SESSION 1997

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SENATE BILL 318*

Short Title: Securities Act Amendments/AB.

(Public)

Sponsors: Senator Reeves.

Referred to: Commerce.

March 6, 1997

1		A BILL TO BE ENTITLED
2	AN ACT TO C	ONFORM THE NORTH CAROLINA SECURITIES ACT TO THE
3	NATIONAL	SECURITIES MARKETS IMPROVEMENT ACT OF 1996.
4	The General Ass	embly of North Carolina enacts:
5	Section	n 1. G.S. 78A-2(9) reads as rewritten:
6	"(9)	'Salesman' means any individual other than a dealer who represents a
7		dealer in effecting or attempting to effect purchases or sales of
8		securities. 'Salesman' does not include an individual who represents (i)
9		an issuer in effecting transfers in securities described in sub-subdivision
10		(2)d. of this section or in effecting transactions in a covered security as
11		described in Section 18(b)(3) of the Securities Act of 1933 [15 U.S.C. §
12		77r(b)(3)] and Section 18(b)(4)(D) of the Securities Act of 1933 [15
13		U.S.C. § 77r(b)(4)(d)]; or (ii) a dealer in effecting transactions in this
14		State limited to those transactions described in Section 15(h)(2) of the
15		Securities Exchange Act of 1934 [15 U.S.C. § 780(h)(2)]. A partner,
16		executive officer, or director of a dealer, or a person occupying a similar
17		status or performing similar functions, is a salesman only if he
18		otherwise comes within this definition."
19	Section	n 2. G.S. 78A-2 is amended by adding a new subdivision to read:

1	"(<u>11a)</u>	'Security covered under federal law' means any security that is
2		covered security under Section 18(b) of the Securities Act of 1933
3		[15 U.S.C. § 77r(b)] or rules or regulations adopted under that
4		section. 'Security covered under federal law' does not include a
5		security for which a fee required by this Article has not been paid
6		and promptly remedied following written notification from the
7		Administrator to the issuer of the nonpayment or underpayment of
8 9	Section 2	the fee." Effective October 10, 1999, G.S. 78A-2(11a), as enacted by this act,
9	reads as rewritten:	Effective October 10, 1999, O.S. 78A-2(11a), as effacted by this act,
10		'Socurity covered under federal law' means any security that is
	"(11a)	'Security covered under federal law' means any security that is
12		covered security under Section 18(b) of the Securities Act of 1933 [15] U.S.C. $\$77r(b)$] or rules or regulations adopted under that
13 14		[15 U.S.C. §77r(b)] or rules or regulations adopted under that section. 'Security covered under federal law' does not include a security
14		for which a fee required by this Article has not been paid and promptly
16		remedied following written notification from the Administrator to the
17		issuer of the nonpayment or underpayment of the fee."
18	Section 4	The title to Article 4 of Chapter 78A reads as rewritten:
19		"ARTICLE 4.
20	"REGISTRATIO	N AND NOTICE FILING PROCEDURES OF SECURITIES."
21		G.S. 78A-24 reads as rewritten:
22	"§ 78A-24. Registra	ation requirement.
23		any person to offer or sell any security in this State unless (i) it is
24		Chapter or Chapter, (ii) the security or transaction is exempted under
25	G.S. 78A-16 or 78A	-17 and such exemption has not been denied or revoked under G.S.
26	78A-18. <u>G.S. 78A-18</u>	, or (iii) it is a security covered under federal law."
27		Article 4 of Chapter 78A of the General Statutes is amended by
28	adding a new section	
29		<u>es covered under federal law.</u>
30		inistrator, by rule or order, may require the filing of any of the
31	-	s with regard to a security covered under Section 18(b)(2) of the
32		<u>33 [15 U.S.C. § 77r(b)(2)]:</u>
33		or to the initial offer of the security in this State, all documents that
34		part of a federal registration statement filed with the Securities and
35		change Commission under the Securities Act of 1933, together with a
36		sent to service of process signed by the issuer and with the payment
37		a notice filing fee of one-tenth of one percent (1/10 of 1%) of the
38		ximum aggregate offering price at which the securities covered under
39		eral law are to be offered in this State, but the notice filing fee shall
40		be less than twenty-five dollars (\$25.00) or more than one thousand
41		hundred dollars (\$1,600).
42		er the initial offer of the security in this State, all documents that are
43	par	t of an amendment to a federal registration statement filed with the

