 prospective buyer in this State;"

30 **SECTION 10.** G.S. 78A-17(14) reads as rewritten:

31 "(14) Any offer, sale or issuance of securities pursuant to ~~an investment~~  
32 ~~contract or stock option plan which~~ an employees' stock or equity  
33 purchase, option, savings, pension, profit-sharing, or other similar  
34 benefit plan that is exempt under the provisions of ~~G.S. 78A-16(11) of~~  
35 ~~this Chapter;~~ G.S. 78A-16(11);"

36 **SECTION 11.** G.S. 78A-17(16) reads as rewritten:

37 "(16) Any offer to purchase or to sell or any sale or issuance of a security,  
38 other than a security covered under federal law, pursuant to a plan  
39 approved by the Administrator after a hearing conducted pursuant to  
40 the provisions of ~~G.S. 78A-30;~~ G.S. 78A-30 or any transaction incident  
41 to any other judicially or governmentally approved reorganization in  
42 which a security is issued in exchange for one or more outstanding

1                   securities, claims or property interests, or partly in such exchange and  
2                   partly for cash."

3                   **SECTION 12.** G.S. 78A-17 is amended by adding a new subdivision to

4 read:

5                   "(18) Any transaction incident to a class vote by security holders, pursuant  
6                   to the articles of incorporation or similar organizational document or  
7                   the applicable statute governing the internal affairs of the entity, on a  
8                   merger, conversion, consolidation, share exchange, reclassification of  
9                   securities, or sale of an entity's assets in consideration of the issuance  
10                   of securities of another entity."

11                   **SECTION 13.** G.S. 78A-25(a)(1) reads as rewritten:

12                   "(1) Any security whose issuer and any predecessors have been in  
13                   continuous operation for at least five years if

14                   a.       There has been no default during the current fiscal year or  
15                   within the three preceding fiscal years in the payment of  
16                   principal, interest, ~~or dividends~~dividends, or distributions on  
17                   any security of the issuer (or any predecessor) with a fixed  
18                   maturity or a fixed interest or dividend or distribution provision,  
19                   and

20                   b.       The issuer and any predecessors during the past three fiscal  
21                   years have had average net earnings, determined in accordance  
22                   with generally accepted accounting practices, (i) which are  
23                   applicable to all securities without a fixed maturity or a fixed  
24                   interest or dividend or distribution provision outstanding at the  
25                   date the registration statement is filed and equal at least five  
26                   percent (5%) of the amount of such outstanding securities (as  
27                   measured by the maximum offering price or the market price on  
28                   a day, selected by the registrant, within 30 days before the date  
29                   of filing the registration statement, whichever is higher, or book  
30                   value on a day, selected by the registrant, within 90 days of the  
31                   date of filing the registration statement to the extent that there is  
32                   neither a readily determinable market price nor a cash offering  
33                   price), or (ii) which, if the issuer and any predecessors have not  
34                   had any security of the type specified in clause (i) outstanding  
35                   for three full fiscal years, equal at least five percent (5%) of the  
36                   amount (as measured in clause (i)) of all securities which will  
37                   be outstanding if all the securities being offered or proposed to  
38                   be offered (whether or not they are proposed to be registered or  
39                   offered in this State) are issued;".

40                   **SECTION 14.** G.S. 78A-30(d) reads as rewritten:

41                   "(d) The Administrator's authority under this section shall extend to the issuance  
42                   or the delivery of securities or other consideration:

- 1 (1) By any ~~corporation~~ entity organized under the laws of this State; or  
2 (2) In any transaction which is subject to the registration or qualification  
3 requirements of this Chapter or which would be so subject except for  
4 the availability of an exemption under G.S. 78A-16 or G.S. 78A-17, ~~by~~  
5 ~~reason of G.S. 78A-2(8)f.~~, or by reason that the security is a security  
6 covered under federal law."

7 **SECTION 15.** G.S. 55-7-02(a) reads as rewritten:

8 "(a) A corporation shall hold a special meeting of shareholders:

- 9 (1) On call ~~of~~ by its board of directors or by one or more officers of the  
10 corporation authorized to do so by the articles of incorporation or  
11 bylaws or, in the case of a corporation that is not a public corporation,  
12 by any other person or persons authorized to do so by the articles of  
13 incorporation or the bylaws; or  
14 (2) Within 30 days after the holders of at least ten percent (10%) of all the  
15 votes entitled to be cast on any issue proposed to be considered at the  
16 proposed special meeting sign, date, and deliver to the corporation's  
17 secretary one or more written demands for the meeting describing the  
18 purpose or purposes for which it is to be held; except however that,  
19 unless otherwise provided in the articles of ~~incorporation or bylaws,~~  
20 incorporation, the call of a special meeting by shareholders is not  
21 available to the shareholders of a public corporation."

22 **SECTION 16.** G.S. 55-9A-01(b)(3) reads as rewritten:

- 23 "(3) 'Control share acquisition' means the acquisition by any person of  
24 beneficial ownership of control shares, except that the acquisition of  
25 beneficial ownership of any shares of a covered corporation does not  
26 constitute a control share acquisition if the acquisition is consummated  
27 in any of the following circumstances:  
28 a. Before April 30, 1987.  
29 b. Pursuant to a contract existing before April 30, 1987, with  
30 either:  
31 (i) The covered corporation; or  
32 (ii) A seller of such shares who owned such shares before  
33 April 30, 1987.  
34 c. Pursuant to the laws of descent and distribution.  
35 d. Pursuant to the satisfaction of a pledge or other security interest  
36 created in good faith and not for the purpose of circumventing  
37 this Article.  
38 e. Pursuant to a ~~merger or share exchange transaction~~ transaction effected in  
39 compliance with applicable law, but only if the transaction is  
40 pursuant to an agreement of merger or share exchange to which  
41 the covered corporation is a party.

- 1 f. Pursuant to the sale of such shares by the covered corporation  
2 or its parent or subsidiary corporation.
- 3 g. Pursuant to a written agreement to which the covered  
4 corporation is a party that permits the purchasers of shares from  
5 the covered corporation or its parent or subsidiary corporation  
6 also to purchase in any manner within 90 days before or after  
7 the purchase from the covered corporation or its parent or  
8 subsidiary up to the same aggregate number of shares as were  
9 sold by the covered corporation or its parent or subsidiary  
10 corporation.
- 11 h. By an employee benefit plan established by the covered  
12 corporation.
- 13 i. Before the corporation became a covered corporation.  
14 For purposes of this definition, shares acquired within any consecutive  
15 90-day period or shares acquired pursuant to a plan to make a control  
16 share acquisition are considered to have been acquired in the same  
17 acquisition."

18 **SECTION 17.** Sections 1 through 14 of this act become effective October 1,  
19 2001. The remaining provisions of this act are effective when it becomes law. Section  
20 15 of this act applies to any meetings of shareholders held or called to be held on or  
21 after the date on which this act becomes law.