
SUBSTITUTE SENATE BILL 5178

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Financial Institutions & Housing (originally sponsored by Senators Fraser, Hale and Prentice)

Read first time 02/20/95.

1 AN ACT Relating to securities investments; and adding new sections
2 to chapter 21.20 RCW.

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

4 NEW SECTION. **Sec. 1.** A broker-dealer or investment adviser shall
5 provide the customer with a copy of the following documents within
6 thirty days of the execution or any amendment of those documents that
7 sets forth the customers investment objectives, financial position, or
8 financial needs:

9 (1) Any document, contract, or agreement between the broker-dealer
10 or investment adviser and the customer that is signed by the customer;

11 (2) Any new account form of the customer with the broker-dealer or
12 investment adviser; and

13 (3) Any form describing the investment objectives, financial
14 position, or financial needs of the customer.

15 NEW SECTION. **Sec. 2.** (1) A broker-dealer or investment adviser
16 shall neither charge nor collect a fee from a customer for closing an
17 account, for transferring an account, or for low activity in an account
18 unless:

1 (a) The broker-dealer or investment adviser gives notice to the
2 customer upon establishing the account of the circumstances under which
3 the fee would be charged and the amount of the fee or the basis on
4 which the amount of the fee is calculated; or

5 (b) The broker-dealer or investment adviser gives notice to the
6 customer ninety days in advance of charging the fee.

7 (2) A broker-dealer or investment adviser shall give prominent
8 notice of its fees.

9 NEW SECTION. **Sec. 3.** (1) A broker-dealer, salesperson, investment
10 adviser, or investment adviser representative who violates:

11 (a) RCW 21.20.035 is liable to that customer, who may sue for:

12 (i) Rescission, or for damages including, if appropriate,
13 commissions, interest, losses suffered, and profit that would have been
14 realized under proper management of the customer's account;

15 (ii) Costs; and

16 (iii) Attorneys' fees; or

17 (b) RCW 21.20.702 is liable to that customer, who may sue for:

18 (i) Rescission, or for damages if the customer no longer owns the
19 security. Damages are in the amount that would be recoverable upon a
20 tender for rescission less the value of the security when the customer
21 disposed of it, plus interest from the date of disposition;

22 (ii) Costs; and

23 (iii) Attorneys' fees.

24 (2) A person who, directly or indirectly, controls a broker-dealer,
25 salesperson, investment adviser, or investment adviser representative
26 liable under subsection (1) of this section is also liable jointly and
27 severally with and to the same extent as the broker-dealer,
28 salesperson, investment adviser, or investment adviser representative
29 to that customer if the person:

30 (a) Knew or should have known that the broker-dealer, salesperson,
31 investment adviser, or investment adviser representative was engaging
32 in the violation; or

33 (b) Failed to establish, maintain, or enforce compliance procedures
34 reasonably designed to detect the violation and that failure
35 contributed to the violation.

36 (3) A customer may not sue under this section more than three years
37 after a violation of RCW 21.20.035 or 21.20.702 was discovered by the

1 customer or would have been discovered by the customer in the exercise
2 of reasonable care.

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

5 (5) Remedies provided under this section do not supplant other
6 remedies available under the common law or another statute.

7 NEW SECTION. **Sec. 4.** (1) A broker-dealer or investment adviser
8 shall not engage in an act or practice in connection with the
9 securities business that constitutes or would constitute a breach of
10 fiduciary duty owed to a customer.

11 (2) A broker-dealer owes a fiduciary duty to a customer when:

12 (a) The broker-dealer exercises discretionary authority over the
13 customer's account; or

14 (b) The broker-dealer exercises substantial control and influence
15 over the exercise of investment decision making and judgment by the
16 customer.

17 (3) An investment adviser owes a fiduciary duty to a customer when:

18 (a) The investment adviser exercises discretionary authority over
19 the customer's account; or

20 (b) The investment adviser provides individualized investment
21 advice to the customer for which the customer agrees to pay a fee and
22 the customer acts upon the advice.

23 (4) The fiduciary duty owed to a customer under this section
24 includes the duty to act with loyalty, in good faith, and with
25 reasonable care.

26 (5) This section does not detract from duties, fiduciary or
27 otherwise, owed by broker-dealers or investment advisers to customers
28 under other statutes or at common law.

29 NEW SECTION. **Sec. 5.** It is the fundamental policy of the state of
30 Washington that a provision in an agreement between a broker-dealer or
31 investment adviser and a customer that determines the venue of a
32 judicial or arbitration proceeding before the proceeding is of no force
33 and effect.

1 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act are each
2 added to chapter 21.20 RCW.

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