

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-126
SENATE BILL 310**

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

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 78A-18(a) reads as rewritten:

"(a) The Administrator may by order deny or revoke any exemption specified in subdivisions (8), (9), (11), or (15) of G.S. 78A-16 or in 78A-17 with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the Administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the Administrator shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within ~~15-20~~ days of the receipt of a written request the matter will be ~~set down~~ scheduled for hearing. hearing in accordance with Chapter 150B of the General Statutes. If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of an opportunity for hearing to all interested persons, may not modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated G.S. 78A-24 or 78A-49(d) by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order."

SECTION 2. G.S. 78A-29(c) reads as rewritten:

"(c) The Administrator may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify each person specified in subsection (d) that it has been entered and of the reasons therefor and that within ~~15~~20 days after the receipt of a written request the matter will be ~~set down~~ scheduled for hearing. hearing in accordance with Chapter 150B of the General Statutes. If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of an opportunity for hearing to each person specified in subsection (d), may modify or vacate the order or extend it until final determination."

SECTION 3. G.S. 78A-39(c) reads as rewritten:

"(c) The Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has

been entered and of the reasons therefor and that within ~~15~~20 days after the receipt of a written request the matter will be ~~set down~~ scheduled for ~~hearing~~ hearing in accordance with Chapter 150B of the General Statutes. If no request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the applicant or registrant and no hearing is ordered by the Administrator, the order shall become final and remain in effect unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination."

SECTION 4. G.S. 78A-47(b)(2) reads as rewritten:

"(2) If the Administrator makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under G.S. 78A-47(b)(1), the Administrator may issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the Administrator shall promptly notify in writing the person subject to the order that such order has been entered, the reasons therefor, and that within 20 days after the receipt of a written request from such person the matter shall be ~~set down~~ scheduled for hearing in accordance with Chapter 150B of the General Statutes to determine whether or not the order shall become permanent and final. If no request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the person subject to the order and no hearing is ordered by the Administrator, the order shall become final and remain in effect unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after giving notice of an opportunity for a hearing to the person subject to the order, shall by written findings of fact and conclusion of law, vacate, modify, or make permanent the order."

SECTION 5. G.S. 78C-19(c) reads as rewritten:

"(c) The Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an investment adviser representative, that it has been entered and of the reasons therefor and that within ~~15~~20 days after the receipt of a written request the matter will be ~~set down~~ scheduled for ~~hearing~~ hearing in accordance with Chapter 150B of the General Statutes. If no request for a hearing, other responsive pleading, or submission is received by the Administrator within 30 business days of receipt of service of notice of the order upon the applicant or registrant and no hearing is ordered by the Administrator, the order shall become final and remain in effect unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination."

SECTION 6. G.S. 78C-28(b)(2) reads as rewritten:

"(2) If the Administrator makes written findings of fact that the public interest will be irreparably harmed by delay in issuing an order under G.S. 78C-28(b)(1), the Administrator may issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the Administrator shall promptly notify in writing the person subject to the order that such order has been entered, the reasons therefor, and that within 20 days after the receipt of a written request from such person the matter shall be ~~set down~~ scheduled for hearing in accordance with Chapter 150B of the General Statutes to determine whether or not the order shall become permanent and final. If no request for a hearing, other responsive pleading, or submission is received by the

Administrator within 30 business days of receipt of service of notice of the order upon the person subject to the order and no hearing is ordered by the Administrator, the order shall become final and remain in effect unless it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after giving notice of an opportunity for a hearing to the person subject to the order, shall by written findings of fact and conclusion of law, vacate, modify, or make permanent the order."

SECTION 7. G.S. 78D-4(e) reads as rewritten:

"(e) If the public interest or the protection of investors so requires, the Administrator may, by order, summarily deny or suspend the exemption for a qualified seller. Upon the entry of the order, the Administrator shall promptly notify the person claiming said status that an order has been entered and the reasons therefor and that within ~~30~~20 days after the receipt of a written request the matter will be ~~set~~ scheduled for hearing. The provisions of G.S. 78D-30 shall apply with respect to all subsequent proceedings."

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

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

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

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

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

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

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

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

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

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

SECTION 9. G.S. 78A-45(a) reads as rewritten:

"(a) This Chapter shall be administered by the Secretary of State. The Secretary of State as Administrator may delegate all or part of the authority under this Chapter to the Deputy Securities Administrator including, but not limited to, the authority to conduct hearings, make, execute and issue final agency orders and decisions. The Secretary of

State may appoint such clerks and other assistants as may from time to time be needed. The Secretary of State may designate one or more hearing officers for the purpose of conducting administrative hearings."

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

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

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

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

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

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

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

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

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

SECTION 13. This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 17th day of
May, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 4:26 p.m. this 25th day of May, 2001