

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SENATE BILL 795
RATIFIED BILL**

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

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 Chapter 78B of the General Statutes is repealed.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 organization, a government, or a political subdivision of a government,~~ an entity, a partnership in which the interests of the partners are not evidenced by a security, a trust in which the interests of the beneficiaries are not evidenced by a security, or an unincorporated organization."

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

"(8) a. 'Sale' or 'sell' includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.
b. 'Offer' or 'offer to sell' includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.
c. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

- d. A purported gift of assessable stock or other ownership interest obligating the owner to make future payments is considered to involve an offer and sale.
- e. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.
- f. The terms defined in this subdivision and the term 'purchase' as used in this Chapter do not include any of the following:
 1. Any bona fide loan, pledge, or other transaction creating a bona fide security ~~interest; interest.~~
 2. Any stock split and any security ~~dividend, dividend or distribution,~~ whether the ~~corporation entity~~ distributing the dividend or distribution is the issuer of the security or not, if nothing of value is given by security holders for the dividend or distribution other than the surrender of a right to a cash or property dividend or distribution when each security holder may elect to take the dividend or distribution in cash or property or in ~~securities; securities.~~
 3. ~~Any transaction incident to a class vote by security holders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation; or~~
 4. ~~Any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash."~~

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

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

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

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

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

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

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

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

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

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

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

read:

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

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

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

- a. There has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest, ~~or dividends~~ dividends, or distributions on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend or distribution provision, and
- b. The issuer and any predecessors during the past three fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, (i) which are applicable to all securities without a fixed maturity or a fixed interest or dividend or distribution provision outstanding at the date the registration statement is filed and equal at least five percent (5%) of the amount of such outstanding securities (as measured by the maximum offering price or the market price on a day, selected by the registrant, within 30 days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within 90 days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price), or (ii) which, if the issuer and any predecessors have not had any security of the type specified in clause (i) outstanding for three full fiscal years, equal at least five percent (5%) of the amount (as measured in clause (i)) of all securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this State) are issued;"

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

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

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

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

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

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

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

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

"(3) 'Control share acquisition' means the acquisition by any person of beneficial ownership of control shares, except that the acquisition of beneficial ownership of any shares of a covered corporation does not constitute a control share acquisition if the acquisition is consummated in any of the following circumstances:

- a. Before April 30, 1987.
- b. Pursuant to a contract existing before April 30, 1987, with either:
 - (i) The covered corporation; or
 - (ii) A seller of such shares who owned such shares before April 30, 1987.
- c. Pursuant to the laws of descent and distribution.
- d. Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this Article.
- e. Pursuant to a ~~merger or share exchange transaction~~ transaction effected in compliance with applicable law, but only if the transaction is pursuant to an agreement of ~~merger or share exchange~~ to which the covered corporation is a party.
- f. Pursuant to the sale of such shares by the covered corporation or its parent or subsidiary corporation.
- g. Pursuant to a written agreement to which the covered corporation is a party that permits the purchasers of shares from the covered corporation or its parent or subsidiary corporation also to purchase in any manner within 90 days before or after the purchase from the covered corporation or its parent or subsidiary up to the same aggregate number of shares as were sold by the covered corporation or its parent or subsidiary corporation.
- h. By an employee benefit plan established by the covered corporation.
- i. Before the corporation became a covered corporation.

For purposes of this definition, shares acquired within any consecutive 90-day period or shares acquired pursuant to a plan to make a control

share acquisition are considered to have been acquired in the same acquisition."

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

In the General Assembly read three times and ratified this the 14th day of June, 2001.

Marc Basnight
President Pro Tempore of the Senate

James B. Black
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____m. this _____ day of _____, 2001