

June 17, 2002

S 1455. STRENGTHEN SECURITIES FRAUD ENFORCEMENT LAWS. TO STRENGTHEN THE LAWS TO PREVENT SECURITIES FRAUD. Rewrites GS 78A-56(a) and (b) and 78C-38(a) to allow punitive damages in actions for securities or investment fraud under those subsections. Rewrites GS 78A-56(f) to change the statute of limitations for actions under the section from 2 years to 5 years. Rewrites GS 78A-57(a1) and 78C-39(a1) to provide that offenses specified in those subsections are Class C (instead of Class H) felonies if the "total value of consideration," which the act defines, involved in the violation is \$100,000 or more. Amends various sections of GS Ch. 78A to increase certain filing and renewal fees. Rewrites GS 78D-24(a) to provide that any violation of the Commodities Act is a Class H (instead of Class I) felony. Appropriates from General Fund for 2002-2003 to the Office of the Sec'y of State \$226,692 for recurring expenses and \$15,990 for nonrecurring expenses for three additional unsworn securities investigators in the Securities Division. Provisions that change the classes of offenses are effective Dec. 1, 2002, and apply to acts committed on or after that date. Provisions relating to fees and the appropriation are effective July 1, 2002. Remainder of the act is effective when it becomes law.

Intro. by Rand, Dalton.

To be referred 6-18

GS 78A, 78C, 78D, APPROP

July 11, 2002

S 1455. STRENGTHEN SECURITIES FRAUD ENFORCEMENT LAWS. Intro. 06/18/02. Senate committee substitute makes the following changes to 1st edition. (1) Amends GS 78A-12(a)(5) to include the issuance of materially false or misleading analyses, reports or financial statements as examples of prohibited actions designed to manipulate securities markets; (2) Amends GS 78A-25(a)(1)b. by substituting the phrase "generally accepted accounting practices" with the phrase "generally accepted accounting principles" in referring to the manner in which issuers' average net earnings are to be determined; (3) Amends GS 78A-49(c) by (a) requiring all financial statements required under the North Carolina Securities Act to be audited, (b) substituting the phrase "generally accepted financial principles" for the phrase "generally accepted accounting practices" in referring to the manner in which such financial statements shall be prepared, and (c) allowing the Administrator to provide otherwise by rule or order; (4) Amends the proposed changes to both GS 78A-56(a) and GS 78A-56(b) by limiting punitive damages to the limitations set forth in GS 1D-25; (5) Amends the proposed changes to GS 78A-57(a) by deleting the reference to willful violations of GS 78A-9 and by amending GS 78A-57 to add new subsec. (a2) providing that (a) any person who willfully violates GS 78A-9 by knowingly making materially false or misleading statements shall be guilty of a Class H felony, and (b) any other willful violation of GS 78A-9 shall be a Class 2 misdemeanor; effective date: 12/01/02; (6) Amends Art. 7 of Ch. 78A by adding a new sec., GS 78A-58, providing that any person who willfully (a) makes or causes to be made any false, misleading, or unfounded oral or written statement to the Administrator for the purpose of interfering with an audit, examination, or investigation by the Administrator under the Act, (b) creates, causes to be made or produces any record, report or document, (c) destroys or alters any record, report, or document, (d) conceals or secretes any record, report or document, or (e) hinders or obstructs the Administrator in the performance of his or her duties, shall be guilty of Class H felony; effective date: 12/01/02; (7) Amends GS 78A-37(a) to provide that in the event that the Administrator institutes a proceeding under GS 78A-39 to postpone or deny a dealer or salesman's application, withdrawal of the application shall be allowed only at the discretion of the Administrator; (8) Amends GS 78C-2(1) by making stylistic changes and by deleting subsec. (k), which provides that persons exempt from registration pursuant to sec. 203(b)(3) of the Investment Advisers Act of 1940 are not to be included under the definition of "investment adviser" set forth in GS 78C-2(1); (9) Amends GS 78C-16(a) by adding new subsec. (4), which adds persons described in sec. 203(b)(3) of the Investment Advisers Act of 1940 to the list of persons for whom it is not unlawful to transact business in NC as an investment adviser; (10) Amends GS 78C-16(a1)(2) to include persons exempt from registration pursuant to the proposed new subsec. (4) to GS 78C-16(a) among the exceptions to the prohibitions against acting as an investment advisor; (11) Amends GS 78C-17(a) to provide that in the event that the Administrator institutes a proceeding under GS 78C-19 to postpone or deny an investment adviser's application, withdrawal of the application shall be allowed only at the discretion of the Administrator; (12) Amends GS

