

House Bill 78

By: Representatives Kendrick of the 93rd, Stephens of the 164th, Epps of the 144th, Kelley of the 16th, Strickland of the 111th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 10 of the Official Code of Georgia Annotated, relating to
2 Georgia uniform securities, so as to clarify a defined term; to provide for rules adopted by
3 the Secretary of State regarding notice filing of certain securities; to provide for the recovery
4 of court costs in civil liability actions related to the sale of securities; to provide for related
5 matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 5 of Title 10 of the Official Code of Georgia Annotated, relating to Georgia uniform
9 securities, is amended in Code Section 10-5-2, relative to definitions, by revising paragraph
10 (29) as follows:

11 "(29) 'Sale' includes every contract of sale, contract to sell, or disposition of a security
12 or interest in a security for value. 'Offer to sell' includes every attempt or offer to dispose
13 of or solicitation of an offer to purchase a security or interest in a security for value. Both
14 terms include:

15 (A) A security given or delivered with or as a bonus on account of a purchase of
16 securities or any other thing constituting part of the subject of the purchase and having
17 been offered and sold for value;

18 (B) A gift of assessable stock involving an offer and sale; and

19 (C) A sale or offer of a warrant or right to purchase or subscribe to another security of
20 the same or another issuer and a sale or offer of a security that gives the holder a
21 present or future right or privilege to convert the security into another security of the
22 same or another issuer, including an offer of the other security."

23 **SECTION 2.**

24 Said chapter is further amended by revising Code Section 10-5-21, relating to filing of
25 records, as follows:

26 "10-5-21.

27 (a) With respect to a federal covered security, as defined in Section 18(b)(2) of the
28 Securities Act of 1933, 15 U.S.C. Section 77r(b)(2), that is not otherwise exempt under
29 Code Sections 10-5-10 through 10-5-12, a rule adopted or order issued under this chapter
30 may require the filing of any or all of the following records:

31 (1) Before the initial offer of a federal covered security in this state, all records that are
32 part of a federal registration statement filed with the Securities and Exchange
33 Commission under the Securities Act of 1933, 15 U.S.C. Section 77a, et seq., and a
34 consent to service of process complying with Code Section 10-5-80 signed by the issuer
35 and the payment of a fee of \$250.00;

36 (2) After the initial offer of the federal covered security in this state, all records that are
37 part of an amendment to a federal registration statement filed with the Securities and
38 Exchange Commission under the Securities Act of 1933, 15 U.S.C. Section 77a, et seq.;

39 and

40 (3) To the extent necessary or appropriate to compute fees, a report of the value of the
41 federal covered securities sold or offered to persons present in this state, if the sales data
42 are not included in records filed with the Securities and Exchange Commission and
43 payment of a fee of \$250.00.

44 (b) A notice filing under subsection (a) of this Code section is effective for one year
45 commencing on the later of the notice filing or the effectiveness of the offering filed with
46 the Securities and Exchange Commission. On or before expiration, the issuer may renew
47 a notice filing by filing a copy of those records filed by the issuer with the Securities and
48 Exchange Commission that are required by rule adopted or order issued under this chapter
49 to be filed and by paying a renewal fee of \$100.00. A previously filed consent to service
50 of process complying with Code Section 10-5-80 may be incorporated by reference in a
51 renewal. A renewed notice filing becomes effective upon the expiration of the filing being
52 renewed.

53 (c) With respect to a security that is a federal covered security under Section 18(b)(4)(D)
54 of the Securities Act of 1933, 15 U.S.C. Section 77r(b)(4)(D), a rule adopted under this
55 chapter may require a notice filing by or on behalf of an issuer to include a copy of Form
56 D, including the Appendix, as promulgated by the Securities and Exchange Commission,
57 and a consent to service of process complying with Code Section 10-5-80 signed by the
58 issuer not later than 15 days after the first sale of the federal covered security in this state
59 and the payment of a fee of \$250.00.

60 (d) With respect to a security that is a federal covered security under Section 18(b)(3) of
61 the Securities Act of 1933, 15 U.S.C. Section 77r(b)(3), a rule adopted under this chapter
62 may require a notice filing, prior to the initial offer of a federal covered security in this

63 state, by or on behalf of an issuer, to include a copy of a federal registration statement filed
 64 with the Securities and Exchange Commission under the Securities Act of 1933, 15 U.S.C.
 65 Section 77a, et seq., a consent to service of process complying with Code Section 10-5-80
 66 signed by the issuer, and the payment of a fee of \$250.00.
 67 (e) Except with respect to a federal security under Section 181(b)(1) of the Securities Act
 68 of 1933, 15 U.S.C. Section 77r(b)(1), if the Commissioner finds that there is a failure to
 69 comply with a notice or fee requirement of this Code section, the Commissioner may issue
 70 a stop order suspending the offer and sale of a federal covered security in this state. If the
 71 deficiency is corrected, the stop order is void as of the time of its issuance and no penalty
 72 may be imposed by the Commissioner."

73

SECTION 3.

74 Said chapter is further amended in Code Section 10-5-58, relating to enforcement of civil
 75 liability and damages, by revising paragraph (1) of subsection (b) as follows:

76 "(1) The purchaser may maintain an action to recover the consideration paid for the
 77 security, less the amount of any income received on the security, and interest at the legal
 78 rate of interest from the date of the purchase, costs, court costs, and reasonable attorney
 79 fees determined by the court upon the tender of the security or for actual damages as
 80 provided in paragraph (3) of this subsection;"

81

SECTION 4.

82 All laws and parts of laws in conflict with this Act are repealed.