

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 795

Short Title: Repeal Chapter 78B/Amend Securities Act.

(Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO REPEAL CHAPTER 78B OF THE GENERAL STATUTES, THE
TENDER OFFER DISCLOSURES ACT, AND TO AMEND CHAPTER 78A OF
THE GENERAL STATUTES, THE NORTH CAROLINA SECURITIES ACT,
AND TO CLARIFY THAT THE ACT APPLIES TO BUSINESS FORMS IN
ADDITION TO CORPORATIONS.

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 Chapter 78B of the General Statutes is repealed.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, a joint-stock company, a limited liability company, an unincorporated association, a business trust, a limited partnership, or other partnership in which the interests of the partners are evidenced by a security, a trust in which the interests of the beneficiaries are evidenced by a security, any other unincorporated organization in which two or more persons are evidenced by a security, any other unincorporated organization in which two or more persons have a joint or common economic interest, and a 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:

1 "(7) 'Person' means an individual, a ~~corporation, a partnership, an~~
2 ~~association, a joint stock company, a trust where the interests of the~~
3 ~~beneficiaries are evidenced by a security, an unincorporated~~
4 ~~organization, a government, or a political subdivision of a~~
5 ~~government.~~an entity, a partnership in which the interests of the
6 partners are not evidenced by a security, a trust in which the interests
7 of the beneficiaries are not evidenced by a security, or an
8 unincorporated organization."

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

- 10 "(8) a. 'Sale' or 'sell' includes every contract of sale of, contract to sell, or
11 disposition of, a security or interest in a security for value.
12 b. 'Offer' or 'offer to sell' includes every attempt or offer to dispose
13 of, or solicitation of an offer to buy, a security or interest in a
14 security for value.
15 c. Any security given or delivered with, or as a bonus on account
16 of, any purchase of securities or any other thing is considered to
17 constitute part of the subject of the purchase and to have been
18 offered and sold for value.
19 d. A purported gift of assessable stock or other ownership interest
20 obligating the owner to make future payments is considered to
21 involve an offer and sale.
22 e. Every sale or offer of a warrant or right to purchase or subscribe
23 to another security of the same or another issuer, as well as
24 every sale or offer of a security which gives the holder a present
25 or future right or privilege to convert into another security of
26 the same or another issuer, is considered to include an offer of
27 the other security.
28 f. The terms defined in this subdivision and the term 'purchase' as
29 used in this Chapter do not include
30 1. Any bona fide loan, pledge, or other transaction creating
31 a bona fide security interest;
32 2. Any stock split and any security ~~dividend, dividend or~~
33 distribution, whether the ~~corporation~~entity distributing
34 the dividend or distribution is the issuer of the security or
35 not, if nothing of value is given by security holders for
36 the dividend or distribution other than the surrender of a
37 right to a cash or property dividend or distribution when
38 each security holder may elect to take the dividend or
39 distribution in cash or property or in securities;
40 3. Any transaction incident to a class vote by security
41 holders, pursuant to the ~~certificate~~articles of
42 incorporation or similar organizational document or the
43 applicable ~~corporation~~statute, statute governing the
44 internal affairs of the entity, on a merger, conversion,

1 consolidation, share exchange, reclassification of
2 securities, or sale of ~~corporation~~ an entity's assets in
3 consideration of the issuance of securities of another
4 ~~corporation;~~ entity; or

- 5 4. Any transaction incident to a judicially or
6 governmentally approved reorganization in which a
7 security is issued in exchange for one or more
8 outstanding securities, claims or property interests, or
9 partly in such exchange and partly for cash."

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

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

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

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

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

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

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

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

38 **SECTION 11.** G.S. 78A-25(a)(1) reads as rewritten:

39 "(1) Any security whose issuer and any predecessors have been in
40 continuous operation for at least five years if
41 a. There has been no default during the current fiscal year or
42 within the three preceding fiscal years in the payment of
43 principal, interest, ~~or dividends~~ dividends, or distributions on
44 any security of the issuer (or any predecessor) with a fixed

1 maturity or a fixed interest or dividend or distribution provision,
2 and

- 3 b. The issuer and any predecessors during the past three fiscal
4 years have had average net earnings, determined in accordance
5 with generally accepted accounting practices, (i) which are
6 applicable to all securities without a fixed maturity or a fixed
7 interest or dividend or distribution provision outstanding at the
8 date the registration statement is filed and equal at least five
9 percent (5%) of the amount of such outstanding securities (as
10 measured by the maximum offering price or the market price on
11 a day, selected by the registrant, within 30 days before the date
12 of filing the registration statement, whichever is higher, or book
13 value on a day, selected by the registrant, within 90 days of the
14 date of filing the registration statement to the extent that there is
15 neither a readily determinable market price nor a cash offering
16 price), or (ii) which, if the issuer and any predecessors have not
17 had any security of the type specified in clause (i) outstanding
18 for three full fiscal years, equal at least five percent (5%) of the
19 amount (as measured in clause (i)) of all securities which will
20 be outstanding if all the securities being offered or proposed to
21 be offered (whether or not they are proposed to be registered or
22 offered in this State) are issued;".

23 **SECTION 12.** G.S. 78A-30(d)(1) reads as rewritten:

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

25 **SECTION 13.** This act becomes effective October 1, 2001.