

49:3-71

LEGISLATIVE HISTORY CHECKLIST  
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(Securities fraudulent sale)

NJSA: 49:3-71

LAWS OF: 1997 CHAPTER: 3

BILL NO: A125

SPONSOR(S): Jones and Lustbader

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Financial Institutions

SENATE: State Management

AMENDED DURING PASSAGE: Yes Amendments during passage denoted  
First reprint enacted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: March 18, 1996

SENATE: December 12, 1996

DATE OF APPROVAL: January 24, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:  
REPORTS: No

HEARINGS: No

KBP:pp

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[First Reprint]  
ASSEMBLY, No. 125

STATE OF NEW JERSEY

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'<sup>1</sup> 8(b),  
11 9(a) or 13 of this act, or

12 (2) Offers or sells a security 'in violation of subsection (a) or (c)  
13 of section 5 of P.L.1967, c.93 (C.49:3-52) or<sup>1</sup> by means of any untrue  
14 statement of material fact or any omission to state a material fact  
15 necessary in order to make the statements made, in the light of the  
16 circumstances under which they are made, not misleading (the buyer  
17 not knowing of the untruth or omission), is liable to the person buying  
18 the security from him, who may sue to recover the consideration paid  
19 for the security, together with interest at 12% per year from the date  
20 of payment and costs, less the amount of any income received on the  
21 security, upon the tender of the security and any income received on  
22 it, or for damages if he no longer owns the security; provided,  
23 however, that the person buying the security must sustain the burden  
24 of proof that the seller knew of the untruth or omission and intended  
25 to deceive the buyer, and provided further that the buyer has suffered  
26 a financial detriment. Damages are the amount that would be  
27 recoverable upon a tender less the value of the security when the buyer  
28 disposed of it and interest at 12% per year from the date of  
29 disposition;

30 (b) Every person who directly or indirectly controls a seller liable  
31 under paragraph (a), every partner, officer, or director of such a seller,

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Senate SSM committee amendments adopted June 6, 1996.

1 every person occupying a similar status or performing similar  
2 functions, every employee of such a seller who materially aids in the  
3 sale, and every broker-dealer or agent who materially aids in the sale  
4 are also liable jointly and severally with and to the same extent as the  
5 seller, unless the nonseller who is so liable sustains the burden of proof  
6 that he did not know, and in the exercise of reasonable care could not  
7 have known, of the existence of the facts by reason of which the  
8 liability is alleged to exist. There is contribution as in cases of contract  
9 among the several persons so liable;

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

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

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

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

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

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

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

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39 2. This act shall take effect immediately.

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Concerns civil liability for fraudulent sale of securities.

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)

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36 2. This act shall take effect immediately.

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#### STATEMENT

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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.

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7 Concerns civil liability for fraudulent sale of securities.

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 125**

**STATE OF NEW JERSEY**

DATED: FEBRUARY 15, 1996

The Assembly Financial Institutions Committee reports favorably Assembly Bill No. 125.

This bill would include violations of section 5 of P.L.1967, c.93 (C.49:3-52) under the section of the "Uniform Securities Law (1967)," P.L.1967, c.93 (C.49:3-47 et seq.), which allows for the recovery of civil damages. Any person offering or selling a security in a manner prohibited by that section would be liable to the person buying the security, who then could proceed as permitted under the law in order to recover the amount paid for the security, plus or minus certain other amounts, in addition to other damages.

This bill was pre-filed for introduction in the 1996 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE STATE MANAGEMENT, INVESTMENT AND  
FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 125**

with committee amendments

**STATE OF NEW JERSEY**

DATED: JUNE 6, 1996

The Senate State Management, Investment and Financial Institutions Committee reports favorably and with committee amendments, Assembly Bill No. 125.

This bill, as amended, would include certain violations of section 5 of P.L.1967, c.93 (C.49:3-52) under the section of the "Uniform Securities Law (1967)," P.L.1967, c.93 (C.49:3-47 et seq.), which allows for the recovery of civil damages. Any person offering or selling a security in a manner prohibited by that section would be liable to the person buying the security, who then could proceed as permitted under the law in order to recover the amount paid for the security, plus or minus certain other amounts, in addition to other damages.

The committee amendment moves the change being proposed by the bill to current law from paragraph (1) to paragraph (2) of subsection (a) of the bill and removes the failure to deliver a prospectus as an action which would allow for the recovery of civil damages.