

ASSEMBLY, No. 488

(P. L. 1927, Chap. 79)

STATE OF NEW JERSEY

INTRODUCED MARCH 19, 1929

By Mr. SIRACUSA

Referred to Committee on Banking and Insurance

AN ACT to amend an act entitled "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," approved March nineteenth, one thousand nine hundred and twenty-seven.

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

1 1. Section three of the act of which this act is amendatory be and the same
2 hereby is amended to read as follows:

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

9 (a) Require or permit such person, partnership, corporation, company, or
10 association to file with him on such forms as he may prescribe, a statement or report
11 in writing under oath or otherwise, as to all the facts and circumstances concern-
12 ing the issuance, sale, offer for sale, purchase, offer to purchase, promotion, nego-
13 tiation, advertisement or distribution, of securities, within this State, by said per-
14 son, partnership, corporation, company, or association, and such other data and in-
15 formation as [he may deem] may be relevant and material thereto.

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

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

1 2. Section six of the act of which this act is amendatory be and the same here-
2 by is amended to read as follows:

3 6. Whenever it shall appear to the Attorney-General from any report or state-
4 ment filed, [or] from any examination made as provided for in this act, or from
5 any other source, that any person, partnership, corporation, company, or associa-
6 tion has engaged in, [or] is engaging in, or is about to engage in, any practice de-
7 clared to be illegal and prohibited by this act, he [, or any assistant Attorney-General
8 or other officer designated by him,] may by petition or bill of complaint setting
9 forth the facts and circumstances of the case, apply to the Court of Chancery for
10 [, and upon proof of the violation of this act,] a writ of injunction, or the appoint-
11 ment of a receiver, or both, and the court being satisfied by affidavit or otherwise of
12 the sufficiency of said application and the truth of the allegations contained in the pe-
13 tition or bill, and upon such notice as the court may by order direct, may proceed in
14 a summary way to hear the affidavits, proofs and allegations which may be offered
15 on behalf of the parties, and if upon such inquiry it shall appear to the court that
16 any such person, partnership, corporation, company or association has engaged in, or
17 is engaging in, or is about to engage in any practice declared to be illegal and pro-
18 hibited by this act, the court may [grant] issue an injunction restraining such per-
19 son, partnership, corporation, company or association, and any agents, employees,
20 brokers, partners, officers, directors and stockholders thereof, from continuing such
21 practices or engaging therein or doing any acts in furtherance thereof, and the court

22 may also issue an injunction restraining the issuance, sale, offer for sale, purchase, or
 23 offer to purchase, promotion, negotiation, advertisement or distribution within this
 24 State of any securities by such person, partnership, corporation, company, or associa-
 25 tion, and any agents, employees, brokers, partners, officers, directors or stockholders
 26 thereof until the court shall otherwise order. [and such other and further relief as
 27 the facts may warrant.]

1 3. Section seven of the act of which this act is amendatory be and the same
 2 hereby is amended to read as follows:

3 7. (a) [The Court of Chancery being satisfied of the sufficiency of the applica-
 4 tion therefor and the proof thereof, in cases showing the use of any practices de-
 5 clared to be illegal and prohibited by this act,] Whenever the Court of Chancery
 6 shall issue any injunction provided for in section six, against a person, partnership,
 7 company or association, it may appoint a receiver with power to sue for, collect,
 8 receive and take into his possession all the goods and chattels, rights and credits,
 9 moneys and effects, lands and tenements, books, records, documents, papers, choses
 10 in action, bills, notes and property of every description, derived by means of any
 11 practice declared to be illegal and prohibited by this act, including also all property
 12 with which such property has been mingled, if such property cannot be identified in
 13 kind because of such commingling, and sell, convey and assign the same, and hold and
 14 dispose of the proceeds thereof under the direction of the Court of Chancery for the
 15 equal benefit of all who establish an interest therein by reason of the use and em-
 16 ployment by the defendant of any practices herein declared to be illegal and pro-
 17 hibited; and the court shall have jurisdiction of all questions arising in said proceed-
 18 ings and may make such orders and decrees therein as justice and equity shall re-
 19 quire.

