

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**SENATE BILL 310  
House Committee Substitute Favorable 5/7/01**

Short Title: Uniform Securities Regulation-AB.

(Public)

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Sponsors:

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Referred to:

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March 5, 2001

A BILL TO BE ENTITLED

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

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~~20 days of the receipt of a written request the matter will be ~~set down~~  
19 scheduled for hearing. hearing in accordance with Chapter 150B of the General Statutes.  
20 If no hearing is requested and none is ordered by the Administrator, the order will  
21 remain in effect until it is modified or vacated by the Administrator. If a hearing is  
22 requested or ordered, the Administrator, after notice of an opportunity for hearing to all  
23 interested persons, may not modify or vacate the order or extend it until final  
24 determination. No order under this subsection may operate retroactively. No person may  
25 be considered to have violated G.S. 78A-24 or 78A-49(d) by reason of any offer or sale  
26 effected after the entry of an order under this subsection if he sustains the burden of  
27 proof that he did not know, and in the exercise of reasonable care could not have  
28 known, of the order."

29 **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~~20 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~~20 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~~20  
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. 78D-4(e) reads as rewritten:

38 "(e) If the public interest or the protection of investors so requires, the  
39 Administrator may, by order, summarily deny or suspend the exemption for a qualified  
40 seller. Upon the entry of the order, the Administrator shall promptly notify the person  
41 claiming said status that an order has been entered and the reasons therefor and that  
42 within ~~30~~20 days after the receipt of a written request the matter will be ~~set~~ scheduled

1 for hearing. The provisions of G.S. 78D-30 shall apply with respect to all subsequent  
2 proceedings."

3           **SECTION 8.** G.S. 78D-30 reads as rewritten:

4 "**§ 78D-30. Procedure for entry of an order.**

5       (a) The Administrator shall commence an administrative proceeding under this  
6 Chapter, by entering either a notice of intent to do a contemplated act or a summary  
7 order. The notice of intent or summary order may be entered without notice, without  
8 opportunity for hearing, and need not be supported by findings of fact or conclusions of  
9 law, but must be in writing.

10       (b) Upon entry of a notice of intent or summary order, the Administrator shall  
11 promptly notify all interested parties that the notice or summary order has been entered  
12 and the reasons therefor. If the proceeding is pursuant to a notice of intent, the  
13 Administrator shall inform all interested parties of the dates, time, and place set for the  
14 hearing on the notice. If the proceeding is pursuant to a summary order, the  
15 Administrator shall inform all interested parties that they have 30 business days from  
16 the entry of the order to file a written request for a hearing on the matter with the  
17 Administrator and that the hearing will be scheduled ~~to commence with 30 business~~  
18 within 20 days after the receipt of the written request.

19       (c) If the proceeding is pursuant to a summary order, the Administrator, whether  
20 or not a written request for a hearing is received from any interested party, may ~~set~~  
21 schedule the matter ~~down~~ for hearing on the Administrator's own motion.

22       (d) If no request for a hearing, other responsive pleading, or submission is  
23 received by the Administrator within 30 business days of receipt of service of notice of  
24 summary order under subsection (b) of this section and no hearing is ordered by the  
25 Administrator, the summary order will automatically become a final order after 30  
26 business days from the date service of the notice of summary order was received.

27       (e) If a hearing is requested or ordered, the Administrator, after notice of, and  
28 opportunity for, hearing to all interested persons, may modify or vacate the order or  
29 extend it until final determination.

30       (f) No final order or order after hearing may be returned without:

- 31           (1) Appropriate notice to all interested persons;  
32           (2) Opportunity for hearing by all interested persons; and  
33           (3) Entry of written findings of fact and conclusions of law.

34 Every hearing in an administrative proceeding under this Chapter shall be public unless  
35 the Administrator grants a request joined in by all the respondents that the hearing be  
36 conducted privately."

37           **SECTION 9.** 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.

1 The Secretary of State may designate one or more hearing officers for the purpose of  
2 conducting administrative hearings."

3 **SECTION 10.** G.S. 78C-26(a) reads as rewritten:

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

11 **SECTION 11.** G.S. 78D-25(a) reads as rewritten:

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

19 **SECTION 12.** G.S. 150B-21.1(a2) reads as rewritten:

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

- 28 (1) Notify persons on its mailing list maintained pursuant to G.S.  
29 150B-21.2(d) and any other interested parties of its intent to adopt a  
30 temporary rule;  
31 (2) Accept oral and written comments on the proposed temporary rule;  
32 and  
33 (3) Hold at least one public hearing on the proposed temporary rule.

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

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

40 **SECTION 13.** This act is effective when it becomes law.