

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 438  
Commerce Committee Substitute Adopted 4/8/97

Short Title: Securities/Investment Advisers Enforcement.

(Public)

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Sponsors:

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Referred to:

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March 20, 1997

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE ENFORCEMENT PROCEDURES RELATED TO THE  
3 REGISTRATION OF SECURITIES AND TO INVESTMENT ADVISERS AND TO  
4 ESTABLISH THE CONFIDENTIALITY OF RECORDS RELATING TO  
5 CRIMINAL INVESTIGATIONS AND ENFORCEMENT PROCEEDINGS.

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 78A-39(a)(2) reads as rewritten:

8 "(2) That the applicant or registrant or, in the case of a dealer, any partner,  
9 officer, or director, any person occupying a similar status or performing  
10 similar functions, or any person directly or indirectly controlling the  
11 dealer:

- 12 a. Has filed an application for registration which as of its effective  
13 date, or as of any date after filing in the case of an order denying  
14 effectiveness, was incomplete in any material respect or  
15 contained any statement which was, in light of the circumstances  
16 under which it was made, false or misleading with respect to any  
17 material fact; or  
18 b. Has willfully violated or willfully failed to comply with any  
19 provision of this Chapter or a predecessor law or any rule or

- 1 order under this Chapter or a predecessor law or any provision of  
2 the Securities Act of 1933, the Securities Exchange Act of 1934,  
3 the Investment Advisors Act of 1940, or the Commodity  
4 Exchange Act; or
- 5 c. Has been convicted, within the past 10 years, of any  
6 misdemeanor involving a security or any aspect of the securities  
7 business, or any felony; or
- 8 d. Is permanently or temporarily enjoined by any court of  
9 competent jurisdiction from engaging in or continuing any  
10 conduct or practice involving any aspect of the securities  
11 business; or
- 12 e. Is the subject of an order of the Administrator denying,  
13 suspending, or revoking registration as a dealer or salesman; or
- 14 f. Is the subject of an order entered within the past five years by the  
15 securities administrator of any state or by the Securities and  
16 Exchange Commission denying or revoking registration as a  
17 dealer or salesman, or the substantial equivalent of those terms as  
18 defined in this Chapter, or is the subject of ~~an~~ a final order ~~of the~~  
19 ~~Securities and Exchange Commission~~ suspending or expelling him  
20 from a national securities exchange or national securities  
21 association registered under the Securities Exchange Act of 1934,  
22 or is the subject of a United States post office fraud order; but (i)  
23 the Administrator may not institute a revocation or suspension  
24 proceeding under subdivision (2)f of subsection (a) more than  
25 one year from the date of the order relied on, and (ii) ~~he~~ the  
26 Administrator may not enter an order under subdivision (2)f of  
27 subsection (a) on the basis of an order under another state act  
28 unless that order was based on facts which would currently  
29 constitute a ground for an order under this section; or
- 30 g. Has engaged in dishonest or unethical practices in the securities  
31 business; or
- 32 h. Is insolvent, either in the sense that his liabilities exceed his  
33 assets or in the sense that he cannot meet his obligations as they  
34 mature; but the Administrator may not enter an order against a  
35 dealer under this paragraph without a finding of insolvency as to  
36 the dealer; or
- 37 i. Is not qualified on the basis of such factors as training,  
38 experience, and knowledge of the securities business, except as  
39 otherwise provided in subsection (b)."

40 Section 2. G.S. 78A-39(c) reads as rewritten:

- 41 "(c) The Administrator may by order summarily postpone or suspend registration  
42 pending final determination of any proceeding under this section. Upon the entry of the  
43 order, the Administrator shall promptly notify the applicant or registrant, as well as the

1 employer or prospective employer if the applicant or registrant is a salesman, that it has  
2 been entered and of the reasons therefor and that within 15 days after the receipt of a  
3 written request the matter will be set down for hearing. If no ~~hearing is requested~~ request  
4 for a hearing, other responsive pleading, or submission is received by the Administrator  
5 within 30 business days of receipt of service of notice of the order upon the applicant or  
6 registrant and ~~none~~ no hearing is ordered by the Administrator, the order will shall  
7 become final and remain in effect until unless it is modified or vacated by the  
8 Administrator. If a hearing is requested or ordered, the Administrator, after notice of and  
9 opportunity for hearing, may modify or vacate the order or extend it until final  
10 determination."