20 (b) Whenever the Court of Chancery shall issue any injunction provided for
 21 in section six, against a corporation, it may restrain the corporation, and its offi-
 22 cers and agents, from exercising any of its privileges or franchises, and from collect-
 23 ing or receiving any debts, or paying out, selling, assigning or transferring any of
 24 its estate, moneys, funds, lands, tenements or effects, except to the receiver appointed
 25 by the court until the court shall otherwise order; and upon the appointment of a

26 receiver for a corporation, all the real and personal property of the corporation, and
27 all its franchises, rights, privileges and effects shall forthwith vest in him, and the
28 corporation shall be divested of the title thereto, and the receiver thus appointed
29 shall settle the estate and distribute the assets, and shall have all the powers and may
30 exercise all the duties conferred upon receivers by the provisions of an act entitled
31 "An act concerning corporations" (Revision of 1896), approved April twenty-first,
32 one thousand eight hundred and ninety-six, and the acts amendatory thereof and
33 supplemental thereto.

1 4. Section eight of the act of which this act is amendatory be and the same
2 hereby is amended to read as follows:

3 8. The Attorney-General shall have power and authority to issue under his
4 hand the subpoena herein provided for, and any person who shall fail or refuse to
5 obey such subpoena, or upon his appearance shall refuse to testify, or shall testify
6 falsely, shall be guilty of a misdemeanor; and any person having been served with
7 an injunction or injunctive order staying or enjoining any such practices or trans-
8 actions herein declared to be illegal and prohibited, and any person, partnership,
9 corporation, company, or association who shall, while such injunction is in effect, dis-
10 obey the same, shall be deemed in contempt of court, and shall be guilty of a misde-
11 meanor. If any person shall ask to be excused from testifying or producing any
12 book, paper or other document before the Attorney-General, [or any assistant attor-
13 ney-general, or other officer designated by him] or before the Chancellor, a Vice-
14 Chancellor, master or officer conducting the inquiry, upon any trial, investigation or
15 proceeding initiated by the Attorney-General pursuant to the provisions of this act
16 upon the ground or for the reason that the testimony or evidence, documentary or
17 otherwise, required of him may tend to incriminate him or to convict him of a crime
18 or to subject him to a penalty or forfeiture, and shall, notwithstanding, be directed by
19 the Chancellor, a Vice-Chancellor, maste or officer conducting the inquiry to testify or
20 to produce such book, paper or document, he must, nonetheless, comply with such di-
21 rection, but in such event he shall not thereafter be prosecuted or subjected to any
22 penalty or forfeiture for or on account of any transaction, matter or thing concern-
23 ing which he may testify or produce evidence, documentary or otherwise, pursuant

24 thereto, and no testimony so given or produced shall be received against him upon
25 any criminal action, suit or proceeding, investigation, inquisition or inquiry; *pro-*
26 *vided, however,* no person so testifying shall be exempt from prosecution or punish-
27 ment for any perjury committed by him in his testimony given as herein provided for,
28 nor shall immunity apply to corporations or to officers as such.

1 5. Section nine of the act of which this act is amendatory be and the same here-
2 by is amended to read as follows:

3 9. For the purpose of carrying into effect the provisions of this act, the Attor-
4 ney-General may appoint one or more assistant attorneys-general to represent him in
5 all examinations required to be made hereunder, and to administer the oath herein
6 provided for, and may appoint and employ such other officers and persons as he may
7 deem necessary, and [and employ such assistants, officers and other persons as he
8 deems necessary] define their duties and authority and fix their compensation [in
9 accordance with] according to the existing law.

1 6. This act shall take effect immediately.

STATEMENT

The foregoing bill is designed to more clearly define the powers of the Court of
Chancery in issuing injunctions and appointing receivers under the New Jersey Securities
Act.

COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 488

(P. L. 1927, Chap. 79)

STATE OF NEW JERSEY

INTRODUCED MARCH 19, 1929

By Mr. SIRACUSA

Referred to Committee on Banking and Insurance

AN Act to amend an act entitled "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," approved March nineteenth, one thousand nine hundred and twenty-seven.

