

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

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SENATE BILL 795  
Judiciary I Committee Substitute Adopted 4/23/01

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

(Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO REPEAL CHAPTER 78B OF THE GENERAL STATUTES, THE  
TENDER OFFER DISCLOSURES ACT, AND TO AMEND CHAPTER 78A OF  
THE GENERAL STATUTES, THE NORTH CAROLINA SECURITIES ACT,  
AND TO CLARIFY THAT THE ACT APPLIES TO BUSINESS FORMS IN  
ADDITION TO CORPORATIONS.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 78B of the General Statutes is repealed.

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

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

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

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

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

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

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

"(7) 'Person' means an individual, ~~a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated~~

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

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

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

- 1                   4.    ~~Any transaction incident to a judicially approved~~  
2                   ~~reorganization in which a security is issued in exchange~~  
3                   ~~for one or more outstanding securities, claims or~~  
4                   ~~property interests, or partly in such exchange and partly~~  
5                   ~~for cash."~~

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

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

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

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

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

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

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

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

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

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

1           **SECTION 12.** G.S. 78A-17 is amended by adding a new subdivision to  
2 read:

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

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

10          "(1) Any security whose issuer and any predecessors have been in  
11 continuous operation for at least five years if  
12          a. There has been no default during the current fiscal year or  
13 within the three preceding fiscal years in the payment of  
14 principal, interest, ~~or dividends~~ dividends, or distributions on  
15 any security of the issuer (or any predecessor) with a fixed  
16 maturity or a fixed interest or dividend or distribution provision,  
17 and  
18          b. The issuer and any predecessors during the past three fiscal  
19 years have had average net earnings, determined in accordance  
20 with generally accepted accounting practices, (i) which are  
21 applicable to all securities without a fixed maturity or a fixed  
22 interest or dividend or distribution provision outstanding at the  
23 date the registration statement is filed and equal at least five  
24 percent (5%) of the amount of such outstanding securities (as  
25 measured by the maximum offering price or the market price on  
26 a day, selected by the registrant, within 30 days before the date  
27 of filing the registration statement, whichever is higher, or book  
28 value on a day, selected by the registrant, within 90 days of the  
29 date of filing the registration statement to the extent that there is  
30 neither a readily determinable market price nor a cash offering  
31 price), or (ii) which, if the issuer and any predecessors have not  
32 had any security of the type specified in clause (i) outstanding  
33 for three full fiscal years, equal at least five percent (5%) of the  
34 amount (as measured in clause (i)) of all securities which will  
35 be outstanding if all the securities being offered or proposed to  
36 be offered (whether or not they are proposed to be registered or  
37 offered in this State) are issued;"

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

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

41          (1) By any ~~corporation~~ entity organized under the laws of this State; or

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

6           **SECTION 13.** This act becomes effective October 1, 2001.