

ACT 30

H.B. NO. 822

A Bill for an Act Relating to the Uniform Securities Act (Modified).

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 485-18.7, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§485-18.7]]~~ **Violation of chapter; cease and desist order.** (a) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued or promulgated hereunder, the commissioner may in the commissioner’s discretion issue a cease and desist order to enforce compliance with this chapter or any rule or order issued or promulgated hereunder. The commissioner shall have the discretion to determine the disposition of any [executory] contracts entered into by the respondent and shall specify in the order whether [existing executory] such contracts shall be suspended [or], completed[.], or rescinded. The commissioner shall have the discretion to include in the order an assessment of an administrative penalty against any person who violates this chapter or who has knowingly violated a rule or order of the commissioner made pursuant to this chapter. An administrative penalty of not more than \$100,000 may be assessed for each violation.

(b) Upon the issuance of an order by the commissioner under subsection (a), the commissioner shall promptly notify the respondent that [it] an order has been issued and the reasons therefor and that upon the receipt of a written request made within thirty days the matter will be set for a hearing to commence within fifteen business days after receipt of the request unless extended by the commissioner for good cause. During the pendency of any hearing requested under this subsection, the cease and desist order shall remain in effect unless vacated or modified by the commissioner[.]; provided that any penalty shall not take effect until the final order is issued.

(c) After the hearing, the commissioner shall issue a final order that shall affirm, vacate, or modify the order in effect during the pendency of the hearing. If no hearing is requested and none is ordered by the commissioner, the cease and desist order shall constitute the final order issued and shall remain in effect until it is modified or vacated by the commissioner.

(d) All hearings and rehearings shall be public.

(e) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the respondent or the respondent’s assets. The court shall not require the commissioner to post a bond.”

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SECTION 2. Section 485-20, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Sales voidable when and by whom. Every sale made in violation of this chapter shall be voidable at the election of the purchaser; and the person making the sale and every director, officer, or agent of or for the seller, if the director, officer, or agent has personally participated or aided in any way in making the sale, shall be jointly and severally liable to the purchaser in an action at law in any court of competent jurisdiction upon tender of the securities sold or of the contract made for the full amount paid by the purchaser, with interest, together with all taxable court costs (and reasonable attorney’s fees); provided that notwithstanding any law to the contrary, no action shall be brought for the recovery of the purchase price after five years from the date of the sale or after two years from the discovery of facts constituting the violations, but in any event after seven years from the date of the sale; and provided further that no purchaser otherwise entitled shall claim or have the benefit of this section who has refused or failed within thirty days from the date thereof to accept an offer in writing of the seller to take back the security in question and to refund the full amount paid by the purchaser, together with interest on the amount for the period from the date of payment by the purchaser down to the date of repayment, such interest to be computed:

- (1) In case the securities consist of interest-bearing obligations, at the same rate as provided in the obligations; and
- (2) In case the securities consist of other than interest-bearing obligations, at the rate of [six] ~~ten~~ per cent a year; less, in every case, the amount of any income from the securities that may have been received by the purchaser.”

SECTION 3. Section 485-20.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§485-20.5]]~~ **Civil penalty.** (a) The commissioner may bring an action to recover a civil penalty against any person who violates this chapter or who has knowingly violated a rule or order of the commissioner made pursuant to this chapter. A civil penalty of not more than \$100,000 may be assessed[.] for each violation.

(b) No civil action shall be brought under this chapter after the expiration of five years from the date of the violation or after expiration of two years from the discovery of facts constituting the violation, but in no event after the expiration of seven years from the date of the violation.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved April 18, 1991.)