

SENATE BILL REPORT

SB 5195

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

**Brief Description:** Regulating excessive securities transactions.

**SPONSORS:** 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

**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 three times the damages sustained.

**EFFECT OF PROPOSED SUBSTITUTE:**

The court may 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