78C-30(c) by (a) requiring all financial statements required under Ch. 78C to be audited, (b) substituting the phrase "generally accepted financial principles" for the phrase "generally accepted accounting practices" in referring to the manner in which such financial statements shall be prepared, and (c) allowing the Administrator to provide otherwise by rule or order; (13) Amends proposed changes to GS 78C-38(a) by limiting punitive damages to the limitations set forth in GS 1D-25; (14) Amends GS 78C-39 by (a) deleting the reference to willful violations of GS 78C-9, (b) adding new subsec. (a2) providing that (i) any person who willfully violates GS 78C-9 by knowingly making materially false or misleading statements shall be guilty of a Class H felony, and (ii) any other willful violation of GS 78C-9 shall be a Class 2 misdemeanor, (c) by adding new subsec. (a3) providing that any person who willfully makes or causes to be made any false, misleading, or unfounded oral or written statement to the Administrator for the purpose of interfering with an audit, examination or investigation by the Administrator under the Act, or who shall willfully (i) create, cause to be made or produce any record, report or document, (ii) destroy or alter any record, report or document, (iii) conceal or secrete any record, report or document, or (e) hinder or obstruct the Administrator in the performance of his or her duties shall be guilty of Class H felony, and (d) by making stylistic changes; effective date: 12/01/02; (15) Amends the proposed changes to GS 78D-24(a) by providing that willful violators of any provision of Ch. 78C who cause actual losses of \$100,000 or more shall be guilty of a Class C felony, while willful violators of any provision of Ch. 78C who have caused actual losses of less than \$100,000 shall be guilty of a Class H felony; effective date: 12/01/02; (16) Amends GS 53B-4 by adding new subsec. (7a), which includes investigations conducted by the Securities Administrator pursuant to GS 78A-46(a), 78C-27(a), and 78D-21(a) among the circumstances in which a government authority may have access to a customer's financial record held by a financial institution; (17) Amends GS 150B-21.1(a2) by authorizing the Secretary of State to adopt rules governing the conduct of hearings in accordance with the Administrative Procedure Act.

July 18, 2002

S 1455. STRENGTHEN SECURITIES FRAUD ENFORCEMENT LAWS. Intro. 6/18/02. Senate committee substitute makes the following changes to 2nd edition. Adds new GS 78A-56(b1) to provide that person who willfully participates in act or transaction in violation of GS 78A-12 (manipulation of market) is liable to person who purchases or sells a security (with exceptions for specified securities) at price affected by act or transaction for damages sustained as result of act or transaction, unless person sustains burden of proof that person did not know, and in exercise of reasonable care could not have known, of existence of facts by which liability is alleged to exist; specifies how to determine amount of damages. Amends GS 78A-58(i) and 78A-39(a3) to require that record, report, or document must be materially false or misleading. Includes GS 78A-12 (manipulation of market) within provisions of GS 78A-63(a) and (b) (concerning scope of provisions within and without state). Makes fee increases in proposed amendments to GS 78A-28(b), 78A-28(j), and 78A-31(a) applicable to fees assessed on or after Oct. 1, 2002.

