

UNIFORM SECURITIES ACT (2002) (EXCERPT)
Act 551 of 2008

***** 451.2509.new THIS NEW SECTION IS EFFECTIVE OCTOBER 1, 2009 *****

451.2509.new Civil liability; joint and several liability; statute of limitations; violative contract; waiver prohibited; other rights or remedies.

Sec. 509. (1) Enforcement of civil liability under this section is subject to the securities litigation uniform standards act of 1998.

(2) A person is liable to the purchaser if the person sells a security in violation of section 301, or by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission, and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. All of the following apply to an action under this subsection:

(a) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at 6% per year from the date of the purchase, costs, and reasonable attorney fees determined by the court, upon the tender of the security, or for actual damages as provided in subdivision (c).

(b) The tender referred to in subdivision (a) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in subdivision (c).

(c) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at 6% from the date of purchase, costs, and reasonable attorney fees determined by the court.

(3) A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, if the seller did not know of the untruth or omission and the purchaser does not sustain the burden of proving that the purchaser did not know, and in the exercise of reasonable care could not have known, of the untruth or omission. All of the following apply to an action under this subsection:

(a) The seller may maintain an action to recover the security, any income received on the security, costs, and reasonable attorney fees determined by the court, on the tender of the purchase price, or for actual damages as provided in subdivision (c).

(b) The tender referred to in subdivision (a) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in subdivision (c).

(c) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, interest at 6% from the date of sale of the security, costs, and reasonable attorney fees determined by the court.

(4) A person acting as a broker-dealer or agent that sells or buys a security in violation of section 401(1), 402(1), or 506 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsection (2) or, if a seller, a remedy as specified in subsection (3).

(5) A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of section 403(1), 404(1), or 506 is liable to the client. The client may maintain an action at law or in equity to recover the consideration paid for the advice, interest at 6% from the date of payment, costs, and reasonable attorney fees determined by the court.

(6) A person that receives, directly or indirectly, any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person is liable to the other person. The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct that gives rise to liability under this subsection, interest at 6% from the date of the fraudulent conduct, costs, and reasonable attorney fees determined by the court, less the amount of any income received as a result of the fraudulent conduct. This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely

incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

(7) The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (2) to (6):

(a) A person that directly or indirectly controls a person liable under subsections (2) to (6), unless the controlling person sustains the burden of proving that the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which the liability is alleged to exist.

(b) An individual who is a managing partner, executive officer, or director of a person liable under subsections (2) to (6), including each individual having a similar status or performing similar functions, unless the individual sustains the burden of proving that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which the liability is alleged to exist.

(c) An individual who is an employee of or associated with a person liable under subsections (2) to (6) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proving that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which the liability is alleged to exist.

(d) A person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (2) to (6), unless the person sustains the burden of proving that the person did not know and, in the exercise of reasonable care could not have known, of the existence of the conduct by reason of which liability is alleged to exist.

(8) A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(9) A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(10) A person may not obtain relief if an action is not commenced within 1 of the following time limits, as applicable:

(a) Under subsection (2) for violation of section 301, or under subsection (4) or (5), unless the action is commenced within 1 year after the violation occurred.

(b) Under subsection (2), other than for violation of section 301, or under subsection (3) or (6), unless the action is commenced within the earlier of 2 years after discovery of the facts constituting the violation or 5 years after the violation occurred.

(11) A person that has made or engaged in the performance of a contract in violation of this act or a rule adopted or order issued under this act, or that has acquired a purported right under the contract with knowledge of the facts by reason of which its making or performance was in violation of this act, may not base an action on the contract.

(12) A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this act or a rule adopted or order issued under this act is void.

(13) The rights and remedies provided by this act are in addition to any other rights or remedies that may exist, but this act does not create a cause of action not specified in this section or section 411(5).

History: 2008, Act 551, Eff. Oct. 1, 2009.