

UNIFORM SECURITIES ACT (EXCERPT)
Act 265 of 1964

***** 451.810 THIS SECTION IS REPEALED BY ACT 551 OF 2008 EFFECTIVE OCTOBER 1, 2009

451.810 Offer or sale of security; liability; recovery; contribution; tender; survival of action; limitations; rescission offer; disclosure; suit based on contract; rights and remedies cumulative.

Sec. 410. (a) Any person who does either of the following is liable to the person buying the security from him or her and the buyer may sue either at law or in equity to recover the consideration paid for the security, together with interest at 6% per year from the date of payment, costs, and reasonable attorney fees, less the amount of income received on the security, upon the tender of the security or, if he or she no longer owns the security, for damages which shall be the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at 6% per year from the date of disposition:

(1) Offers or sells a security in violation of section 201(a), 301, or 405(b), or of any rule or order under section 403 which requires the affirmative approval of sales literature before it is used, or of any condition imposed under section 304(d), 305(f), 305(g), or 412(g).

(2) Offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(b) Every person who directly or indirectly controls a seller liable under subsection (a), every partner, officer, or director of the seller, every person occupying a similar status or performing similar functions, every employee of the seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the person sustains the burden of proof that he or she did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

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

(d) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(e) A person may not bring an action under subsection (a)(1) more than 2 years after the contract of sale. A person may not bring an action under subsection (a)(2) more than 2 years after the person, in the exercise of reasonable care, knew or should have known of the untruth or omission, but in no event more than 4 years after the contract of sale. A person may not bring an action under this section if the buyer received a written rescission offer, before the action and at a time when he or she owned the security, to refund the consideration paid together with interest at 6% per year from the date of payment, less the amount of any income received on the security, and he or she failed to accept the offer within 30 days of its receipt, or if the buyer received the offer before the action and at a time when he or she did not own the security, unless he or she rejected the offer in writing within 30 days of its receipt. The documents making full written disclosure about the financial and business condition of the issuer and the financial and business risks associated with the retention of the securities shall be provided to the offeree concurrently with the written rescission offer. Such an offer shall not be made until 45 days after the date of sale of the securities and acceptance or rejection of the offer shall not be binding until 48 hours after receipt by the offeree. The rescission offer shall recite the provisions of this section. A rescission offer under this subsection shall not be valid unless the offeror substantiates that it has the ability to fund the offering and this information is set forth in the disclosure documents.

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

(g) Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this act or any rule or order hereunder is void.

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

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1984, Act 176, Imd. Eff. July 3, 1984;—Am. 1990, Act 150, Eff. Nov. 30, 1990;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

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