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

1 1. Section three of the act of which this act is amendatory be and the same
2 hereby is amended to read as follows:

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

~~9 (a) Require or permit such person, partnership, corporation, company, or~~
10 association to file with him on such forms as he may prescribe, a statement or report
11 in writing under oath or otherwise, as to all the facts and circumstances concern-
12 ing the issuance, sale, offer for sale, purchase, offer to purchase, promotion, nego-
13 tiation, advertisement or distribution, of securities, within this State, by said per-
14 son, partnership, corporation, company, or association, and such other data and in-
15 formation as [he may deem] may be relevant and material thereto.

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

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

1 2. Section four of the act of which this act is amendatory be and the same here-
2 by is amended to read as follows:

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

d
s,
s,
e
e
-
-
:
.
23 and in case any person so summoned by subpoena issued by said clerk as aforesaid,
24 shall fail or refuse to obey such subpoena or to answer any direction therein, or to
25 give testimony, or to answer questions as required, or to produce any books, records,
26 documents, accounts or papers, or in case any such person shall fail or refuse to
27 obey any order, the court, on motion supported by proof, may order an attachment
28 for contempt to be issued against any person charged with disobedience to any order
29 or injunction issued out of the Court of Chancery pursuant to this act; and if the
30 person so offending shall be brought before the court by virtue of said attachment,
31 and if upon a hearing such disobedience shall appear, the court, in its discretion may
32 order such offender to be committed and kept in close custody until it shall further
33 order therein.

1 3. Section five of the act of which this act is amendatory be and the same here-
2 by is amended to read as follows:

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

1 4. Section six of the act of which this act is amendatory be and the same hereby
2 is amended to read as follows:

3 6. Whenever it shall appear to the Attorney-General from any report or state-
4 ment filed, [or] from any examination made as provided for in this act, or from
5 any other source, that any person, partnership, corporation, company, or association

6 has engaged in, [or] is engaging in, or is about to engage in, any practice declared
7 to be illegal and prohibited by this act, he [or any assistant attorney-general or other
8 officer designated by him,] may by petition or bill of complaint setting forth the facts
9 and circumstances of the case, apply to the Court of Chancery for [and upon proof
10 of the violation of this act,] a writ of injunction, or the appointment of a receiver,
11 or both, and the court being satisfied by affidavit or otherwise of the sufficiency of
12 said application and the truth of the allegations contained in the petition or bill, and
13 upon such notice as the court may by order direct, may proceed in a summary way
14 to hear the affidavits, proofs and allegations which may be offered on behalf of the
15 parties, and if upon such inquiry it shall appear to the court that any such person,
16 partnership, corporation, company or association has engaged in, or is engaging in,
17 or is about to engage in any practice declared to be illegal and prohibited by this act,
18 the court may [grant] issue an injunction restraining such person, partnership, cor-
19 poration, company or association, and any agents, employees, brokers, partners, offi-
20 cers, directors and stockholders thereof, from continuing such practices or engaging
21 therein or doing any acts in furtherance thereof, and the court may also issue an
22 injunction restraining the issuance, sale, offer for sale, purchase, or offer to pur-
23 chase, promotion, negotiation, advertisement or distribution within this State of any
24 securities by such person, partnership, corporation, company, or association, and any
25 agents, employees, brokers, partners, officers, directors or stockholders thereof until
26 the court shall otherwise order. [and such other and further relief as the facts may
27 warrant.]

1 5. Section seven of the act of which this act is amendatory be and the same
2 hereby is amended to read as follows:

3 7. (a) [The Court of Chancery being satisfied of the sufficiency of the applica-
4 ~~tion therefor, and the proof thereof, in cases showing the use of any practices de-~~
5 clared to be illegal and prohibited by this act,] Whenever the Court of Chancery
6 shall issue any injunction provided for in section six, against a person, partnership,
7 company or association, it may appoint a receiver with power to sue for, collect, re-
8 ceive and take into his possession all the goods and chattels, rights and credits,
9 moneys and effects, lands and tenements, books, records, documents, papers, choses

10 in action, bills, notes and property of every description, derived by means of any
 11 practice declared to be illegal and prohibited by this act, including also all property
 12 with which such property has been mingled, if such property cannot be identified in
 13 kind because of such commingling, and sell, convey and assign the same, and hold
 14 and dispose of the proceeds thereof under the direction of the Court of Chancery
 15 for the equal benefit of all who establish an interest therein by reason of the use and
 16 employment by the defendant of any practices herein declared to be illegal and pro-
 17 hibited; and the court shall have jurisdiction of all questions arising in said pro-
 18 ceedings and may make such orders and decrees therein as justice and equity shall
 19 require.