11 Section 3. G.S. 78A-46(a)(1) reads as rewritten:

12 "(1) May make ~~such public or private investigations~~ any investigation within or  
13 outside of this State as ~~he~~ the Administrator deems necessary to  
14 determine whether any person has violated or is about to violate any  
15 provision of this Chapter or any rule or order hereunder, or to aid in the  
16 enforcement of this Chapter or in the prescribing of rules and forms  
17 hereunder,".

18 Section 4. G.S. 78A-47(b)(2) reads as rewritten:

19 "(2) If the Administrator makes written findings of fact that the public  
20 interest will be irreparably harmed by delay in issuing an order under  
21 G.S. 78A-47(b)(1), the Administrator may issue a temporary cease and  
22 desist order. Upon the entry of a temporary cease and desist order, the  
23 Administrator shall promptly notify in writing the person subject to the  
24 order that such order has been entered, the reasons therefor, and that  
25 within 20 days after the receipt of a written request from such person the  
26 matter shall be set down for hearing to determine whether or not the  
27 order shall become permanent and final. If no ~~hearing is requested~~ request  
28 for a hearing, other responsive pleading, or submission is received by  
29 the Administrator within 30 business days of receipt of service of notice  
30 of the order upon the person subject to the order and ~~none~~ no hearing is  
31 ordered by the Administrator, the order shall become final and remain in  
32 effect until unless it is modified or vacated by the Administrator. If a  
33 hearing is requested or ordered, the Administrator, after giving notice of  
34 an opportunity for a hearing to the person subject to the order, shall by  
35 written findings of fact and conclusion of law, vacate, modify, or make  
36 permanent the order."

37 Section 5. G.S. 78A-50 reads as rewritten:

38 **"§ 78A-50. Administrative files and opinions.**

39 (a) A document is filed when it is received by the Administrator.

40 (b) The Administrator shall keep a register of all applications for registration and  
41 registration statements which are or have been effective under this Chapter and all denial,  
42 suspension, or revocation orders which have been entered under this chapter. The  
43 register shall be open for public inspection.

1 (c) The information contained in or filed with any registration statement,  
2 application, or report may be made available to the public under such rules as the  
3 Administrator prescribes.

4 (c1) The files and records of the Administrator relating to criminal investigations  
5 and enforcement proceedings undertaken pursuant to this Chapter are subject to the  
6 provisions of G.S. 132-1.4.

7 (c2) The files and records of the Administrator relating to noncriminal  
8 investigations and enforcement proceedings undertaken pursuant to this Chapter shall not  
9 be subject to inspection and examination pursuant to G.S. 132-6 until the investigations  
10 and proceedings are completed and cease to be active.

11 (c3) Any information obtained by the Administrator from any law enforcement  
12 agency, administrative agency, or regulatory organization on a confidential or otherwise  
13 restricted basis in the course of an investigation or proceeding undertaken pursuant to this  
14 Chapter shall be confidential and exempt from G.S. 132-6 to the same extent that it is  
15 confidential in the possession of the providing agency or organization.

16 (d) Upon request and at such reasonable charges as ~~he~~the administrator prescribes,  
17 the Administrator shall furnish to any person photostatic or other copies (certified under  
18 ~~his~~the seal of office if requested) of any entry in the register or any document which is a  
19 matter of public record. In any proceeding or prosecution under this Chapter, any copy  
20 so certified is prima facie evidence of the contents of the entry or document certified.

21 (e) The Administrator ~~in his discretion~~may honor requests from interested persons  
22 for interpretative opinions. When an exemption is claimed in writing, cites the section  
23 relied upon, and is considered eligible upon the showing made, a 'no action' letter will be  
24 furnished upon request and upon the payment of a fee of one hundred fifty dollars  
25 (\$150.00)."

26 Section 6. G.S. 78C-2 is amended by adding a new subdivision to read:

27 "(5) 'Person' means an individual, a corporation, a partnership, an  
28 association, a joint-stock company, a trust where the interests of the  
29 beneficiaries are evidenced by a security, an unincorporated  
30 organization, a government, or a political subdivision of a government."

