

AN ACT concerning business.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) the date upon which 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 of this Act; ~~but in no event shall the period of limitation so extended be more than 2 years beyond the expiration of the 3 year period otherwise applicable.~~

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

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

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

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

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

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

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

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

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