

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. Chapter 485, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

“§485- 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 his 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 contracts shall be suspended or completed.

(b) Upon the issuance of an order by the commissioner under subsection (a), the commissioner shall promptly notify the respondent that it 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.

(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 order 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.”

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 [two] five years from the date of¹ 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 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. Chapter 485, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§485- 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.

(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. Section 485-21, Hawaii Revised Statutes, is amended to read as follows:

“§485-21 [Penalty.] Criminal Penalties. (a) Whoever violates this chapter shall be punished [by a fine of not more than \$5,000 or by imprisonment for not more than three years, or both.] as follows:

- (1) An offense in which the total value of all money and anything else of value paid by or lost by the victims pursuant to the same scheme, plan or representations, or to the same entity, amounts to under \$5,000 shall be a class C felony as defined by the Hawaii Penal Code;
- (2) An offense in which the total value of all money and anything else of value paid by or lost by the victims pursuant to the same scheme, plan, or representations, or to the same entity, amounts to \$5,000 but less than \$100,000 shall be a class B felony as defined by the Hawaii Penal Code;
- (3) An offense in which the total value of all money and anything else of value paid or lost by the victims pursuant to the same scheme, plan, or representations, or to the same entity, amounts to \$100,000 or more shall be a class A felony as defined by the Hawaii Penal Code.

In addition to the above, whoever violates this chapter shall forfeit to the State (1) any interest or property he has acquired or maintained in violation of this chapter, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of this chapter.

(b) The value of all money and anything else of value paid or lost by various victims pursuant to the same scheme, plan, or representations or to the same entity may be aggregated in determining the class or grade of the offense.

(c) Upon conviction of a person under this chapter, the circuit court shall authorize the county attorney or prosecutor, or the attorney general, to seize all property or other interest declared forfeited under this chapter upon such terms and conditions as the court shall deem proper. The State shall dispose of all property or other interest seized under this chapter as soon as feasible making due provision for the rights of innocent persons. If a property right or other interest is not exercisable or transferable for value by the State, it shall not revert to the convicted person and the commissioner shall dispose of said property as deemed proper by the commissioner.

(d) Notwithstanding any other law to the contrary, a person convicted of a felony under this chapter who has a prior conviction for felony under this chapter or a prior conviction for a crime which would constitute a felony under this chapter shall be sentenced to a mandatory minimum period of imprisonment of one year without possibility of parole. Nothing in this subsection shall be construed to in any way limit the maximum term of imprisonment imposed pursuant to chapter 706.

(e) Notwithstanding any other laws to the contrary, the following period of limitations will apply to prosecutions for felony violations of this chapter:

- (1) Prosecution for a felony under this chapter shall be commenced within five years after the offense is committed.
- (2) If the period prescribed in paragraph (1) has expired, prosecution for a felony under this chapter may be commenced within two years after the discovery of the offense by an aggrieved party and who is himself not a party to the offense, but in no event more than seven years after the offense is committed.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 6. This Act shall take effect upon its approval.

(Approved May 14, 1985.)

Notes

1. Prior to amendment, the word “the” appeared here.
2. Edited pursuant to HRS §23G-16.5.