
SENATE BILL 5435

State of Washington

53rd Legislature

1993 Regular Session

By Senators Fraser, Moore, Wojahn, Barr, Sutherland, Vognild and Amondson

Read first time 01/28/93. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to limitations on actions for unlawful securities
2 transactions; and amending RCW 4.16.080 and 21.20.430.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 4.16.080 and 1989 c 38 s 2 are each amended to read as
5 follows:

6 The following actions shall be commenced within three years:

7 (1) An action for waste or trespass upon real property;

8 (2) An action for taking, detaining, or injuring personal property,
9 including an action for the specific recovery thereof, or for any other
10 injury to the person or rights of another not hereinafter enumerated;

11 (3) Except as provided in RCW 4.16.040(2), an action upon a
12 contract or liability, express or implied, which is not in writing, and
13 does not arise out of any written instrument;

14 (4) Except as provided under RCW 21.20.430, an action for relief
15 upon the ground of fraud, the cause of action in such case not to be
16 deemed to have accrued until the discovery by the aggrieved party of
17 the facts constituting the fraud;

18 (5) An action against a sheriff, coroner, or constable upon a
19 liability incurred by the doing of an act in his official capacity and

1 by virtue of his office, or by the omission of an official duty,
2 including the nonpayment of money collected upon an execution; but this
3 subdivision shall not apply to action for an escape;

4 (6) An action against an officer charged with misappropriation or
5 a failure to properly account for public funds intrusted to his
6 custody; an action upon a statute for penalty or forfeiture, where an
7 action is given to the party aggrieved, or to such party and the state,
8 except when the statute imposing it prescribed a different limitation:
9 PROVIDED, HOWEVER, The cause of action for such misappropriation,
10 penalty or forfeiture, whether for acts heretofore or hereafter done,
11 and regardless of lapse of time or existing statutes of limitations, or
12 the bar thereof, even though complete, shall not be deemed to accrue or
13 to have accrued until discovery by the aggrieved party of the act or
14 acts from which such liability has arisen or shall arise, and such
15 liability, whether for acts heretofore or hereafter done, and
16 regardless of lapse of time or existing statute of limitation, or the
17 bar thereof, even though complete, shall exist and be enforceable for
18 three years after discovery by aggrieved party of the act or acts from
19 which such liability has arisen or shall arise.

20 **Sec. 2.** RCW 21.20.430 and 1986 c 304 s 1 are each amended to read
21 as follows:

22 (1) Any person, who offers or sells a security in violation of any
23 provisions of RCW 21.20.010 or 21.20.140 through 21.20.230, is liable
24 to the person buying the security from him or her, who may sue either
25 at law or in equity to recover the consideration paid for the security,
26 together with interest at eight percent per annum from the date of
27 payment, costs, and reasonable attorneys' fees, less the amount of any
28 income received on the security, upon the tender of the security, or
29 for damages if he or she no longer owns the security. Damages are the
30 amount that would be recoverable upon a tender less (a) the value of
31 the security when the buyer disposed of it and (b) interest at eight
32 percent per annum from the date of disposition.

33 (2) Any person who buys a security in violation of the provisions
34 of RCW 21.20.010 is liable to the person selling the security to him or
35 her, who may sue either at law or in equity to recover the security,
36 together with any income received on the security, upon tender of the
37 consideration received, costs, and reasonable attorneys' fees, or if
38 the security cannot be recovered, for damages. Damages are the value

1 of the security when the buyer disposed of it, and any income received
2 on the security, less the consideration received for the security, plus
3 interest at eight percent per annum from the date of disposition,
4 costs, and reasonable attorneys' fees.

5 (3) Every person who directly or indirectly controls a seller or
6 buyer liable under subsection (1) or (2) above, every partner, officer,
7 director or person who occupies a similar status or performs a similar
8 function of such seller or buyer, every employee of such a seller or
9 buyer who materially aids in the transaction, and every broker-dealer,
10 salesperson, or person exempt under the provisions of RCW 21.20.040 who
11 materially aids in the transaction is also liable jointly and severally
12 with and to the same extent as the seller or buyer, unless such person
13 sustains the burden of proof that he or she did not know, and in the
14 exercise of reasonable care could not have known, of the existence of
15 the facts by reason of which the liability is alleged to exist. There
16 is contribution as in cases of contract among the several persons so
17 liable.

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

20 (b) No person may sue under this section more than (~~three~~) five
21 years after the contract of sale for any violation of the provisions of
22 RCW 21.20.140 through 21.20.230, or more than (~~three~~) five years
23 after a violation of the provisions of RCW 21.20.010, either was
24 discovered by such person or would have been discovered by him or her
25 in the exercise of reasonable care. No person may sue under this
26 section if the buyer or seller receives a written rescission offer,
27 which has been passed upon by the director before suit and at a time
28 when he or she owned the security, to refund the consideration paid
29 together with interest at eight percent per annum from the date of
30 payment, less the amount of any income received on the security in the
31 case of a buyer, or plus the amount of income received on the security
32 in the case of a seller.

33 (5) No person who has made or engaged in the performance of any
34 contract in violation of any provision of this chapter or any rule or
35 order hereunder, or who has acquired any purported right under any such
36 contract with knowledge of the facts by reason of which its making or
37 performance was in violation, may base any suit on the contract. Any
38 condition, stipulation, or provision binding any person acquiring any

1 security to waive compliance with any provision of this chapter or any
2 rule or order hereunder is void.

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

5 (7) Notwithstanding subsections (1) through (6) of this section, if
6 an initial offer or sale of securities that are exempt from
7 registration under RCW 21.20.310 is made by this state or its agencies,
8 political subdivisions, municipal or quasi-municipal corporations, or
9 other instrumentality of one or more of the foregoing and is in
10 violation of RCW 21.20.010(2), and any such issuer, member of the
11 governing body, committee member, public officer, director, employee,
12 or agent of such issuer acting on its behalf, or person in control of
13 such issuer, member of the governing body, committee member, public
14 officer, director, employee, or agent of such person acting on its
15 behalf, materially aids in the offer or sale, such person is liable to
16 the purchaser of the security only if the purchaser establishes
17 scienter on the part of the defendant. The word "employee" or the word
18 "agent," as such words are used in this subsection, do not include a
19 bond counsel or an underwriter. Under no circumstances whatsoever
20 shall this subsection be applied to require purchasers to establish
21 scienter on the part of bond counsels or underwriters. The provisions
22 of this subsection are retroactive and apply to any action commenced
23 but not final before July 27, 1985. In addition, the provisions of
24 this subsection apply to any action commenced on or after July 27,
25 1985.

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