

BILL NO. 148

(as passed)



*2nd Session, 58th General Assembly
Nova Scotia
51 Elizabeth II, 2002*

Government Bill

Securities Act (amended)

CHAPTER 39 OF THE ACTS OF 2002

The Honourable David M. Morse
Minister of Environment and Labour

[First Reading](#): November 5, 2002 (LINK TO BILL AS INTRODUCED)

Second Reading: November 12, 2002

[Third Reading](#): November 19, 2002

Royal Assent: November 28, 2002



An Act to Amend Chapter 418

of the Revised Statutes, 1989, the Securities Act

Be it enacted by the Governor and Assembly as follows:

1 Subsection 2(1) of Chapter 418 of the Revised Statutes, 1989, the *Securities Act*, as amended by Chapter 15 of the Acts of 1990, Chapter 32 of the Acts of 1996 and Chapter 41 of the Acts of 2001, is further amended by

(a) adding "unless the Commission has specified otherwise" immediately after "regulation" in the last line of subclause (ab)(ii); and

(b) striking out "or" immediately after subclause (ao)(ii).

2 Clause 29F(4)(b) of Chapter 418, as enacted by Chapter 15 of the Acts of 1990, is amended by striking out "of" in the third line and substituting "or".

3 Chapter 418 is further amended by adding immediately after Section 44 the following Section:

44A (1) In this Section, "unfair practice" includes

(a) putting unreasonable pressure on a person to purchase, hold or sell a security;

(b) taking advantage of a person's inability or incapacity to reasonably protect the person's own interest because of physical or mental infirmity, ignorance, illiteracy, age or inability to understand the character, nature or language of any matter relating to a decision to purchase, hold or sell a security; or

(c) imposing terms or conditions that make a transaction in securities manifestly inequitable.

(2) No person or company shall engage in an unfair practice.

4 Clause 75(3)(a) of Chapter 418 is amended by adding "the" immediately before "prospectus" in the second line.

5 Subclause 77(1)(a)(iv) of Chapter 418 is amended by striking out "corporation" in the third line and substituting "company".

6 Section 138 of Chapter 418 is repealed and the following Section substituted:

138 (1) Where

(a) an offering memorandum sent or delivered to a purchaser, together with any amendment to the offering memorandum; or

(b) advertising or sales literature as defined by subsection (2) of Section 56,

contains a misrepresentation, a purchaser who purchases a security referred to in it is deemed to have relied on that misrepresentation, if it was a misrepresentation at the time of purchase, and

(c) has a right of action for damages against

(i) the seller,

(ii) every director of the seller at the date of the offering memorandum, and

(iii) every person who signed the offering memorandum; or

(d) may elect to exercise a right of rescission against the seller, in which case the purchaser has no right of action for damages against any person or company under clause (c).

(2) No person or company is liable under subsection (1) if the person or company proves that the purchaser purchased the securities with knowledge of the misrepresentation.

(3) No person or company is liable under subsection (1) if the person or company proves that

(a) the offering memorandum or the amendment to the offering memorandum was sent or delivered to the purchaser without the person's or company's knowledge or consent and that, on becoming aware of its delivery, the person or company gave reasonable general notice that it was delivered without the person's or company's knowledge or consent;

(b) after delivery of the offering memorandum or the amendment to the offering memorandum and before the purchase of the securities by the purchaser, on becoming aware of any misrepresentation in the offering memorandum, or amendment to the offering memorandum, the person or company withdrew the person's or company's consent to the offering memorandum, or amendment to the offering memorandum, and gave reasonable general notice of the withdrawal and the reason for it; or

(c) with respect to any part of the offering memorandum or amendment to the offering memorandum purporting

(i) to be made on the authority of an expert, or

(ii) to be a copy of, or an extract from, a report, an opinion or a statement of an expert,

the person or company had no reasonable grounds to believe and did not believe that

(iii) there had been a misrepresentation, or

(iv) the relevant part of the offering memorandum or amendment to the offering memorandum

(A) did not fairly represent the report, opinion or statement of the expert, or

(B) was not a fair copy of, or an extract from, the report, opinion or statement of the expert.

(4) No person or company is liable under subsection (1) with respect to any part of an offering memorandum or amendment to the offering memorandum not purporting

(a) to be made on the authority of an expert; or

(b) to be a copy of, or an extract from, a report, opinion or statement of an expert,

unless the person or company

(c) failed to conduct a reasonable investigation to provide reasonable grounds for a belief that there had been no misrepresentation; or

(d) believed that there had been a misrepresentation.

(5) Subsections (3) and (4) do not apply to the seller if the seller is also the issuer.

(6) In an action for damages under clause (c) of subsection (1), the defendant is not liable for all or any part of the damages that the defendant proves does not represent the depreciation in value of the security resulting from the misrepresentation.

(7) The liability of all persons or companies referred to in clause (c) of subsection (1) is joint and several with

respect to the same cause of action.

(8) A defendant who is found liable to pay a sum in damages may recover a contribution, in whole or in part, from a person or company who is jointly and severally liable under this Section to make the same payment in the same cause of action unless, in all the circumstances of the case, the court is satisfied that it would not be just and equitable.

(9) The amount recoverable by a plaintiff under this Section may not exceed the price at which the securities were offered under the offering memorandum or amendment to the offering memorandum.

(10) The right of action for rescission or damages conferred by this Section is in addition to and not in derogation from any other right the purchaser may have.

(11) If a misrepresentation is contained in a record incorporated by reference in, or deemed incorporated into, an offering memorandum or amendment to the offering memorandum, the misrepresentation is deemed to be contained in the offering memorandum or amendment to the offering memorandum.

(12) For the purpose of subsection (1), advertising or sales literature is deemed not to contain a misrepresentation unless the advertising or sales literature

(a) contains an untrue statement of material fact; or

(b) omits to state a material fact that is necessary to prevent a statement contained in the advertising or sales literature from being misleading in light of the circumstances in which the statement was made.

(13) In this Section, for greater certainty, "seller" includes the issuer where the securities are distributed by the issuer.

7 Section 150 of Chapter 418, as amended by Chapter 15 of the Acts of 1990, Chapter 32 of the Acts of 1996 and Chapters 18 and 41 of the Acts of 2001, is further amended by

(a) striking out "Director" in the second line of subclause (g)(ii) and substituting "Commission"; and

(b) adding immediately after clause (bac) the following clause:

(bad) prescribing that subclauses (ii) and (iii) of clause (c) of subsection (1) of Section 138 do not apply where the offering memorandum is of a type specified;



This page and its contents published by the Office of the Legislative Counsel, Nova Scotia House of Assembly, and © 2002 Crown in right of Nova Scotia. Updated November 29, 2002. Send comments to legc.office@gov.ns.ca.