

49: 1-1 et seq.

July 12, 1971

LEGISLATIVE HISTORY OF R.S.49:1-1 et seq.
(Sale of securities)

1903 through 1953

COPY 1

For mts. see
copy 2.

L.1903 - Chap.182 - S-232.

Not amended during passage.
Bill had no statement.

L.1906 - Chap.331 - A-495.

Committee Substitute passed (copy enclosed of original
bill and committee substitute).
Bill had no statement

L.1907 - Chap.250 - S-24

Repealed Laws of 1903 Chap.182.
Bill had no statement.

L.1920 - Chap.234 - A-13.

Jan.14 - Introduced by Fritt.

Committee substitute passed (copy enclosed of original
bill and committee substitute).

Public hearing - announced March 30, 1920. If this hearing
was ever held, the State Library has no transcripts from it.
Bill had statement. (copy enclosed)

L.1923 - Chap.59 - S-202.

Feb.5 - Introduced by Parry.

Not amended during passage.

Bill had statement. (copy enclosed)

L.1927 - Chap.79 - S-21.

Jan.17 - Introduced by Abell.

Amended during passage. (copy enclosed of original bill
and amendments.)

Bill had statement (copy enclosed)

L.1930 - Chap.52 - S-205.

Feb.4 - Introduced by Yates.

Committee substitute passed (copy enclosed of original bill
and committee substitute).

Bill had statement (copy enclosed)

L.1931 - Chap.381 - S-68.

Jan.26 - Introduced by Leap.

Not amended during passage.

Bill had statement. (copy enclosed)

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L.1931 - Chap.226 - A-52.

Jan.9 - Introduced by Grimm.

Amended during passage. (copy enclosed of original bill and amendments.)

Bill had statement. (copy enclosed)

L.1953 - Chap.46 - S-42.

Jan.13 - Introduced by Clapp.

Not amended during passage.

No statement.

Articles are enclosed from the New Jersey Legislative Index of 1920 on the subject of the "Blue Sky Law".

The State Library also has the annual reports from 1929-34 of the Division of Securities of the Attorney General's office.

No hearings or reports, other than those annual reports mentioned above, were located.

JH/EH
Encl.

1916
The Blue Sky Law

The State Chamber has been impressed with the apparent lack of interest on the part of the public in A. 13, which the synopsis laconically announces is a "Blue Sky Law" to prevent selling worthless stocks.

This bill has passed the Assembly and is now in the Senate. In Kansas and Michigan there have been similar laws in operation for some time, and a brief report is now being prepared to show the experience in those States and the effect of such statutes. Meanwhile, it may be opportune to present the report of the New York State Bar Association as an indication of the need for giving serious consideration to this subject before imposing the provision of A. 13 on New Jersey. The report follows:

Stock swindles, involving a further consideration of "Blue Sky" laws, have engaged the attention of public authorities in New York City; the licensing of brokers was suggested as a remedy, but it failed to receive complete agreement among the authorities; restrictive legislation proceeds in other States, but whether it ever operates to curtail swindles we are not fully advised.

The Governor of this State has appointed a committee of well-known financiers to advise him respecting some program of legislation to discourage swindles.

The subject has engaged the attention of committees of the Investment Bankers' Association of America, who have found that existing laws in their zeal to discourage swindles have been framed with an eye single to that end without due regard to the effect upon legitimate enterprise. It should not be lost to view that any repression of the facilities through established channels to secure new capital for the development of industry, reacts, unfortunately, upon the whole business structure. It has been the experience (we are told) of the members of the Investment Bankers' Association that the restrictions of the so-called Blue Sky laws, designed to prevent swindling through the sale of stocks and bonds, have in some States so far discouraged the legitimate disposal of securities of new and promising enterprises, through the delay and congestion of satisfactory investigation by State bureaus, as to substantially close the markets of those States to new industrial securities, and thus to encourage the operations within those States of desperate characters who are willing to take the risk of defiance and disregard of the law; so that the law has had an effect directly opposite to its design; and where the processes of investigation are slow and the inadequate bureaus congested, such securities as do percolate through are so long delayed in admission to the State that the bankers of the State and their investing associates are deprived of the opportunity to participate in the advantages of promotion. The profits of legitimate investment banking are dependent in large measure upon quick processes in the turning over of banking capital and the early transfer from the banking intermediary to the investing public. To the extent that the laborious processes of preliminary State investigation retard this method, they discourage enterprise, curtail profit, prevent investment and injure industry. We have learned of investment bankers of large resources and great responsibility who consider themselves excluded from offerings or dealings in one of the largest and richest States in the Union on account of the vexatious requirements of its Blue Sky laws, which, by their inevitable delays, make such banking impossible.

