

ASSEMBLY, No. 125

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen JONES and LUSTBADER

1 AN ACT concerning civil liability for the fraudulent sale of securities
2 and amending P.L.1967, c.93.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 24 of P.L.1967, c. 93 (C.49:3-71) is amended to read as
8 follows:

9 24. (a) Any person who

10 (1) Offers or sells a security in violation of section 5, 8(b), 9(a) or
11 13 of this act, or

12 (2) Offers or sells a security by means of any untrue statement of
13 material fact or any omission to state a material fact necessary in order
14 to make the statements made, in the light of the circumstances under
15 which they are made, not misleading (the buyer not knowing of the
16 untruth or omission), is liable to the person buying the security from
17 him, who may sue to recover the consideration paid for the security,
18 together with interest at 12% per year from the date of payment and
19 costs, less the amount of any income received on the security, upon
20 the tender of the security and any income received on it, or for
21 damages if he no longer owns the security; provided, however, that the
22 person buying the security must sustain the burden of proof that the
23 seller knew of the untruth or omission and intended to deceive the
24 buyer, and provided further that the buyer has suffered a financial
25 detriment. Damages are the amount that would be recoverable upon
26 a tender less the value of the security when the buyer disposed of it
27 and interest at 12% per year from the date of disposition;

28 (b) Every person who directly or indirectly controls a seller liable
29 under paragraph (a), every partner, officer, or director of such a seller,
30 every person occupying a similar status or performing similar
31 functions, every employee of such a seller who materially aids in the
32 sale, and every broker-dealer or agent who materially aids in the sale

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 are also liable jointly and severally with and to the same extent as the
2 seller, unless the nonseller who is so liable sustains the burden of proof
3 that he did not know, and in the exercise of reasonable care could not
4 have known, of the existence of the facts by reason of which the
5 liability is alleged to exist. There is contribution as in cases of contract
6 among the several persons so liable;

7 (c) Any tender specified in this section may be made at any time
8 before entry of judgment;

9 (d) Every cause of action under this law survives the death of any
10 person who might have been a plaintiff or defendant;

11 (e) No person may sue under this section more than two years after
12 the contract of sale, or within two years of the time when the person
13 aggrieved knew or should have known of the existence of his cause of
14 action, whichever is later. No person may sue under this section (1)
15 if the buyer received a written offer, before suit and at a time when he
16 owned the security, to refund the consideration paid, together with
17 interest at 12% per year from the date of payment, less the amount of
18 any income received on the security, and he failed to accept the offer
19 within 30 days of its receipt, or (2) if the buyer received such an offer
20 before suit and at a time when he did not own the security, unless he
21 rejected the offer in writing within 30 days of its receipt;

22 (f) No person who has made or engaged in the performance of any
23 contract in violation of any provision of this law or any rule or order
24 hereunder, or who has acquired any purported right under any such
25 contract with knowledge of the facts by reason of which its making or
26 performance was in violation, may base any suit on the contract;

27 (g) Any condition, stipulation or provision binding any person
28 acquiring any security to waive compliance with any provision of this
29 law or any rule or order hereunder is void;

30 (h) The rights and remedies provided by this act are in addition to
31 any other rights or remedies that may exist at law or in equity, but this
32 law does not create any cause of action not specified in this section or
33 section 10, paragraph (e).

34 (cf: P.L.1985, c.405, s.14)

35
36 2. This act shall take effect immediately.

37 38 39 STATEMENT

40
41 This bill would include violations of section 5 of P.L.1967, c.93
42 (C.49:3-52) under the section of the "Uniform Securities Law (1967),"
43 P.L.1967, c.93 (C.49:3-47 et seq.), which allows for the recovery of
44 civil damages. Any person offering or selling a security in a manner
45 prohibited by that section would be liable to the person buying the
46 security, who then could proceed as permitted under the law in order

1 to recover the amount paid for the security, plus or minus certain other
2 amounts, in addition to other damages.

3

4

5

6

7 Concerns civil liability for fraudulent sale of securities.