

SENATE BILL REPORT

SB 5183

AS REPORTED BY COMMITTEE ON LABOR & COMMERCE, FEBRUARY 11, 1993

Brief Description: Forbidding the breach of fiduciary duty in securities advising.

SPONSORS: Senator Moore

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass.

Signed by Senators Moore, Chairman; Prentice, Vice Chairman; Amondson, Barr, Fraser, McAuliffe, Newhouse, Pelz, Prince, Sutherland, and Vognild.

Staff: Benson Porter (786-7470)

Hearing Dates: January 28, 1993; February 11, 1993

BACKGROUND:

A securities customer can bring a legal action against a securities broker based upon the agency relationship that exists between brokers and their clients. In addition to theories of liability under agency principles, brokers may also be liable as fiduciaries in some situations. Once a fiduciary relationship arises, the broker has additional responsibilities that vary depending upon the extent of the fiduciary duty.

Court decisions have not created a uniform standard that definitively establishes when a fiduciary relationship arises or the scope of the fiduciary duty. While a few courts find the relationship between brokers and their clients to always be fiduciary in nature, many courts consider whether the broker possesses discretion or exercises control over the account. Moreover, some courts consider if a special agreement has been entered or the client reposes trust and confidence that is accepted by the broker.

Interest has been expressed in codifying a broker's fiduciary duty to provide protection to the consumer and establish a clear standard for brokers to measure their conduct.

SUMMARY:

Any person who receives consideration for securities advice owes a fiduciary duty to clients if (1) the person has discretion over the account; or (2) the person has substantial control and influence over the client's investment decision making. When the fiduciary duty arises, the advisor is obligated to act in good faith and fully disclose all known material information regarding the investment to the client.

Appropriation: none

Revenue: none

Fiscal Note: none requested

TESTIMONY FOR:

Washington, unlike most states, does not have a good definition of the fiduciary duty under case law. While most practitioners believe that the standard is as contained in the bill, codification of the standard would provide certainty in the area.

TESTIMONY AGAINST: None

TESTIFIED: Fredrick Huebner (pro)