

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 354*

Short Title: Technical Corrections Act.

(Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary II.

March 11, 2003

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING
CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE
GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 78A-17 reads as rewritten:

"§ 78A-17. Exempt transactions.

Except as otherwise provided in this Chapter, the following transactions are
exempted from G.S. 78A-24 and G.S. 78A-49(d):

- (1) Any isolated nonissuer transaction, whether effected through a dealer
or ~~not~~;not.
- (2) Any nonissuer distribution other than by a controlling person of an
outstanding security if
 - a. A recognized securities manual contains the names of the
issuer's officers and directors, a balance sheet of the issuer as of
a date within 18 months, and a profit and loss statement for
either the fiscal year preceding that date or the most recent year
of operations, or
 - b. A registered dealer files with the Administrator such
information relating to the issuer as the Administrator may by
rule or order require, or
 - c. The security has a fixed maturity or a fixed interest or dividend
provision and there has been no default during the current fiscal
year or within the three preceding fiscal years, or during the
existence of the issuer and any predecessors if less than three
years, in the payment of principal, interest, or dividends on the
~~security~~;security.
- (3) Any nonissuer transaction effected by or through a registered dealer
pursuant to an unsolicited order or offer to buy; but the Administrator

- 1 may by rule require that the customer acknowledge upon a specified
2 form that the sale was unsolicited, and that a signed copy of each such
3 form be preserved by the dealer for a specified ~~period~~period.
- 4 (4) Any transaction between the issuer or other person on whose behalf
5 the offering is made and an underwriter, or among
6 ~~underwriters~~underwriters.
- 7 (5) Any transaction in a bond or other evidence of indebtedness secured
8 by a lien or security interest in real or personal property, or by an
9 agreement for the sale of real estate or chattels, if the entire security
10 interest or agreement, together with all the bonds or other evidences of
11 indebtedness secured thereby, is offered and sold as a ~~unit~~unit.
- 12 (6) Any transaction by an executor, administrator, sheriff, marshal,
13 receiver, trustee in bankruptcy, guardian, or ~~conservator~~conservator.
- 14 (7) Any transaction executed by a person holding a bona fide security
15 interest without any purpose of evading this ~~Chapter~~Chapter.
- 16 (8) Any offer or sale to an entity which has a net worth in excess of one
17 million dollars (\$1,000,000) as determined by generally accepted
18 accounting principles, bank, savings institution, trust company,
19 insurance company, investment company as defined in the Investment
20 Company Act of 1940, pension or profit-sharing trust, or other
21 financial institution or institutional buyer, or to a dealer, whether the
22 purchaser is acting for itself or in some fiduciary ~~capacity~~capacity.
- 23 (9) Any transaction pursuant to an offer directed by the offeror to not
24 more than 25 persons, other than those persons designated in
25 subdivision (8), in this State during any period of 12 consecutive
26 months, whether or not the offeror or any of the offerees is then
27 present in this State, if the seller reasonably believes that all the buyers
28 in this State are purchasing for investment. The Administrator may by
29 rule or order withdraw, amend, or further condition this exemption for
30 any security or security transaction. There is established a fee of one
31 hundred fifty dollars (\$150.00) to recover costs for any filing required.
- 32 (10) Any offer or sale of a preorganizational certificate or subscription if:
33 (i) no commission or other remuneration is paid or given directly or
34 indirectly for soliciting any prospective subscriber; (ii) no public
35 advertising or solicitation is used in connection with the offer or sale;
36 (iii) the number of subscribers does not exceed 10 and the number of
37 offerees does not exceed 25; and (iv) no payment is made by any
38 subscriber.
- 39 (11) Any transaction pursuant to an offer to existing security holders of the
40 issuer, including persons who at the time of the transaction are holders
41 of convertible securities, nontransferable warrants, or transferable
42 warrants exercisable within not more than 90 days of their issuance, if
43 (i) no commission or other remuneration (other than a standby
44 commission) is paid or given directly or indirectly for soliciting any

1 security holder in this State, or (ii) the issuer first files a notice
2 specifying the terms of the offer and the Administrator does not by
3 order disallow the exemption within the next 10 full business
4 ~~days;~~days.

5 (12) Any offer (but not a sale) of a security for which registration
6 statements have been filed under both this Chapter and the Securities
7 Act of 1933 if no stop order or refusal order is in effect and no public
8 proceeding or examination looking toward such an order is pending
9 under either ~~aet;~~act.