31 Section 7. G.S. 78C-19(c) reads as rewritten:

32 "(c) The Administrator may by order summarily postpone or suspend registration  
33 pending final determination of any proceeding under this section. Upon the entry of the  
34 order, the Administrator shall promptly notify the applicant or registrant, as well as the  
35 employer or prospective employer if the applicant or registrant is an investment adviser  
36 representative, that it has been entered and of the reasons therefor and that within 15 days  
37 after the receipt of a written request the matter will be set down for hearing. If no ~~hearing~~  
38 ~~is requested~~request for a hearing, other responsive pleading, or submission is received by  
39 the Administrator within 30 business days of receipt of service of notice of the order  
40 upon the applicant or registrant and ~~none~~no hearing is ordered by the Administrator, the  
41 order will~~shall~~ become final and remain in effect ~~until~~unless it is modified or vacated by  
42 the Administrator. If a hearing is requested or ordered, the Administrator, after notice of

1 and opportunity for hearing, may modify or vacate the order or extend it until final  
2 determination."

3 Section 8. G.S. 78C-27(a)(1) reads as rewritten:

4 "(1) May make ~~such public or private investigations~~ any investigation within or  
5 outside of this State as ~~he~~ the Administrator deems necessary to  
6 determine whether any person has violated or is about to violate any  
7 provision of this Chapter or any rule or order hereunder, or to aid in the  
8 enforcement of this Chapter or in the prescribing of rules and forms  
9 hereunder;".

10 Section 9. G.S. 78C-28(b)(2) reads as rewritten:

11 "(2) If the Administrator makes written findings of fact that the public  
12 interest will be irreparably harmed by delay in issuing an order under  
13 G.S. 78C-28(b)(1), the Administrator may issue a temporary cease and  
14 desist order. Upon the entry of a temporary cease and desist order, the  
15 Administrator shall promptly notify in writing the person subject to the  
16 order that such order has been entered, the reasons therefor, and that  
17 within 20 days after the receipt of a written request from such person the  
18 matter shall be set down for hearing to determine whether or not the  
19 order shall become permanent and final. If no ~~hearing is requested~~  
20 request for a hearing, other responsive pleading, or submission is  
21 received by the Administrator within 30 business days of receipt of  
22 service of notice of the order upon the person subject to the order and  
23 ~~none~~ no hearing is ordered by the Administrator, the order shall become  
24 final and remain in effect until ~~until~~ unless it is modified or vacated by the  
25 Administrator. If a hearing is requested or ordered, the Administrator,  
26 after giving notice of an opportunity for a hearing to the person subject  
27 to the order, shall by written findings of fact and conclusion of law,  
28 vacate, modify, or make permanent the order."

29 Section 10. G.S. 78C-31 reads as rewritten:

30 **"§ 78C-31. Administrative files and opinions.**

31 (a) A document is filed when it is received by the Administrator.

32 (b) The Administrator shall keep a register of all applications for registration  
33 which are or have been effective under this Chapter and all denial, suspension, or  
34 revocation orders or similar orders which have been entered under this chapter. The  
35 register shall be open for public inspection.

36 (c) The information contained in or filed with any registration, application, or  
37 report may be made available to the public under such rules as the Administrator  
38 prescribes.

39 (c1) The files and records of the Administrator relating to criminal investigations  
40 and enforcement proceedings undertaken pursuant to this Chapter are subject to the  
41 provisions of G.S. 132-1.4.

42 (c2) The files and records of the Administrator relating to noncriminal  
43 investigations and enforcement proceedings undertaken pursuant to this Chapter shall not

1 be subject to inspection and examination pursuant to G.S. 132-6 until the investigations  
2 and proceedings are completed and cease to be active.

3 (c3) Any information obtained by the Administrator from any law enforcement  
4 agency, administrative agency, or regulatory organization on a confidential or otherwise  
5 restricted basis in the course of an investigation or proceeding undertaken pursuant to  
6 this Chapter shall be confidential and exempt from G.S. 132-6 to the same extent that it is  
7 confidential in the possession of the providing agency or organization.

8 (d) Upon request and at such reasonable charges as ~~he~~the Administrator  
9 prescribes, the Administrator shall furnish to any person photostatic or other copies  
10 (certified under ~~his~~the seal of office if requested) of any entry in the register or any  
11 document which is a matter of public record. In any proceeding or prosecution under this  
12 Chapter, any copy so certified is prima facie evidence of the contents of the entry or  
13 document certified.

14 (e) The Administrator ~~in his discretion~~ may honor requests from interested persons  
15 for interpretative opinions upon the payment of a fee of one hundred fifty dollars  
16 (\$150.00)."

17 Section 11. This act becomes effective October 1, 1997, and applies to  
18 administrative proceedings commenced on or after that date.