We are advised that the Blue Sky laws and their administration have now gravitated into types; and that none of them has met the promise of their sponsors; that those which are least vexatious, and therefore least embarrassing, to legitimate banking, are innocuous alike to both honest and dishonest enterprises; that this type being one designed merely to secure publicity is characterized as the filing system, whose chief requirement is the filing of information in a public office, where it accumulates in such masses as to prove harmless but practically inaccessible; that another type is severe in its requirements, but lax in its enforcement; that this type has evolved into one where temporary permits are granted to houses of known good repute, to be followed at the convenience of the office by full investigation and the substitution of a permanent approval; the theoretical risk to the bankers of proceeding under the temporary permit, with the possibility

of being responsible for all of the penalties of the law in the case of refusal of permanent approval is a discouragement to houses of responsibility, while it offers no discouragement to those of no responsibility, to whom the risk is no terror; that the third type is consistent in its exactions, following the vexatious letter of the law conscientiously, with the result that in direct proportion to the painstaking care is the congestion and delay in the inadequately manned bureaus; and that this type practically closes the markets of the State to all but those who can afford to await indefinitely the slow processes of the bureaus, and those who defiantly disregard them and do not fear the consequences—the latter, the very class of swindlers at whom the laws are aimed.

There is a type of lawmakers who, seizing the most obvious methods, very closely resembles Herod of old, willing to slaughter all of the innocents in a vain attempt to catch the only enemy, who escapes.

The legislative committee of the Investment Bankers' Association, after a careful consideration of the effects of the Blue Sky legislation upon legitimate enterprise and the swindlers which it was designed to prevent, has reached the conclusion that it has everywhere failed of its purpose; that it curbs legitimate enterprise, while offering no serious barrier to deliberate swindles. This committee is, we understand, now prepared to recommend a change in the type of the laws so as to reserve the power for use in suspicious cases without presenting a barrier of vexation and delay to all legitimate enterprise. They do not especially favor a licensing system; they point out that as developed it has two serious objections; it is used by the unscrupulous for purposes of deception; these represent that it imports a governmental guaranty; and the license fees are usually fixed without regard to the aggregate exacted by other States, so that the aggregate license tax becomes more than the legitimate traffic will bear; and curious results are wrought or threatened in directions that the lawmakers probably never conceived, such, for instance, as the taxation of a whole issue because it is advertised in a magazine of national circulation sold within the State, though only a small fraction of the issue would in any event be allotted within the State, the prohibitive tax resulting in excluding the entire issue from the State.

The committee of the Investment Bankers' Association has carefully examined into these various unexpected and absurd results, the aggregate effect of which is to cripple legitimate industry, and is prepared to recommend that a new departure in such laws be made which will admit of normal business activity, but which will enable and require the State Bureau to keep alert to prevent swindles by watching suspicious issues and instituting immediate and searching scrutiny thereof, with the power to enjoin sales of specific issues pending such investigation, without holding up hosts of legitimate transactions of reputable enterprises because there may be a swindle among them.

We make no recommendations save those of a negative character; Blue Sky laws of any present type are said to be one and all substantially a failure in that they are either inoperative or they promote swindles and discourage legitimate transactions by delay, by unreasonable requirements and by expense. The best sort of a rifle shot is said to be one that can hit the mark if it is a bear and miss it if it is a calf, but there are few such skilful sportsmen. The Blue Sky law does not yet seem to have been evolved which will exhibit the same skill, though there are examples of laws of the reverse efficiency.

The State Chamber, through the columns of the *LEGISLATIVE INDEX*, is advocating the repeal of Chapters 13, 14, 16 and 19 of the Laws of 1913, and is basing its recommendations upon the grounds that there is more need for research as a foundation for the promotion of business enterprise than there is for experimental legislation.

A. 13 is not generally understood, and the far-reaching effect of its provisions are not appreciated. There should be no objection to having the subject held over for another year in order to determine, meanwhile, if the Blue Sky law is that character of legislation which is necessary or desired by the business interests and the citizens of New Jersey.

