



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB2969

by Rep. Mike Smiddy

SYNOPSIS AS INTRODUCED:

815 ILCS 5/13

from Ch. 121 1/2, par. 137.13

Amends language in the Illinois Securities Law of 1953 providing that the 3-year period for seeking specified relief under the Act begins to run on the earlier of the date the party bringing the action has actual knowledge of the alleged violation or the date the party bringing the action has notice of facts which in the exercise of reasonable diligence would lead to actual knowledge of the alleged violation. Deletes language providing that the period of limitation may not be extended more than 2 years beyond the expiration of the 3-year period. Effective immediately.

LRB098 10745 JLS 41091 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Securities Law of 1953 is amended
5 by changing Section 13 as follows:

6 (815 ILCS 5/13) (from Ch. 121 1/2, par. 137.13)

7 Sec. 13. Private and other civil remedies; securities.

8 A. Every sale of a security made in violation of the
9 provisions of this Act shall be voidable at the election of the
10 purchaser exercised as provided in subsection B of this
11 Section; and the issuer, controlling person, underwriter,
12 dealer or other person by or on behalf of whom said sale was
13 made, and each underwriter, dealer or salesperson who shall
14 have participated or aided in any way in making the sale, and
15 in case the issuer, controlling person, underwriter or dealer
16 is a corporation or unincorporated association or
17 organization, each of its officers and directors (or persons
18 performing similar functions) who shall have participated or
19 aided in making the sale, shall be jointly and severally liable
20 to the purchaser as follows:

21 (1) for the full amount paid, together with interest
22 from the date of payment for the securities sold at the
23 rate of the interest or dividend stipulated in the

1 securities sold (or if no rate is stipulated, then at the
2 rate of 10% per annum) less any income or other amounts
3 received by the purchaser on the securities, upon offer to
4 tender to the seller or tender into court of the securities
5 sold or, where the securities were not received, of any
6 contract made in respect of the sale; or

7 (2) if the purchaser no longer owns the securities, for
8 the amounts set forth in clause (1) of this subsection A
9 less any amounts received by the purchaser for or on
10 account of the disposition of the securities.

11 If the purchaser shall prevail in any action brought to
12 enforce any of the remedies provided in this subsection, the
13 court shall assess costs together with the reasonable fees and
14 expenses of the purchaser's attorney against the defendant. Any
15 provision of this subsection A to the contrary notwithstanding,
16 the civil remedies provided in this subsection A shall not be
17 available against any person by reason of the failure to file
18 with the Secretary of State, or on account of the content of,
19 any report of sale provided for in subsection G or P of Section
20 4, paragraph (2) of subsection D of Sections 5 and 6, or
21 paragraph (2) of subsection F of Section 7 of this Act.

22 B. Notice of any election provided for in subsection A of
23 this Section shall be given by the purchaser within 6 months
24 after the purchaser shall have knowledge that the sale of the
25 securities to him or her is voidable, to each person from whom
26 recovery will be sought, by registered mail or certified mail,

1 return receipt requested, addressed to the person to be
2 notified at his or her last known address with proper postage
3 affixed, or by personal service.

4 C. No purchaser shall have any right or remedy under this
5 Section who shall fail, within 15 days from the date of receipt
6 thereof, to accept an offer to repurchase the securities
7 purchased by him or her for a price equal to the full amount
8 paid therefor plus interest thereon and less any income thereon
9 as set forth in subsection A of this Section. Every offer of
10 repurchase provided for in this subsection shall be in writing,
11 shall be delivered to the purchaser or sent by registered mail
12 or certified mail, return receipt requested, addressed to the
13 purchaser at his or her last known address, and shall offer to
14 repurchase the securities sold for a price equal to the full
15 amount paid therefor plus interest thereon and less any income
16 thereon as set forth in subsection A of this Section. Such
17 offer shall continue in force for 15 days from the date on
18 which it was received by the purchaser, shall advise the
19 purchaser of his or her rights and the period of time limited
20 for acceptance thereof, and shall contain such further
21 information, if any, as the Secretary of State may prescribe.
22 Any agreement not to accept or refusing or waiving any such
23 offer made during or prior to said 15 days shall be void.

