

HOUSE BILL ANALYSIS

SB 6202

Title: An act relating to the securities act of Washington.

Brief Description: Changing the securities act to conform with federal statute.

Sponsors: Senators Winsley and Prentice; by request of Department of Financial Institutions.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Meeting Date: February 19, 1998

Bill Analysis Prepared by: Jim Morishima (786-7191)

Background: The National Securities Markets Improvement Act of 1996 (the Act) makes changes to federal law that alter the manner in which federal and state law interact:

- ⌋ The states can no longer regulate offerings of covered securities.— States cannot impose registration requirements on mutual funds, large investment advisors (with portfolios over \$25 million), or national securities. States can continue to collect registration fees for a limited time. States can still require notice filings and collect notification or other fees.
- ⌋ The states are limited in their regulation of broker/dealers and their associated persons.— States may continue to regulate broker/dealers, but cannot require of a broker/dealer anything not required by federal law. However, the states may continue to impose fees on broker/dealers.
- ⌋ The states are limited in their licensing and registration requirements for investment advisers. States may not impose licensing or registration requirements on Securities Exchange Commission registered investment advisers unless the investment adviser has a place of business in the state. However, a state may license, register, or otherwise qualify any investment adviser representative— who has a place of business located within the state.
- ⌋ The states are limited in their requirements regarding books, records, and net capital for investment advisers. A state may not enforce any law or regulation that would require an investment adviser to maintain any books or records in addition to those required by the investment adviser's home state. Furthermore, a state may not impose any requirements on an investment adviser who has no place

of business in the state and has had fewer than six clients who were residents of the state within the preceding 12 months.

- þ The states may continue to investigate fraud and bring enforcement actions regarding transactions or securities organizations that no longer are required to register with the state.

Summary of Bill: The definition of investment advisor– is clarified to exclude a broker/dealer, a broker/dealer salesperson, a publisher of electronic information, and an investment advisor representative.

Investment adviser representative– is defined as a person who is similar to an investment adviser in function or status and (1) gives advice regarding securities, (2) manages accounts or portfolios of clients, (3) determines which advice regarding securities should be given, or (4) solicits, offers, or negotiates for the sale of or sells investment advisory services.

Federal covered security– and federal covered adviser– are defined in conformity with federal law.

Persons who advise others as to the value of securities or their purchase or sale, may not: (1) act as a principal for his or her own account, (2) sell any security to a client, (3) buy any security from a client, or (4) act as a broker for a person other than a client for the purpose of selling or buying securities for the account of such client without informing the client and obtaining his or her consent. Such persons also cannot engage in dishonest or unethical practices.

A broker/dealer as defined by federal law or a person who is a salesperson effecting transactions in open-end investment company securities sold at net asset value without any sales charges do not have to register with the state in order to conduct business in Washington.

An investment adviser or an investment adviser representative may not transact business in Washington unless they: (1) register under state law, (2) have no place of business in the state and deal only with certain types of clients or have fewer than six clients within the preceding 12 months, (3) have already registered under federal law, (4) are a federal covered adviser, or (5) are exempted from the definition of investment adviser by federal law.

A person who is registered or required to be registered as an investment adviser must not employ, supervise, or associate with an unregistered investment adviser representative. Also, a federal covered adviser or any other investment adviser registered under federal law must not employ, supervise, or associate with an unregistered investment adviser representative unless the investment adviser representative is exempted from registration.

A broker/dealer, salesperson, investment advisor, or investment advisor representative may apply for registration by filing an application as well as a consent to service of process and registration fees. A federal covered adviser must file any documents required by the Director of Financial Institutions as well as a consent to service of process and registration fees. After an application for registration has been filed, the director must make the registration effective unless there is a denial order in effect or a denial, suspension, or revocation proceeding in progress.

The director may set minimum capital requirements for registered broker/dealers and investment advisers. However, these requirements must not be more stringent than those required by federal law. Also, reporting requirements for a broker/dealer may not exceed federal requirements.

The director may require every registered broker/dealer and investment adviser to keep records as long as the record-keeping requirements do not exceed federal requirements. The director may require an investment adviser to disseminate information for the protection of investors or advisory clients. If the information contained in any document filed with the director is or becomes inaccurate or incomplete, the registrant must amend the filing.

The director may require the filing of certain documents and the payment of certain fees before a federal covered security can be sold in the state. Also, a person may not sell a security unless the security is registered under state or federal law.

Any nonissuer transaction by a registered salesperson of a registered broker/dealer, and any resale transaction by a sponsor of a unit investment trust registered under federal law is exempt from the registration requirements. The director has the discretion to exempt any offering below \$5 million from the registration requirements.

The following fees are specified: (1) a fee for an offering of a federal exempt security, (2) a fee for an offering by an investment company, (3) a fee for an offering by a closed-end investment company, (4) a filing fee for a federal covered adviser.

The director can fine any person who knowingly violates the state securities law. If a petition for judicial review is not timely filed, the fine has the force of a superior court judgement. The director may engage in the detection and identification of criminal activities and may also assist prosecutors.

Appropriation: None.

Fiscal Note: Senate requested on January 26, 1998.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Rulemaking Authority: Not specifically addressed.