July 24, 2002

S 1455. STRENGTHEN SECURITIES FRAUD ENFORCEMENT LAWS. Intro. 6/18/02. Senate committee substitute makes the following changes to 3rd edition. Changes title to read *AN ACT TO STRENGTHEN THE LAWS TO PREVENT SECURITIES FRAUD, TO PROHIBIT THE STATE FROM CONTRACTING WITH BUSINESSES THAT HAVE ANY OFFICERS OR DIRECTORS WHO HAVE BEEN CONVICTED OF SECURITIES FRAUD, AND TO PROHIBIT THE STATE FROM CONTRACTING WITH VENDORS THAT ARE INCORPORATED IN A TAX HAVEN COUNTRY BUT THE UNITED STATES IS THE PRINCIPAL MARKET FOR THE PUBLIC TRADING OF THEIR CORPORATION'S STOCK*. Adds new section G.S. 143-59.2 and amends 143-59.1, effective Oct. 1, 2002, to prohibit the state from contracting with vendors indicated in the title. Makes other technical, clarifying changes.

October 2, 2002

S 1455. STRENGTHEN SECURITIES FRAUD ENFORCEMENT LAWS. Intro. 6/17/02. House committee substitute makes the following changes to 4th edition. Deletes all provisions except

those amending GS 78A-31(a)(4), creating new provisions at GS 143-59.1 and 143-59.2, and appropriating funds. Modifies the amendments to GS 78A-31(a)(4) to provide for a \$250 renewal fee (prior edition provided for a \$200 renewal fee). Modifies new GS 143-59.1 (contracts with certain foreign vendors) by adding a new subsection on vendor certification and modifying provision on ineligibility of vendors incorporated in tax haven countries. Reduces the appropriation for recurring expenses for three additional unsworn securities investigators in the Securities Division to \$151,125. Contains a new section directing the General Statutes Comm'n to study the provisions in S 1455 4th ed. in consultation with the Sec'y of State, Securities Industry Ass'n, NC Bar Ass'n, and other interested parties and make recommendations to the 2003 Regular Session of the 2003 General Assembly. Contains new provisions increasing from \$200 to \$300 the filing fees in GS 78C-17(b) for applicants for initial or renewal registrations and GS 78C-17(b1) for investment advisors. Creates a new GS 147-69.4 establishing a Pension Assurance Fund to protect the retirement savings and investments of NC citizens employed by private industry. Money from the fund may be used to compensate individuals who lose a significant portion of their retirement savings, through no fault of their own, that are invested in 401k or other pension plans funded in whole or in part with the stock of their employer companies as a result of a violation of GS Ch. 78A, the Securities Act of 1933, or the Securities Exchange Act of 1934. Provides that the State Treasurer, in consultation with the Sec'y of State, shall develop and report on legislative recommendations regarding the best methods for funding the Pension Assurance Fund and allows for study by the Legislative Research Comm'n. Amends GS 147-69.2(a) to make it apply to funds held to the credit of the Pension Assurance Fund. Provisions increasing fees become effective Nov. 1, 2002 and apply to fees assessed on or after that date. New GS 143-59.2 and amendments to GS 143-59.1 become effective Nov. 1, 2002 and apply to contracts entered into on or after that date. Remainder is effective when it becomes law.

October 3, 2002

S 1455. SECURITIES FRAUD PROTECTION AND STUDY (NEW). Intro. 6/17/02. House committee substitute makes the following changes to 5th edition. Modifies new GS 143-59.2 (certain vendors prohibited from contracting with the State) by deleting provision stating the new section does not impose a duty on the State to investigate or verify information contained in vendor certifications. Deletes sections establishing a Pension Assurance Fund and replaces them with provision directing the State Treasurer, in consultation with the Sec'y of State, to study and report on the best methods for creating and funding such a Fund. Allows for study by the Legislative Research Comm'n. Changes effective date for vendor provisions to Dec. 1, 2002. Makes appropriation for additional securities investigators effective Nov. 1, 2002.