1	Securities and Exchange Commission under the Securities Act of 1933,		
2	which shall be filed concurrently with the Administrator.		
3	(3) <u>A report of the value of securities covered under federal law that are</u>		
4	offered or sold in this State.		
5	(b) With regard to any security that is covered under Section 18(b)(4)(D) of the		
6	Securities Act of 1933 [15 U.S.C. § 77r(b)(4)(d)], the Administrator, by rule or order,		
7	may require the issuer to file a notice on SEC Form D [17 C.F.R. § 239.500] and a		
8	consent to service of process signed by the issuer no later than 15 days after the first sale		
9	of the security in this State. The Administrator may, by rule, establish a fee to recover		
10	costs for filing required by this section, not to exceed one hundred fifty dollars (\$150.00).		
11	(c) <u>The Administrator, by rule or order, may require the filing of any document</u>		
12	filed with the Securities and Exchange Commission under the Securities Act of 1933,		
13	with respect to a security covered under Section $18(b)(3)$ or (4) of the Securities Act of $10222 115 \text{ H/S} = 6.777(1)(2) \exp((4)1 \text{ The A labeled states})$		
14	<u>1933 [15 U.S.C. § 77r(b)(3) or (4)]. The Administrator may, by rule, establish a fee to</u>		
15	recover costs for any filing required under this section, not to exceed one hundred fifty		
16	dollars (\$150.00).		
17	(d) The Administrator may issue a stop order suspending the offer and sale of a country of the Security of th		
18	security covered under 18(b)(1) of the Securities Act of 1933 [15 U.S.C. § 77r(b)(1)], if		
19 20	the Administrator finds that (i) the order is in the public interest, and (ii) there is a failure to comply with any condition established under this section		
20 21	to comply with any condition established under this section. (e) The Administrator, by rule or order, may waive any of the requirements set by		
21	this section."		
22	Section 7. G.S. 78A-38 reads as rewritten:		
23 24	"§ 78A-38. Post-registration provisions.		
24 25	(a) Every registered dealer shall make and keep such accounts, correspondence,		
23 26	memoranda, papers, books, and other records as the Administrator by rule prescribes.		
20 27	prescribes, except as provided by Section 15 of the Securities Exchange Act of 1934 [15]		
28	U.S.C. § 780]. All records so required shall be preserved for three years unless the		
20 29	Administrator by rule prescribes otherwise for particular types of records.		
30	(b) Every registered dealer shall file such financial reports as the Administrator by		
31	rule prescribes. prescribes, except as provided by Section 15 of the Securities Exchange		
32	Act of 1934 [15 U.S.C. § 780].		
33	(c) If the information contained in any document filed with the Administrator is or		
34	becomes inaccurate or incomplete in any material respect, the registrant shall promptly		
35	file a correcting amendment unless notification of the correction has been given under		
36	G.S. 78A-36(b).		
37	(d) All the records referred to in subsection (a) <u>of this section</u> are subject at any		
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38			
38 39	time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this State, as the Administrator		
	time or from time to time to such reasonable periodic, special, or other examinations by		
39	time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this State, as the Administrator		
39 40	time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this State, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors.		

and any national securities exchange or national securities association registered under
 the Securities Exchange Act of 1934."

Section 8. G.S. 78A-49(d) reads as rewritten:

"(d) The Administrator may by rule or order require the filing of any prospectus,
pamphlet, circular, form letter, advertisement, or other sales literature or advertising
communication addressed or intended for distribution to prospective investors, unless the
security or transaction is exempted by G.S. 78A-16 or 78A-17 (except 78A-17(9), (17))
and such exemption has not been denied or revoked under G.S. 78A-18. G.S. 78A-18 or is
a security covered under federal law."

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Section 9. G.S. 78A-63(a) reads as rewritten:

"(a) Sections 78A-8, 78A-10, 78A-24, <u>78A-31, 78A-36(a)</u>, and 78A-56 apply to persons who sell or offer to sell when (i) an offer to sell is made in this State, or (ii) an offer to buy is made and accepted in this State."

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Section 10. G.S. 78A-63(f) reads as rewritten:

15 "(f) Every applicant for registration under this Chapter and every issuer who 16 proposes to offer a security in this State through any person acting on an agency basis in 17 the common-law sense shall file with the Administrator, in such form as he by rule 18 prescribes, an irrevocable consent appointing the Administrator or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action 19 20 or proceeding against him or his successor, executor or administrator which arises under 21 this Chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who 22 23 has filed such a consent in connection with a previous registration or notice filing need 24 not file another. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless (i) the plaintiff, who may be the Administrator 25 in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and 26 27 a copy of the process by registered mail to the defendant or respondent at his address on file with the Administrator, and (ii) the plaintiff's affidavit of compliance with the 28 29 subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows." 30

Section 11. Section 3 of this act becomes effective October 10, 1999. The remainder of this act becomes effective October 1, 1997, and applies to securities offered or sold on or after that date.