

SENATE BILL REPORT

SB 5185

AS REPORTED BY COMMITTEE ON LABOR & COMMERCE, FEBRUARY 3, 1993

Brief Description: Regulating excessive securities transactions.

SPONSORS: Senator Moore

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass as amended.

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

Staff: Blaine Gibson (786-7457)

Hearing Dates: January 28, 1993; February 3, 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. The remedy for churning victims is also available to clients who have been placed in unsuitable investments.

SUMMARY OF PROPOSED COMMITTEE AMENDMENT:

The provision authorizing the awarding of treble damages is deleted.

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