20 (b) Whenever the Court of Chancery shall issue any injunction provided for
 21 in section six, against a corporation, it may restrain the corporation, and its officers
 22 and agents, from exercising any of its privileges or franchises, and from collecting
 23 or receiving any debts, or paying out, selling, assigning or transferring any of its
 24 estate, moneys, funds, lands, tenements or effects, except to the receiver appointed
 25 by the court until the court shall otherwise order; and upon the appointment of a
 26 receiver for a corporation, all the real and personal property of the corporation, and
 27 all its franchises, rights, privileges and effects shall forthwith vest in him, and the
 28 corporation shall be divested of the title thereto, and the receiver thus appointed
 29 shall settle the estate and distribute the assets, and shall have all the powers and may
 30 exercise all the duties conferred upon receivers by the provisions of an act entitled
 31 "An act concerning corporations" (Revision of 1896), approved April twenty-first
 32 one thousand eight hundred and ninety-six, and the acts amendatory thereof and
 33 supplemental thereto.

1 6. Section eight of the act of which this act is amendatory be and the same
 2 hereby is amended to read as follows:

3 8. The Attorney-General shall have power and authority to issue under his
 4 hand the subpoena herein provided for, and any person who shall fail or refuse to
 5 obey such subpoena, or upon his appearance shall refuse to testify, or shall testify
 6 falsely, shall be guilty of a misdemeanor; and any person having been served with
 7 an injunction or injunctive order staying or enjoining any such practices or trans-
 8 actions herein declared to be illegal and prohibited, and any person, partnership,

9 corporation, company, or association who shall, while such injunction is in effect,
 10 disobey the same, shall be deemed in contempt of court, and shall be guilty of a mis-
 11 demeanor. If any person shall ask to be excused from testifying or producing any
 12 book, paper or other document before the Attorney-General, [or any assistant attor-
 13 ney-general, or other officer designated by him] or before the Chancellor, a vice-
 14 chancellor, master or officer conducting the inquiry, upon any trial, investigation or
 15 proceeding initiated by the Attorney-General pursuant to the provisions of this act
 16 upon the ground or for the reason that the testimony or evidence, documentary or
 17 otherwise, required of him may tend to incriminate him or to convict him of a crime
 18 or to subject him to a penalty or forfeiture, and shall, notwithstanding, be directed
 19 by the Chancellor, a vice-chancellor, master or officer conducting the inquiry to tes-
 20 tify or to produce such book, paper or document, he must, nonetheless, comply with
 21 such direction, but in such event he shall not thereafter be prosecuted or subjected to
 22 any penalty or forfeiture for or on account of any transaction, matter or thing con-
 23 cerning which he may testify or produce evidence, documentary or otherwise, pur-
 24 suant thereto, and no testimony so given or produced shall be received against him
 25 upon any criminal action, suit or proceeding, investigation, inquisition or inquiry;
 26 *provided, however,* no person so testifying shall be exempt from prosecution or pun-
 27 ishment for any perjury committed by him in his testimony given as herein provided
 28 for, nor shall immunity apply to corporations or to the officers as such.

1 7. Section nine of the act of which this act is amendatory be and the same here-
 2 by is amended to read as follows:

3 9. The Attorney-General may appoint and employ such assistants as he shall
 4 deem necessary to act for him and in his name to represent him in carrying into
 5 effect the provisions of this act, and he may further appoint and employ such other
 6 officers and persons as he shall deem necessary, define their duties and authority and
 7 fix their compensation.

8 [For the purpose of carrying into effect the provisions of this act, the Attorney-
 9 General may appoint and employ such assistants, officers and other persons as he
 10 deems necessary, define their duties and authority and fix their compensation in ac-
 11 cordance with the existing law.]

1 8. This act shall take effect immediately.