

- 28 (B) Section 61-1-7;
- 29 (C) Subsection 61-1-17(2);
- 30 (D) a rule or order under Section 61-1-15, which requires the affirmative approval of
- 31 sales literature before it is used; or
- 32 (E) a condition imposed under Subsection 61-1-10(4) or 61-1-11(7); or
- 33 (ii) offers, sells, or purchases a security in violation of Subsection 61-1-1(2).
- 34 (b) A person described in Subsection (1)(a) is liable to a person selling the security to
- 35 or buying the security from the person described in Subsection (1)(a). The person to whom the
- 36 person described in Subsection (1)(a) is liable may sue either at law or in equity to recover the
- 37 consideration paid for the security, together with interest at 12% per year from the date of
- 38 payment, costs, and reasonable attorney fees, less the amount of income received on the
- 39 security, upon the tender of the security or for damages if the person no longer owns the
- 40 security.
- 41 (c) Damages are an amount calculated as follows:
- 42 (i) subtract from the amount that would be recoverable upon a tender under Subsection
- 43 [(7)] (1)(b), excluding interest, the value of the security when the buyer disposed of the
- 44 security; and
- 45 (ii) add to the amount calculated under Subsection (1)(c)(i) interest at:
- 46 (A) 12% per year:
- 47 (I) beginning the day on which the security is purchased by the buyer; and
- 48 (II) ending on the date of disposition; and
- 49 (B) after the period described in Subsection (1)(c)(ii)(A), 12% per year on the amount
- 50 lost at disposition.
- 51 (2) The court in a suit brought under Subsection (1) may award an amount equal to
- 52 three times the consideration paid for the security, together with interest, costs, and attorney
- 53 fees, less any amounts, all as specified in Subsection (1) upon a showing that:
- 54 (a) the violation was reckless or intentional; or
- 55 (b) the violation was of Subsection 61-1-1(2), was negligent, and it is demonstrated by
- 56 clear and convincing evidence that the violation involved an investment by a person over
- 57 whom the violator exercised undue influence.
- 58 (3) A person who offers or sells a security in violation of Subsection 61-1-1(2) is not

59 liable under Subsection (1)(a) if the purchaser knew of the untruth or omission, or the seller did
60 not know and in the exercise of reasonable care could not have known of the untrue statement
61 or misleading omission.

62 (4) (a) Every person who directly or indirectly controls a seller or buyer liable under
63 Subsection (1), every partner, officer, or director of such a seller or buyer, every person
64 occupying a similar status or performing similar functions, every employee of such a seller or
65 buyer who materially aids in the sale or purchase, and every broker-dealer or agent who
66 materially aids in the sale or purchase are also liable jointly and severally with and to the same
67 extent as the seller or purchaser, unless the nonseller or nonpurchaser who is so liable sustains
68 the burden of proof that the nonseller or nonpurchaser did not know, and in exercise of
69 reasonable care could not have known, of the existence of the facts by reason of which the
70 liability is alleged to exist.

71 (b) There is contribution as in cases of contract among the several persons so liable.

72 (5) A tender specified in this section may be made at any time before entry of
73 judgment.

74 (6) A cause of action under this section survives the death of a person who might have
75 been a plaintiff or defendant.

76 (7) (a) An action may not be maintained to enforce liability under this section unless
77 brought before the earlier of:

78 (i) the expiration of five years after the act or transaction constituting the violation; or

79 (ii) the expiration of two years after the discovery by the plaintiff of the facts
80 constituting the violation.

81 (b) A person may not sue under this section if:

82 (i) the buyer or seller received a written offer, before suit and at a time when the buyer
83 or seller owned the security, to refund the consideration paid together with interest at 12% per
84 year from the date of payment, less the amount of any income received on the security, and the
85 buyer or seller failed to accept the offer within 30 days of its receipt; or

86 (ii) the buyer or seller received such an offer before suit and at a time when the buyer
87 or seller did not own the security, unless the buyer or seller rejected the offer in writing within
88 30 days of its receipt.

89 (8) A person who has made or engaged in the performance of any contract in violation

90 of this chapter or any rule or order issued under this chapter, or who has acquired a purported
91 right under any such contract with knowledge of the facts by reason of which its making or
92 performance was in violation, may not base a suit on the contract.

93 (9) A condition, stipulation, or provision binding a person acquiring a security to waive
94 compliance with this chapter or a rule or order issued under this chapter is void.

95 (10) (a) The rights and remedies provided by this chapter are in addition to any other
96 rights or remedies that may exist at law or in equity.

97 (b) This chapter does not create a cause of action not specified in this section or
98 Subsection [61-1-4\(6\)](#).

Legislative Review Note
Office of Legislative Research and General Counsel