10 (13) Any offer or sale by a domestic entity of its own securities if (i) the
11 entity was organized for the purpose of promoting community,
12 agricultural or industrial development of the area in which the
13 principal office is located, (ii) the offer or sale has been approved by
14 resolution of the county commissioners of the county in which its
15 principal office is located, and, if located in a municipality or within
16 two miles of the boundaries thereof, by resolution of the governing
17 body of such municipality, (iii) no commission or other remuneration
18 is paid or given directly or indirectly for soliciting any prospective
19 buyer in this State, and (iv) the ~~corporation~~entity is both organized
20 and operated principally to promote some community, industrial, or
21 agricultural development that confers a public benefit rather than
22 organized and operated principally to generate a pecuniary
23 ~~profit;~~profit.

24 (14) Any offer, sale or issuance of securities pursuant to an employees'
25 stock or equity purchase, option, savings, pension, profit-sharing, or
26 other similar benefit plan that is exempt under the provisions of G.S.
27 ~~78A-16(11);~~78A-16(11).

28 (15) Any offer or sale of limited partnership interests in a partnership
29 organized under the North Carolina Uniform Limited Partnership Act
30 for the sole purpose of constructing, owning and operating a low and
31 moderate income rental housing project located in North Carolina if
32 the total amount of the offering and the total number of limited
33 partners, both within and without this State for each such partnership,
34 does not exceed five hundred thousand dollars (\$500,000) and 100
35 respectively. This exemption shall be allowed without limitation as to
36 (i) the number, either in total or within any time period, of separate
37 partnerships which may be formed by the same general partner or
38 partners, sponsors or individuals in which partnership interests are
39 offered; (ii) the period over which such offerings can be made; (iii) the
40 amount of each limited partner's investment; or (iv) the period over
41 which such investment is payable to the partnership. For purposes of
42 this subdivision (15), the term "low and moderate rental housing
43 project" means:

- 1 a. Any housing project with respect to which a mortgage is
2 insured or guaranteed under section 221(d)(3) or 221(d)(4) or
3 236 of the National Housing Act, or any housing project
4 financed or assisted by direct loan, mortgage insurance or
5 guaranty, or tax abatement under similar provisions of federal,
6 State or local laws, whether now existing or hereafter enacted;
7 or
8 b. Any housing project, some or all of the units of which are
9 available for occupancy by families or individuals eligible to
10 receive subsidies under section 8 of the United States Housing
11 Act of 1937, as amended, or under the provisions of other
12 federal, State or local law authorizing similar levels of subsidy
13 for lower income families, whether now existing or hereafter
14 enacted; or
15 c. Any housing project with respect to which a loan is made,
16 insured or guaranteed under Title V, section 515, of the
17 Housing Act of 1949, or under similar provisions of other
18 federal, State or local laws, whether now existing or hereafter
19 enacted.
- 20 (16) Any offer to purchase or to sell or any sale or issuance of a security,
21 other than a security covered under federal law, pursuant to a plan
22 approved by the Administrator after a hearing conducted pursuant to
23 the provisions of G.S. 78A-30 or any transaction incident to any other
24 judicially or governmentally approved reorganization in which a
25 security is issued in exchange for one or more outstanding securities,
26 claims or property interests, or partly in such exchange and partly cash.
- 27 (17) Any transaction that is exempt pursuant to rules established by the
28 Administrator creating limited offering transactional exemptions that
29 are consistent with the objectives of compatibility with federal limited
30 offering exemptions and uniformity among the states. There is
31 established a fee of one hundred fifty dollars (\$150.00) to recover
32 costs for any filing required by such rules.
- 33 (18) Any transaction incident to a class vote by security holders, pursuant
34 to the articles of incorporation or similar organizational document or
35 the applicable statute governing the internal affairs of the entity, on a
36 merger, conversion, consolidation, share exchange, reclassification of
37 securities, or sale of an entity's assets in consideration of the issuance
38 of securities of entity.
- 39 (19) Any offer or sale of any viatical settlement contract or any
40 fractionalized or pooled interest therein by the issuer in a transaction
41 that meets all of the following criteria:
42 a. The underlying viatical settlement transaction with the viator
43 was not in violation of any applicable state or federal law; and

1 b. The offer and sale of such contract or interest therein is
2 conducted in accordance with such conditions as the
3 Administrator requires by rule or order, including conditions
4 governing advertising, suitability standards, financial
5 statements, the investor's right of rescission, and the disclosure
6 of information to offerees and purchasers.

7 The Administrator may establish a fee to recover costs for any filing
8 required by such rules, not to exceed five hundred dollars (\$500.00)."

9 **SECTION 2.** This act is effective when it becomes law.