

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 310

Short Title: Uniform Securities Regulation-AB.

(Public)

Sponsors: Senator Hoyle.

Referred to: Commerce.

March 5, 2001

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY THE LAW GOVERNING ADMINISTRATIVE
2 PROCEEDINGS OF THE SECRETARY OF STATE; TO AUTHORIZE THE
3 SECRETARY OF STATE TO APPOINT A HEARING OFFICER TO CONDUCT
4 HEARINGS ON LICENSING MATTERS; AND TO AUTHORIZE THE
5 SECRETARY OF STATE TO ADOPT UNIFORM NATIONAL SECURITIES
6 REGULATION STANDARDS BY TEMPORARY RULE.
7

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** G.S. 78A-18(a) reads as rewritten:

10 "(a) The Administrator may by order deny or revoke any exemption specified in
11 subdivisions (8), (9), (11), or (15) of G.S. 78A-16 or in 78A-17 with respect to a
12 specific security or transaction. No such order may be entered without appropriate prior
13 notice to all interested parties, opportunity for hearing, and written findings of fact and
14 conclusions of law, except that the Administrator may by order summarily deny or
15 revoke any of the specified exemptions pending final determination of any proceeding
16 under this section. Upon the entry of a summary order, the Administrator shall promptly
17 notify all interested parties that it has been entered and of the reasons therefor and that
18 within 15 days of the receipt of a written request the matter will be ~~set down~~ scheduled
19 for hearing. ~~hearing in accordance with Chapter 150B of the General Statutes.~~ If no
20 hearing is requested and none is ordered by the Administrator, the order will remain in
21 effect until it is modified or vacated by the Administrator. If a hearing is requested or
22 ordered, the Administrator, after notice of an opportunity for hearing to all interested
23 persons, may not modify or vacate the order or extend it until final determination. No
24 order under this subsection may operate retroactively. No person may be considered to
25 have violated G.S. 78A-24 or 78A-49(d) by reason of any offer or sale effected after the
26 entry of an order under this subsection if he sustains the burden of proof that he did not
27 know, and in the exercise of reasonable care could not have known, of the order."

28 **SECTION 2.** G.S. 78A-29(c) reads as rewritten:

1 "(c) The Administrator may by order summarily postpone or suspend the
2 effectiveness of the registration statement pending final determination of any
3 proceeding under this section. Upon the entry of the order, the Administrator shall
4 promptly notify each person specified in subsection (d) that it has been entered and of
5 the reasons therefor and that within 15 days after the receipt of a written request the
6 matter will be ~~set down~~ scheduled for hearing ~~hearing in accordance with Chapter 150B~~
7 of the General Statutes. If no hearing is requested and none is ordered by the
8 Administrator, the order will remain in effect until it is modified or vacated by the
9 Administrator. If a hearing is requested or ordered, the Administrator, after notice of an
10 opportunity for hearing to each person specified in subsection (d), may modify or vacate
11 the order or extend it until final determination."

12 **SECTION 3.** G.S. 78A-39(c) reads as rewritten:

13 "(c) The Administrator may by order summarily postpone or suspend registration
14 pending final determination of any proceeding under this section. Upon the entry of the
15 order, the Administrator shall promptly notify the applicant or registrant, as well as the
16 employer or prospective employer if the applicant or registrant is a salesman, that it has
17 been entered and of the reasons therefor and that within 15 days after the receipt of a
18 written request the matter will be ~~set down~~ scheduled for hearing ~~hearing in accordance~~
19 with Chapter 150B of the General Statutes. If no request for a hearing, other responsive
20 pleading, or submission is received by the Administrator within 30 business days of
21 receipt of service of notice of the order upon the applicant or registrant and no hearing is
22 ordered by the Administrator, the order shall become final and remain in effect unless it
23 is modified or vacated by the Administrator. If a hearing is requested or ordered, the
24 Administrator, after notice of and opportunity for hearing, may modify or vacate the
25 order or extend it until final determination."

26 **SECTION 4.** G.S. 78A-47(b)(2) reads as rewritten:

27 "(2) If the Administrator makes written findings of fact that the public
28 interest will be irreparably harmed by delay in issuing an order under
29 G.S. 78A-47(b)(1), the Administrator may issue a temporary cease and
30 desist order. Upon the entry of a temporary cease and desist order, the
31 Administrator shall promptly notify in writing the person subject to the
32 order that such order has been entered, the reasons therefor, and that
33 within 20 days after the receipt of a written request from such person
34 the matter shall be ~~set down~~ scheduled for hearing in accordance with
35 Chapter 150B of the General Statutes to determine whether or not the
36 order shall become permanent and final. If no request for a hearing,
37 other responsive pleading, or submission is received by the
38 Administrator within 30 business days of receipt of service of notice of
39 the order upon the person subject to the order and no hearing is
40 ordered by the Administrator, the order shall become final and remain
41 in effect unless it is modified or vacated by the Administrator. If a
42 hearing is requested or ordered, the Administrator, after giving notice
43 of an opportunity for a hearing to the person subject to the order, shall

1 by written findings of fact and conclusion of law, vacate, modify, or
2 make permanent the order."

