

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**SENATE BILL 1455  
Judiciary I Committee Substitute Adopted 7/11/02  
Finance Committee Substitute Adopted 7/18/02  
Appropriations/Base Budget Committee Substitute Adopted 7/24/02  
House Committee Substitute Favorable 10/2/02  
House Committee Substitute #2 Favorable 10/3/02**

Short Title: Securities Fraud Protections and Study.

(Public)

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Sponsors:

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Referred to:

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June 18, 2002

A BILL TO BE ENTITLED

1  
2 AN ACT TO AUTHORIZE THE GENERAL STATUTES COMMISSION AND  
3 OTHER INTERESTED PARTIES TO STUDY THE PROVISIONS OF SENATE  
4 BILL 1455, 4<sup>TH</sup> EDITION, STRENGTHEN SECURITIES FRAUD  
5 ENFORCEMENT LAWS, INTRODUCED IN THE 2001 GENERAL ASSEMBLY,  
6 AND TO MAKE RECOMMENDATIONS TO THE 2003 REGULAR SESSION  
7 OF THE 2003 GENERAL ASSEMBLY; TO INCREASE CERTAIN FILING AND  
8 RENEWAL FEES WITH THE SECRETARY OF STATE; TO FUND  
9 ADDITIONAL SECURITIES INVESTIGATOR POSITIONS; TO PROHIBIT THE  
10 STATE FROM CONTRACTING WITH BUSINESSES THAT HAVE ANY  
11 OFFICERS OR DIRECTORS WHO HAVE BEEN CONVICTED OF  
12 SECURITIES FRAUD; TO PROHIBIT THE STATE FROM CONTRACTING  
13 WITH VENDORS THAT ARE INCORPORATED IN A TAX HAVEN  
14 COUNTRY BUT THE UNITED STATES IS THE PRINCIPAL MARKET FOR  
15 THE PUBLIC TRADING OF THEIR CORPORATION'S STOCK; AND TO  
16 AUTHORIZE THE STATE TREASURER, IN CONSULTATION WITH THE  
17 SECRETARY OF STATE, AND THE LEGISLATIVE RESEARCH  
18 COMMISSION TO STUDY THE CREATION OF A PENSION ASSURANCE  
19 FUND TO PROTECT THE RETIREMENT SAVINGS AND INVESTMENTS OF  
20 THE CITIZENS OF NORTH CAROLINA.

21 The General Assembly of North Carolina enacts:

22 **SECTION 1.** The General Statutes Commission is directed to study the  
23 provisions of Senate Bill 1455, 4<sup>th</sup> Edition, Strengthen Securities Fraud Enforcement  
24 Laws, introduced in the 2001 General Assembly, in consultation with the Department of  
25 the Secretary of State, the Securities Industry Association, the North Carolina Bar

1 Association, and other interested parties, and to make recommendations to the 2003  
2 Regular Session of the 2003 General Assembly.

3 **SECTION 2.** G.S. 78C-17(b) reads as rewritten:

4 "(b) Every applicant for initial or renewal registration shall pay a filing fee of ~~two~~  
5 three hundred dollars (~~\$200.00~~)(\$300.00) in the case of an investment adviser, and  
6 forty-five dollars (\$45.00) in the case of an investment adviser representative. When an  
7 application is denied or withdrawn, the Administrator shall retain the fee."

8 **SECTION 3.** G.S. 78C-17(b1) reads as rewritten:

9 "(b1) Every person acting as an investment adviser covered under federal law in  
10 this State shall pay an initial filing fee of ~~two~~three hundred dollars (~~\$200.00~~)(\$300.00)  
11 and a renewal notice filing fee of ~~two~~three hundred dollars (~~\$200.00~~)(\$300.00)."   
12

13 **SECTION 4.** G.S. 78A-31(a)(4), as amended by Section 29A.37 of Senate  
14 Bill 1115 of the 2001 General Assembly, reads as rewritten:

15 "(a) The Administrator, by rule or order, may require the filing of any of the  
16 following documents with regard to a security covered under section 18(b)(2) of the  
17 Securities Act of 1933 (15 U.S.C. § 77r(b)(2)):

18 ...

19 (4) A notice filing pursuant to this section shall expire on December 31 of  
20 each year or some other date not more than one year from its effective  
21 date as the Administrator may by rule or order provide. A notice filing  
22 of the offer of securities covered under federal law that are to be  
23 offered for a period in excess of one year shall be renewed annually by  
24 payment of a renewal fee of two hundred fifty dollars  
25 (~~\$200.00~~)(\$250.00) and by filing any documents and reports that the  
26 Administrator may by rule or order require consistent with this section.  
27 The renewal shall be effective upon the expiration of the prior notice  
28 period."

