

**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**

Short Title: Strengthen Securities Fraud Enforcement Laws. (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 CREATE A PENSION ASSURANCE FUND TO PROTECT THE RETIREMENT  
17 SAVINGS AND INVESTMENTS OF THE CITIZENS OF NORTH CAROLINA.

18 The General Assembly of North Carolina enacts:

19 **SECTION 1.** The General Statutes Commission is directed to study the  
20 provisions of Senate Bill 1455, 4<sup>th</sup> Edition, Strengthen Securities Fraud Enforcement  
21 Laws, introduced in the 2001 General Assembly, in consultation with the Department of  
22 the Secretary of State, the Securities Industry Association, the North Carolina Bar  
23 Association, and other interested parties, and to make recommendations to the 2003  
24 Regular Session of the 2003 General Assembly.

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

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4 application is denied or withdrawn, the Administrator shall retain the fee."

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

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

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

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

14       ...

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

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

27       "**§ 143-59.2. Certain vendors prohibited from contracting with State.**

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

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

41       (c) Void Contracts. – A contract entered into in violation of this section is void.  
42 A contract that is void under this section may continue in effect until an alternative can  
43 be arranged when: (i) immediate termination would result in harm to the public health  
44 or welfare, and (ii) the continuation is approved by the Secretary of Administration.

1 Approval of continuation of contracts under this subsection shall be given for the  
2 minimum period necessary to protect the public health or welfare.

3 (d) No Duty to Investigate. – Nothing in this section imposes a duty on any  
4 department, institution, or agency of the State government to investigate or verify the  
5 information contained in a vendor's certification."

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

7 **"§ 143-59.1. Contracts with certain foreign vendors.**

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

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

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

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

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

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

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

32 **SECTION 7.** Article 6 of Chapter 147 is amended by adding a new section  
33 to read:

34 **"§ 147-69.4. Pension Assurance Fund established.**

35 (a) Fund Established. – There is established the Pension Assurance Fund in the  
36 Office of the State Treasurer that shall be used to provide a means to protect the  
37 retirement savings and investments of the citizens of North Carolina who are employed  
38 by private industry.

39 (b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the  
40 Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer  
41 shall be the custodian of the Fund and shall invest its assets in accordance with G.S.  
42 147-69.2 and G.S. 147-69.3. Investment earnings credited to the assets of the Fund shall  
43 become part of the Fund. Any balance remaining in the Fund at the end of any fiscal  
44 year shall be carried forward in the Fund for the next succeeding fiscal year.

1       (c) Fund Purposes. – Moneys from the Fund may be used to compensate  
2 individuals who lose a significant portion of their retirement savings, through no fault of  
3 their own, that are invested in 401k plans or other pension plans that are funded in  
4 whole or in part with the stock of their employer companies as the result of a violation  
5 of Chapter 78A of the General Statutes or a violation of the Securities Act of 1933 or  
6 the Securities Exchange Act of 1934. Payments from the Fund shall be made by the  
7 State Treasurer as provided by State law."

8       **SECTION 8.** The State Treasurer, in consultation with the Secretary of  
9 State, shall develop legislative recommendations regarding the best methods for funding  
10 the Pension Assurance Fund established by this act, including the use of punitive  
11 damages and treble damages awarded in actions involving securities fraud brought by  
12 the State or by private individuals, and the proper guidelines for the payment of claims  
13 from the Fund. The Legislative Research Commission may also study this issue. The  
14 State Treasurer and the Secretary of State shall report their recommendations to the  
15 General Assembly on or before March 1, 2003, and if the Legislative Research  
16 Commission authorizes a study of this issue, the State Treasurer shall also forward a  
17 copy of its report to that committee.

18       **SECTION 9.** G.S. 147-69.2(a) reads as rewritten:

19       "(a) This section applies to funds held by the State Treasurer to the credit of:

- 20       (1) The Teachers' and State Employees' Retirement System,
- 21       (2) The Consolidated Judicial Retirement System,
- 22       (3) The Teachers' and State Employees' Hospital and Medical Insurance  
23       Plan,
- 24       (4) The General Assembly Medical and Hospital Care Plan,
- 25       (5) The Disability Salary Continuation Plan,
- 26       (6) The Firemen's and Rescue Workers' Pension Fund,
- 27       (7) The Local Governmental Employees' Retirement System,
- 28       (8) The Legislative Retirement System,
- 29       (9) The Escheat Fund,
- 30       (10) The Legislative Retirement Fund,
- 31       (11) The State Education Assistance Authority,
- 32       (12) The State Property Fire Insurance Fund,
- 33       (13) The Stock Workers' Compensation Fund,
- 34       (14) The Mutual Workers' Compensation Fund,
- 35       (15) The Public School Insurance Fund,
- 36       (16) The Liability Insurance Trust Fund,
- 37       (17) Trust funds of The University of North Carolina and its constituent  
38       institutions deposited with the State Treasurer pursuant to G.S.  
39       116-36.1,
- 40       (17a) North Carolina Veterans Home Trust Fund,
- 41       (17b) North Carolina National Guard Pension Fund,
- 42       (17c) Retiree Health Premium Reserve Account, ~~and~~
- 43       (17d) Pension Assurance Fund, and

1           (18) Any other special fund created by or pursuant to law for purposes  
2           other than meeting appropriations made pursuant to the Executive  
3           Budget Act."

4           **SECTION 10.** There is hereby appropriated to the Office of the Secretary of  
5 State for the 2002-2003 fiscal year the sum of one hundred fifty-one thousand one  
6 hundred twenty-five dollars (\$151,125) for recurring expenses and fifteen thousand nine  
7 hundred ninety dollars (\$15,990) for nonrecurring expenses for three additional  
8 unsworn securities investigators in the Securities Division.

9           **SECTION 11.** Sections 2, 3, and 4 of this act become effective November 1,  
10 2002, and apply to fees assessed on or after that date. Sections 5 and 6 of this act  
11 become effective November 1, 2002, and apply to contracts entered into on or after that  
12 date. The remainder of this act is effective when it becomes law.