STATE OF NEW JERSEY

INTRODUCED JANUARY 17, 1927.

By Mr. ABELL.

Referred to Committee on Banks and Insurance.

AN ACT declaring unlawful certain practices in connection with the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, advertisement or distribution of securities within this State, and providing for the investigation and prevention of such practices.

1 BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1 1. This act may be cited as the New Jersey Securities act.

1 2. The use or employment by any person, partnership, corporation, company or
2 association of any deception, misrepresentation, concealment, suppression, fraud,
3 false pretense, false promise and fictitious or pretended purchase or sales, in connec-
4 tion with the issuance, sale, offer for sale, purchase, offer to purchase, promotion,
5 negotiation, advertisement or distribution within this State of any stocks, bonds,
6 notes, debentures, evidences of indebtedness, certificates of interest or participation,
7 interim certificates or receipts, foreign currency orders or calls or options therefor,
8 or other instruments commonly known as securities, hereinafter called securities, are
9 hereby declared to be illegal practices and are hereby prohibited.

1 3. Whenever it shall appear to the Attorney-General, either upon complaint or
2 otherwise, that any person, partnership, corporation, company, or association, has
3 engaged in, or is engaging in, or is about to engage in, any practice declared to be
4 illegal and prohibited by this act, or whenever the Attorney-General believes it to be
5 in the public interest that an investigation of any such matters should be made, he,
6 or any assistant attorney-general or other officer designated by him, may

7 (a) Require or permit such person, partnership, corporation, company, or as-

8 sociation to file with him on such forms as he may prescribe, a statement or report
9 in writing under oath or otherwise, as to all the facts and circumstances concerning
10 the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation,
11 advertisement or distribution, of securities, within this State, by said person, part-
12 nership, corporation, company or association, and such other data and information
13 as he may deem relevant and material thereto.

14 (b) Examine the promoter, seller, broker, dealer, negotiator, advertiser and issuer
15 of any such securities, and any agents, employees, partners, officers, directors, members
16 or stockholders thereof, under oath; and examine such records, books, documents,
17 accounts and papers as may be relevant or material to the inquiry.

18 (c) Administer an oath or affirmation to any witness whose testimony may be
19 required, compel the appearance and attendance of any such person for the purpose
20 of examination, by subpoena ad testificandum, or order the production of any rec-
21 ords, books, documents, accounts and papers, by subpoena duces tecum; the subpoena
22 herein provided for may be served by any police officer, or constable, of the State
23 of New Jersey, or by any person designated by the Attorney-General.

1 4. In case any person, partnership, corporation, company or association shall
2 fail, or refuse to file any such statement or report, or shall fail or refuse to obey
3 such subpoena, or to give testimony, or to answer questions as required, or to pro-
4 duce any books, records, documents, accounts or papers as required, the Court of
5 Chancery of this State, upon application made to it and upon proof being made of
6 such failure or refusal, may make an order awarding process of subpoena or sub-
7 pena duces tecum, out of the said court for such witness to appear and testify be-
8 fore the Attorney-General, any assistant attorney-general or other officer designated
9 by him as aforesaid, and may make an order or orders that any person give testi-
10 mony and answer questions as required, and produce books, records, documents, ac-
11 counts or papers as required; and upon filing such order in the clerk's office of the
12 said Court of Chancery, it shall be the duty of the said clerk, under the seal of said
13 court, to issue process of subpoena to appear before the Attorney-General or the per-
14 son designated by him as aforesaid at a time and place named therein, and so from
15 day to day until the examination of such person shall be completed; and said sub-
16 pena may contain a direction that such witness bring with him to such examination

17 any books, records, documents, accounts or papers therein mentioned, and it shall
18 also be the duty of said clerk to issue, under the seal of said court, such other or
19 further order in reference to the examination, appearance and production of books,
20 records, documents, accounts or papers as aforesaid as said court shall direct; and
21 in case any person so summoned by subpoena issued by said clerk as aforesaid, shall
22 fail or refuse to obey such subpoena or to answer any direction therein, or to give
23 testimony, or to answer questions as required, or to produce any books, records,
24 documents, accounts or papers as required, or in case any such person shall fail or
25 refuse to obey any order, the court, on motion supported by proof, may order an at-
26 tachment for contempt to be issued against any person charged with disobedience to
27 any order or injunction issued out of the Court of Chancery pursuant to this act;
28 and if the person so offending shall be brought before the court by virtue of said at-
29 tachment, and if upon a hearing such disobedience shall appear, the court, in its
30 discretion, may order such offender to be committed and kept in close custody until
31 it shall further order therein.