24 D. No action shall be brought for relief under this Section
25 or upon or because of any of the matters for which relief is
26 granted by this Section after 3 years from the date of sale;

1 provided, that if the party bringing the action neither knew
2 nor in the exercise of reasonable diligence should have known
3 of any alleged violation of subsection E, F, G, H, I or J of
4 Section 12 of this Act which is the basis for the action, the 3
5 year period provided herein shall begin to run upon the earlier
6 of:

7 (1) the date upon which the party bringing the action
8 has actual knowledge of the alleged violation of this Act;
9 or

10 (2) the date upon which the party bringing the action
11 has notice of facts which in the exercise of reasonable
12 diligence would lead to actual knowledge of the alleged
13 violation of this Act; ~~but in no event shall the period of~~
14 ~~limitation so extended be more than 2 years beyond the~~
15 ~~expiration of the 3 year period otherwise applicable.~~

16 E. The term purchaser as used in this Section shall include
17 the personal representative or representatives of the
18 purchaser.

19 F. Anything in this Act to the contrary notwithstanding and
20 in addition to all other remedies, the Secretary of State
21 through the Office of the Attorney General may bring an action
22 in any circuit court of the State of Illinois in the name and
23 on behalf of the State of Illinois against any person or
24 persons participating in or about to participate in a violation
25 of this Act to enjoin those persons who are continuing or doing
26 any act in violation of this Act or to enforce compliance with

1 this Act. Upon a proper showing the court may grant a permanent
2 or preliminary injunction or temporary restraining order
3 without bond, and may order the defendant to make an offer of
4 rescission of any sales or purchases of securities determined
5 by the court to be unlawful under this Act. The court shall
6 further have jurisdiction and authority, in addition to the
7 other penalties and remedies in this Act provided, to act or
8 appoint another person as a receiver, conservator, ancillary
9 receiver or ancillary conservator for the defendant or the
10 defendant's assets located in this State and may assess costs
11 against the defendant for the use of the State.

12 G. (1) Whenever any person has engaged or is about to
13 engage in any act or practice constituting a violation of this
14 Act, any party in interest may bring an action in the circuit
15 court of the county in which the party in interest resides, or
16 where the person has his, her or its principal office or
17 registered office or where any part of the transaction has or
18 will take place, to enjoin that person from continuing or doing
19 any act in violation of or to enforce compliance with this Act.
20 Upon a proper showing, the court shall grant a permanent or
21 preliminary injunction or temporary restraining order or
22 rescission of any sales or purchases of securities determined
23 to be unlawful under this Act, and may assess costs of the
24 proceedings against the defendant.

25 (2) A copy of the complaint shall be served upon the
26 Secretary of State within one business day of filing in the

1 form and manner prescribed by the Secretary of State by rule or
2 regulation; provided, that the failure to comply with this
3 provision shall not invalidate the action which is the subject
4 of the complaint.

5 H. Any provision of this Section 13 to the contrary
6 notwithstanding, neither the civil remedies provided in
7 subsection A of this Section 13 nor the remedies of rescission
8 and appointment of a receiver, conservator, ancillary receiver
9 or ancillary conservator provided in subsection I of Section 11
10 of this Act and in subsections F and G of this Section 13 of
11 this Act nor the remedies of restitution, damages or
12 disgorgement of profits provided in subsection I of Section 11
13 of this Act shall be available against any person by reason of
14 the failure to file with the Secretary of State, or on account
15 of the contents of, any notice filing under Section 2a of this
16 Act or subsection C-5 of Section 8 of this Act or any report of
17 sale provided for in subsection G or P of Section 4, paragraph
18 (2) of subsection D of Sections 5 and 6, or paragraph (2) of
19 subsection F of Section 7 of this Act.

20 (Source: P.A. 89-209, eff. 1-1-96; 89-626, eff. 8-9-96; 90-70,
21 eff. 7-8-97.)

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.