3 **SECTION 5.** G.S. 78C-19(c) reads as rewritten:

4 "(c) The Administrator may by order summarily postpone or suspend registration
5 pending final determination of any proceeding under this section. Upon the entry of the
6 order, the Administrator shall promptly notify the applicant or registrant, as well as the
7 employer or prospective employer if the applicant or registrant is an investment adviser
8 representative, that it has been entered and of the reasons therefor and that within 15
9 days after the receipt of a written request the matter will be ~~set down~~ scheduled for
10 ~~hearing~~ hearing in accordance with Chapter 150B of the General Statutes. If no request
11 for a hearing, other responsive pleading, or submission is received by the Administrator
12 within 30 business days of receipt of service of notice of the order upon the applicant or
13 registrant and no hearing is ordered by the Administrator, the order shall become final
14 and remain in effect unless it is modified or vacated by the Administrator. If a hearing is
15 requested or ordered, the Administrator, after notice of and opportunity for hearing, may
16 modify or vacate the order or extend it until final determination."

17 **SECTION 6.** G.S. 78C-28(b)(2) reads as rewritten:

18 "(2) If the Administrator makes written findings of fact that the public
19 interest will be irreparably harmed by delay in issuing an order under
20 G.S. 78C-28(b)(1), the Administrator may issue a temporary cease and
21 desist order. Upon the entry of a temporary cease and desist order, the
22 Administrator shall promptly notify in writing the person subject to the
23 order that such order has been entered, the reasons therefor, and that
24 within 20 days after the receipt of a written request from such person
25 the matter shall be ~~set down~~ scheduled for hearing in accordance with
26 Chapter 150B of the General Statutes to determine whether or not the
27 order shall become permanent and final. If no request for a hearing,
28 other responsive pleading, or submission is received by the
29 Administrator within 30 business days of receipt of service of notice of
30 the order upon the person subject to the order and no hearing is
31 ordered by the Administrator, the order shall become final and remain
32 in effect unless it is modified or vacated by the Administrator. If a
33 hearing is requested or ordered, the Administrator, after giving notice
34 of an opportunity for a hearing to the person subject to the order, shall
35 by written findings of fact and conclusion of law, vacate, modify, or
36 make permanent the order."

37 **SECTION 7.** G.S. 78A-45(a) reads as rewritten:

38 "(a) This Chapter shall be administered by the Secretary of State. The Secretary of
39 State as Administrator may delegate all or part of the authority under this Chapter to the
40 Deputy Securities Administrator including, but not limited to, the authority to conduct
41 hearings, make, execute and issue final agency orders and decisions. The Secretary of
42 State may appoint such clerks and other assistants as may from time to time be needed.
43 The Secretary of State may designate one or more hearing officers for the purpose of
44 conducting administrative hearings."

1 **SECTION 8.** G.S. 78C-26(a) reads as rewritten:

2 "(a) This Chapter shall be administered by the Secretary of State. The Secretary of
3 State as Administrator may delegate all or part of the authority under this Chapter to the
4 Deputy Securities Administrator including, but not limited to, the authority to conduct
5 hearings, and make, execute and issue final agency orders and decisions. The Secretary
6 of State may appoint such clerks and other assistants as may from time to time be
7 needed. The Secretary of State may designate one or more hearing officers for the
8 purpose of conducting administrative hearings."

9 **SECTION 9.** G.S. 150B-21.1(a2) reads as rewritten:

10 "(a2) Notwithstanding the provisions of subsection (a) of this section, the Secretary
11 of State may adopt temporary rules to implement the certification technology provisions
12 of Article 11A of Chapter 66 of the General ~~Statutes~~. Statutes and to adopt uniform
13 Statements of Policy that have been officially adopted by the North American Securities
14 Administrators Association for the purpose of promoting uniformity of state securities
15 regulation. After having the proposed temporary rule published in the North Carolina
16 Register and at least 30 days prior to adopting a temporary rule pursuant to this
17 subsection, the Secretary shall:

- 18 (1) Notify persons on its mailing list maintained pursuant to G.S.
19 150B-21.2(d) and any other interested parties of its intent to adopt a
20 temporary rule;
21 (2) Accept oral and written comments on the proposed temporary rule;
22 and
23 (3) Hold at least one public hearing on the proposed temporary rule.

24 When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary
25 must submit a reference to this subsection as the Secretary's statement of need to the
26 Codifier of Rules.

27 Notwithstanding any other provision of this Chapter, the Codifier of Rules shall
28 publish in the North Carolina Register a proposed temporary rule received from the
29 Secretary in accordance with this subsection."

30 **SECTION 10.** This act is effective when it becomes law.