1 5. In case any person, partnership, corporation, company or association shall fail
2 or refuse to file any such statement or report, or shall fail or refuse to obey any sub-
3 pena, the issuance of which is provided for in this act, or to produce books, records,
4 documents, accounts or papers, or to give testimony or to answer questions, as required
5 by this act, the Attorney-General, any assistant attorney-general or other officer des-
6 ignated by him, in addition to the other remedies provided for herein, may apply to
7 the Court of Chancery for, and upon proof of such failure or refusal the court may
8 order an injunction restraining the issuance, sale, offer for sale, purchase, offer to
9 purchase, promotion, negotiation, advertisement or distribution within this State of
10 securities, by such person, partnership, corporation, company, or association, and
11 any agents, employees, brokers, partners, officers, directors, and stockholders thereof,
12 until the filing of the statement or report, the compliance with such subpoena, the
13 production specified therein, the giving of testimony and the answering of questions,
14 and for such other and further relief as the facts may warrant.

1 6. Whenever it shall appear to the Attorney-General from any report or state-
2 ment filed, or from any examination made as provided for in this act, any person,
3 partnership, corporation, company, or association has engaged in, or is engaging in,

4 or is about to engage in, any practice declared to be illegal and prohibited by this
5 act, he, or any assistant attorney-general or other officer designated by him, may ap-
6 ply to the Court of Chancery for, and upon proof of the violation of this act, the
7 court may order an injunction restraining such person, partnership, corporation,
8 company, or association, and any agents, employees, brokers, partners, officers, direc-
9 tors, and stockholders thereof, from continuing such practices or engaging therein or
10 doing any acts in furtherance thereof within this State, and for such other and fur-
11 ther relief as the facts may warrant.

1 7. The Court of Chancery being satisfied of the sufficiency of the application
2 therefor and the proof thereof, in cases showing the use of any practices declared
3 to be illegal and prohibited by this act, may appoint a receiver with power to sue
4 for, collect, receive and take into his possession all the goods and chattels, rights
5 and credits, moneys and effects, lands and tenements, books, records, documents,
6 papers, choses in action, bills, notes and property of every description, derived by
7 means of any practice declared to be illegal and prohibited by this act, including
8 also all property with which such property has been mingled, if such property can-
9 not be identified in kind because of such commingling, and sell, convey and assign
10 the same, and hold and dispose of the proceeds thereof under the direction of the
11 Court of Chancery; and the court shall have jurisdiction of all questions arising in
12 said proceedings and may make such orders and decrees therein as justice and
13 equity shall require.

1 8. If any person shall ask to be excused from testifying or producing any
2 book, paper or other document before the Attorney-General or any assistant attor-
3 ney-general, or other officer designated by him, or before the Chancellor, a vice-chan-
4 cellor, master or officer conducting the inquiry, upon any trial, investigation or pro-
5 ceeding initiated by the Attorney-General pursuant to the provisions of this act upon
6 the ground or for the reason that the testimony or evidence, documentary or other-
7 wise, required of him may tend to incriminate him or to convict him of a crime or
8 to subject him to a penalty or forfeiture, and shall, notwithstanding, be directed by
9 the Chancellor, a vice-chancellor, master or officer conducting the inquiry to testify
10 or to produce such book, paper or document, he must, nonetheless, comply with
11 such direction, but in such event he shall not thereafter be prosecuted or subjected

12 to any penalty or forfeiture for or on account of any transaction, matter or thing
 13 concerning which he may testify or produce evidence, documentary or otherwise,
 14 pursuant thereto, and no testimony so given or produced shall be received against
 15 him upon any criminal action, suit or proceeding, investigation, inquisition or in-
 16 quiry; *provided, however*, no person so testifying shall be exempt from prosecution
 17 or punishment for any perjury committed by him in his testimony given as herein
 18 provided for, nor shall immunity apply to corporations or to the officers as such.

1 9. For the purpose of carrying into effect the provisions of this act, the Attor-
 2 ney-General may in his discretion, and without civil service examination, appoint
 3 and employ, and at pleasure remove, such assistants, officers and other persons as
 4 he deems necessary, define and determine their duties and authority and fix their
 5 compensation.

