

§714. Civil liability from sales of securities

A. Any person who violates R.S. 51:712(A) shall be liable to the person buying such security, and such buyer may sue in any court to recover the consideration paid in cash or, if such consideration was not paid in cash, the fair value thereof at the time such consideration was paid for the security with interest thereon from the date of payment down to the date of repayment as computed in R.S. 51:714(C)(1), less the amount of any income received thereon, together with all taxable court costs and reasonable attorney's fees, upon the tender, where practicable, of the security at any time before the entry of judgment, or for damages if he no longer owns the security.

Damages are the amount which equals the difference between the fair value of the consideration the buyer gave for the security and the fair value of the security at the time the buyer disposed of it, plus interest thereon from the date of payment to the date of repayment as computed in R.S. 51:714(C)(2).

B. Every person who directly or indirectly controls a person liable under Subsection A of this Section, every general partner, executive officer, or director of such person liable under Subsection A of this Section, every person occupying a similar status or performing similar functions, and every dealer or salesman who participates in any material way in the sale is liable jointly and severally with and to the same extent as the person liable under Subsection A of this Section unless the person whose liability arises under this Subsection sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which liability is alleged to exist. There is contribution as in the case of contract among several persons so liable.

C.(1) No person may sue under this Section more than two years from the date of the contract for sale or sale, if there is no contract for sale. No person may sue under this Section:

(a) If the buyer received a written offer, before suit and at a time when he owned the security, to repay in cash or by certified or official bank check, within thirty days from the date of acceptance of such offer in exchange for the securities, the fair value of the consideration paid, determined as of the date such payment was originally paid by the buyer, together with interest on such amount for the period from the date of payment to the date of repayment, such interest to be computed in case the security consists of an interest-bearing obligation, at the same rate as provided in the security or, in case the security consists of other than an interest-bearing obligation, at the applicable rate of legal interest, less, in every case, the amount of any income received on the security, and:

(i) Such offeree does not accept the offer within thirty days of its receipt or

(ii) If such offer was accepted, the terms thereof were complied with by the offeror;

(b) If the buyer received a written offer before suit and at a time when he did not own the security to repay in cash or by certified or official bank check, within thirty days from the date of acceptance of such offer, an amount equal to the difference between the fair value of the consideration the buyer gave for the security and the fair value of the security at the time the buyer disposed of it, together with interest on such amount for the period from the date of payment down to the date of repayment, such interest to be computed in case the security consists of an interest-bearing obligation at the same rate as provided in the security, or, in case the security consists of other than an interest-bearing obligation, at the applicable rate of legal interest, less, in every case, the amount of any income received on the security, and:

(i) Such offeree does not accept the offer within thirty days of its receipt or

(ii) If such offer was accepted, the terms thereof were complied with by the offeror;

(2) Provided, that no written offer shall be effective within the meaning of this Subsection unless, if it were an offer to sell securities, it would be exempt under R.S. 51:709 or, if registration

would have been required, then unless such rescission offer has been registered and effected under R.S. 51:705. Any person who is paid for his security in the amount provided by this Subsection shall be foreclosed from asserting any remedies under this Part, regardless of whether the other requirements of this Subsection have been complied with.

D. Every cause of action under this Part survives the death of any person who might have been a plaintiff or defendant.

E. Nothing in this Part shall limit any statutory or civil right of any person to bring action in any court for any act involved in the sale of securities or the right of this state to punish any person for any violation of any law. The attorney general and each of the district attorneys throughout this state, with regard to violation of this Part in their respective districts, shall lend full assistance to the commissioner in any investigations or prosecutions that the commissioner may deem necessary under the provisions of this Part.

Acts 1985, No. 722, §1.