

§ 78C-39. Criminal penalties.

(a) Any person who willfully violates any provision of this Chapter except G.S. 78C-8(a)(1), 78C-8(a)(2), 78C-8(b), or 78C-9 is guilty of a Class I felony.

(a1) Any person who willfully violates any rule or order under this Chapter is guilty of a Class I felony. No person may be imprisoned for the violation of any rule if the person proves that the person had no knowledge of the rule. It is an affirmative defense to a charge of violating an order under this Chapter that the person had no knowledge of the order.

(a2) Any person who willfully violates G.S. 78C-8(a)(1), 78C-8(a)(2), or 78C-8(b) is guilty of a felony. If the losses caused, directly or indirectly, by the violator for a single act or for a series of related acts in a common scheme or plan is one hundred thousand dollars (\$100,000) or more, the person is guilty of a Class C felony. If the losses caused, directly or indirectly, by the violator for a single act or for a series of related acts in a common scheme or plan is less than one hundred thousand dollars (\$100,000), the person is guilty of a Class H felony.

(a3) Any person who willfully violates G.S. 78C-9 knowing the statement made to be false or misleading in any material respect is guilty of a Class H felony. Any other willful violation of G.S. 78C-9 constitutes a Class 2 misdemeanor.

(a4) A person is guilty of a Class H felony if the person willfully does any of the following for the purpose of interfering with the performance of any audit, examination, or investigation by the Administrator under this Chapter:

- (1) Makes or causes to be made to the Administrator or the Administrator's designated representative any false or misleading oral or written statement.
- (2) Creates, causes to be made, or delivers any record, report, or document knowing that it is false or misleading in any material respect.
- (3) Destroys or alters any record, report, or document.
- (4) Conceals or secretes any record, report, or document.

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

(c) Nothing in this Chapter limits the power of the State to punish any person for any conduct which constitutes a crime by statute or at common law. (1987 (Reg. Sess., 1988), c. 1098, s. 1; 1991, c. 456, s. 9; 2003-413, s. 25.)