1 10. The Attorney-General of the State is hereby authorized to expend annually,
 2 in the administration of this act, a sum not exceeding twelve thousand dollars; *pro-*
 3 *vided*, such sum shall be regularly appropriated in any annual or supplemental ap-
 4 propriation bill.

1 11. In case for any reason any section or part of any section or any provision
 2 of this act shall be questioned in any court and shall be held to be unconstitutional
 3 or invalid, the same shall not be held to affect any other section or part of any sec-
 4 tion or provision of this act.

1 12. All acts and parts of acts inconsistent with this act be and the same are
 2 hereby repealed.

STATEMENT.

Harm to the economic life and health of this State is brought about through the
 use of all sorts of deceptive schemes imposed on the public in the purchase and sale of
 stocks, bonds, and other papers in the form of securities. The subject is of wide impor-
 tance to the community and the consequences of such schemes are generally injurious.
 It is within the protective power of the State and is a matter of public concern to inter-
 vene, to check, suppress, and prevent such evils, and such is the purpose of this act.

STATE OF NEW JERSEY

ADOPTED FEBRUARY 15, 1927.

1 Amend section two, line three, by striking out the word "and" and inserting in
2 lieu thereof the word "or".

3 By striking out the word "sales" and inserting in lieu thereof the word "sale".

4 Amend section five, line eight, by striking out the word "order" and inserting
5 in lieu thereof the word "grant."

6 Line fourteen, by striking out the word "for".

7 Amend section six, line two, by interposing the word "that" after the state-
8 ment "or from any examination made as provided for in this act."

9 Line seven, by striking out the word "order" and inserting in lieu thereof the
10 word "grant".

11 Line ten, by striking out the word "for".

12 Amend section nine, by striking out the entire section and inserting in lieu
13 thereof the following:

14 9. For the purpose of carrying into effect the provisions of this act, the At-
15 torney-General may appoint and employ such assistants, officers, and other persons
16 as he deems necessary, define their duties and authority and fix their compensation
17 in accordance with the existing law.

Sp. S. STATEMENT

This bill amends the Securities Act by defining the word "fraud" as used therein, provides for the impounding of books and papers when necessary to an investigation and authorizes the adjournment of examinations from time to time instead of from day to day. It also makes it unlawful to sell securities by prohibited methods from this State as well as within it, and provides for the assessment of costs against defendants in actions instituted by the Attorney-General, under the Securities Act, and authorizes the Court of Chancery to award him a counsel fee for the use of the State. The allowance of costs and counsel fees to the Attorney-General will help defray the expense of administering the act.

3 such institution, but the institution so provided for, created or established shall con-
4 tinue as though such act or part of act had not been repealed.

Spon. STATEMENT

568 (1931)

This act has been prepared and is recommended for passage by the Commission on Revision and Consolidation of Public Statutes, created by P. L. 1925, c. 73, p. 244. The purpose of the act is to repeal acts and parts of acts which have been rendered entirely obsolete by later legislation. The repeal thereof will tend to clarify the statute law.

29 testimony given as herein provided for, nor shall immunity apply to corporations
30 or to the officers as such.

1 9. Section ten of the act of which this act is amendatory is hereby amended to
2 read as follows:

3 10. [The Attorney-General of the State is hereby authorized to expend an-
4 nually, in the administration of this act, a sum not exceeding twelve thousand
5 dollars; *provided*, such sum shall be regularly appropriated in any annual or sup-
6 plemental appropriation bill.]

7 The Attorney-General may expend annually, in the administration of this act,
8 such sum as shall be regularly appropriated in any annual or supplemental appropria-
9 tion bill.

1 11. This act shall take effect immediately.

A52 (1931)

Spon. STATEMENT

The New Jersey Securities Act as now drawn, makes it unlawful for any person, partnership, corporation, company or association to engage in the practices therein declared to be unlawful. It has been found that many fraudulent schemes are worked through the medium of trusts. This bill adds them to the list and changes the body of the statute wherever necessary to make it conform. Section seven relating to receiverships has been reworded so as to provide for trusts. Each type of organization is assigned to a subsection therein with appropriate language. The use or employment of any deception, misrepresentation, concealment, suppression, fraud, false pretense, false promise or fictitious or pretended purchase or sale in connection with the marketing of securities is declared to be a misdemeanor, thus making it possible to prosecute violators of the Securities Act criminally.