

SENATE BILL REPORT

SSB 5195

AS PASSED SENATE, MARCH 9, 1993

Brief Description: Regulating excessive securities transactions.

SPONSORS: Senate Committee on Labor & Commerce (originally sponsored by Senator Moore)

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5195 be substituted therefor, and the substitute bill do pass.

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

Staff: Blaine Gibson (786-7457)

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

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

HOUSE COMMITTEE ON APPROPRIATIONS

BACKGROUND:

Regulations adopted pursuant to Washington's Securities Act prohibit securities churning. Churning is generally defined as the purchase or sale of securities for a customer's account that are excessive in size and frequency in light of the character of the account and that are made because of the securities advisor's ability to control or influence the frequency of trades.

Currently, if a securities advisor is found guilty of churning a client's account, the securities advisor is liable for restitutionary damages including the consideration paid for the security, interest from the date of payment, costs, and reasonable attorneys' fees, less any income received on the security. Some argue that the damages available to victims of churning should be enhanced to further deter such conduct.

Arguments are also made that the remedies for churning should be extended to clients whose accounts have been invested in an unsuitable manner.

SUMMARY:

A securities client whose account has been churned may recover damages, costs, reasonable attorneys' fees, and all commissions paid for the transactions. Damages may include restitutionary and benefit-of-the-bargain (e.g. opportunity

cost) recoveries. The court is authorized to award up to twice the damages sustained.

The remedy for churning victims is also available for clients who have been placed in unsuitable investments.

Appropriation: none

Revenue: none

Fiscal Note: none requested

TESTIMONY FOR:

Treble damages would act as a deterrent against churning and unsuitable investments.

TESTIMONY AGAINST:

Current penalties are sufficient, and treble damages may lead to unwarranted lawsuits.

TESTIFIED: CON: Frederick Huebner, attorney; Mark Greenberg, SIA; Jim Keer, Dain Bosworth; Rod Hagenlach, Merrill Lynch; PRO: Norman Elverston; Gertrude Carter; Jeffrey Cudworth

HOUSE AMENDMENT(S)

The prohibition against churning and placing customers' money in unsuitable investments is codified. The provision for double damages is deleted, so no damages are added to those in existing law.

The director is authorized to censure or fine the securities company, or its officer, director, or partner for violations of enumerated provisions including a failure to reasonably supervise another person. The director is authorized to limit the company's business activity in the state.

A person does not fail to reasonably supervise another person when reasonable procedures are established and the supervising person has reasonably discharged his or her duties thereunder without reasonable cause to believe there is a violation.

The director is authorized to impose a fine not to exceed \$5,000 for each act or omission constituting a basis for issuing the order. The fine cannot be imposed until after notice and opportunity for hearing.