

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 438

Short Title: Securities/Investment Advisers Enforcement.

(Public)

Sponsors: Senator Reeves.

Referred to: Commerce.

March 20, 1997

A BILL TO BE ENTITLED

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

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
20 order under this Chapter or a predecessor law or any provision of

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

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

- 40 "(c) The Administrator may by order summarily postpone or suspend registration
41 pending final determination of any proceeding under this section. Upon the entry of the
42 order, the Administrator shall promptly notify the applicant or registrant, as well as the
43 employer or prospective employer if the applicant or registrant is a salesman, that it has

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

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

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

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

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

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

36 "**§ 78A-50. Administrative files and opinions.**

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

38 (b) The Administrator shall keep a register of all applications for registration and
39 registration statements which are or have been effective under this Chapter and all denial,
40 suspension, or revocation orders which have been entered under this chapter. The
41 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
31 government."

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

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

1 requested or ordered, the Administrator, after notice of and opportunity for hearing, may
2 modify or vacate the order or extend it until final 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
5 or 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
8 the enforcement of this Chapter or in the prescribing of rules and
9 forms 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
14 and desist order. Upon the entry of a temporary cease and desist
15 order, the Administrator shall promptly notify in writing the person
16 subject to the order that such order has been entered, the reasons
17 therefor, and that within 20 days after the receipt of a written request
18 from such person the matter shall be set down for hearing to
19 determine whether or not the order shall become permanent and final.
20 If ~~no hearing is requested~~ request for a hearing or other responsive
21 pleading or submission is received by the Administrator within 30
22 days of service of notice upon the person subject to the order and ~~no~~
23 no hearing is ordered by the Administrator, the order shall become
24 final and remain in effect ~~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
27 subject to the order, shall by written findings of fact and conclusion of
28 law, 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.