29 **SECTION 5.** Article 3 of Chapter 143 is amended by adding a new section  
30 to read:

31 **§ 143-59.2. Certain vendors prohibited from contracting with State.**

32 (a) Ineligible Vendors. – A vendor is not entitled to enter into a contract for  
33 goods or services with any department, institution, or agency of the State government  
34 subject to the provisions of this Article if any officer or director of the vendor, or any  
35 owner if the vendor is an unincorporated business entity, within 10 years immediately  
36 prior to the date of the bid solicitation, has been convicted of any violation of Chapter  
37 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange  
38 Act of 1934.

39 (b) Vendor Certification. – The Secretary of Administration shall require each  
40 vendor submitting a bid or contract to certify that none of its officers, directors, or  
41 owners of an unincorporated business entity has been convicted of any violation  
42 referenced in subsection (a) of this section within 10 years immediately prior to the date  
43 of the bid solicitation. Any person who submits a certification required by this  
subsection known to be false shall be guilty of a Class I felony.

1       (c) Void Contracts. – A contract entered into in violation of this section is void.  
2 A contract that is void under this section may continue in effect until an alternative can  
3 be arranged when: (i) immediate termination would result in harm to the public health  
4 or welfare, and (ii) the continuation is approved by the Secretary of Administration.  
5 Approval of continuation of contracts under this subsection shall be given for the  
6 minimum period necessary to protect the public health or welfare."

7       **SECTION 6.** G.S. 143-59.1 reads as rewritten:

8       "**§ 143-59.1. Contracts with certain foreign vendors.**

9       (a) Ineligible Vendors. – The Secretary of Administration and other entities to  
10 which this Article applies shall not contract for goods or services with either of the  
11 following:

12       (1) Aa vendor if the vendor or an affiliate of the vendor meets one or more  
13 of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax  
14 levied under Article 5 of Chapter 105 of the General Statutes on its  
15 sales delivered to North Carolina. The Secretary of Revenue shall  
16 provide the Secretary of Administration periodically with a list of  
17 vendors to which this section applies.

18       (2) A vendor or an affiliate of the vendor that is incorporated in a tax  
19 haven country after December 31, 2001, but the United States is the  
20 principal market for the public trading of the corporation's stock.

21       (b) Vendor Certification. – The Secretary of Administration shall require each  
22 vendor submitting a bid or contract to certify that the vendor is not an ineligible vendor  
23 as set forth in subsection (a) of this section. Any person who submits a certification  
24 required by this subsection known to be false shall be guilty of a Class I felony.

25       (c) Definitions. – The following definitions apply in this section:

26       (1) ~~For the purpose of this section, the term "affiliate" has the meaning~~  
27 ~~provided Affiliate.~~ – As defined in G.S. 105-163.010.

28       (2) Tax haven country. – Means each of the following: Barbados,  
29 Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of  
30 the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of  
31 Liechtenstein, the Principality of Monaco, and the Republic of the  
32 Seychelles."

33       **SECTION 7.** The State Treasurer, in consultation with the Secretary of  
34 State, shall study the best methods for creating and funding a Pension Assurance Fund,  
35 including the use of damages awarded in actions involving securities fraud brought by  
36 the State or by private individuals, and for paying claims from the Fund. The  
37 Legislative Research Commission may also study this issue. The State Treasurer and  
38 the Secretary of State shall develop legislative recommendations based on the study and  
39 report their recommendations to the General Assembly on or before March 1, 2003, and  
40 if the Legislative Research Commission authorizes a study of this issue, the State  
41 Treasurer shall also forward a copy of its report to that committee.

42       **SECTION 8.** There is hereby appropriated to the Office of the Secretary of  
43 State for the 2002-2003 fiscal year the sum of one hundred fifty-one thousand one  
44 hundred twenty-five dollars (\$151,125) for recurring expenses and fifteen thousand nine

1 hundred ninety dollars (\$15,990) for nonrecurring expenses for three additional  
2 unsworn securities investigators in the Securities Division.

3           **SECTION 9.** Sections 2, 3, and 4 of this act become effective November 1,  
4 2002, and apply to fees assessed on or after that date. Sections 5 and 6 of this act  
5 become effective December 1, 2002, and apply to contracts entered into on or after that  
6 date. Section 8 of this act becomes effective November 1, 2002. The remainder of this  
7 act is effective when it becomes law.