

HOUSE BILL REPORT

HB 2487

As Reported by House Committee On:
Financial Institutions & Insurance

Title: An act relating to regulating securities.

Brief Description: Regulating securities.

Sponsors: Representatives McIntire, Benson and Cooper; by request of Department of Financial Institutions.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/5/02 [DP].

Brief Summary of Bill

- Expands the authority of the Department of Financial Institutions to regulate the securities industry.
- Expands the class of investment advisers subject to ethics requirements.
- Authorizes the issuance of subpoenas containing a directive prohibiting disclosure to third parties.
- Revises the definition of "security".
- Authorizes the Department of Financial Institutions to regulate sales practices regarding variable annuities.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass. Signed by 11 members: Representatives Cooper, Chair; McIntire, Vice Chair; Benson, Ranking Minority Member; Barlean, Cairnes, Hatfield, Mielke, Miloscia, Roach, Santos and Simpson.

Staff: Thamas Osborn (786-7129).

Background:

The Department of Financial Institutions (department), through its Securities Division, is

responsible for the regulation of the securities market in this state, its mission being the protection of investors and the interests of the general public. As part of its regulatory oversight duties, the department monitors state and federal regulatory developments, pertinent court decisions, and changes in the marketplace that might necessitate changes in state laws regarding securities.

The department participates in the National Conference of Commissioners on Uniform State Laws (NCCUSL), which is involved in the development of model regulations. The NCCUSL has recently completed a draft "Uniform Securities Act", which contains definitions and regulatory provisions that are different than those in current state law. The department is proposing several changes in the state securities act that are inspired by the model provisions in the Uniform Securities Act, including an expansion of state regulatory authority and several technical changes to definitions.

In response to recent court cases and changes in federal law, the department is proposing additional changes in the state regulatory scheme, including the redefinition of "security" and revisions in the rules governing variable annuities.

Summary of Bill:

Definition of "security": The definition of "security" is subject to several amendments, as follows:

- Statutory language regarding interests in oil, gas, and minerals is revised in accordance with proposed model legislation;
- Interests in the sale of out-of-state land are deleted from the definition;
- Eliminates the requirement that the security be evidenced by a written document;
- Revises provisions relating to annuities, so as to allow variable annuities to be included in the definition of "security"; and
- Interests in certain pension or welfare benefit plans are excepted from the definition.

Ethical requirements for investment advisers: The structure of the ethics rules is reorganized. The types of advisers covered by the rules are expanded. Broker-dealers are exempted from the ethics rules if they are not acting as an investment adviser in relation to the transaction.

Registration of securities broker-dealers: Broker-dealers are exempted from professional registration requirements with respect to the sale of certain variable annuity contracts.

Denial, suspension, or revocation of registration: The regulatory authority of the department is significantly expanded with respect to the denial, suspension or revocation of the registration of broker-dealers, investment advisers, salespersons and other securities professionals:

- Regulatory actions are authorized for specified felony and misdemeanor convictions that have taken place within the preceding 10 years, as opposed to the five-year time limit imposed under current law;
- Subject to certain conditions, the director of the Department of Financial Institutions (director) may sanction a registrant in this state based upon regulatory actions taken by other state and federal agencies that result in court or administrative orders against the registrant;
- Sanctions against a registrant are authorized for specified violations of law or rule resulting from the negligent supervision of an employee; and
- The director may require that an applicant or class of applicants take an examination.

Securities exempt from registration: A security issued by any insurance company authorized to do business in the state of Washington is exempt from the registration requirements of the securities act.

Criminal history: The department is authorized to obtain an individual's criminal history in connection with an investigation of criminal activity.

Nondisclosure directives in subpoenas: The director may require the recipient of a subpoena to not disclose the existence of the subpoena to third parties, excepting affiliates and legal counsel. The director may take legal action to obtain an order of contempt against a party violating the nondisclosure directive.

Registration of sellers of variable annuity contracts: Sellers of variable annuity contracts must register with the department.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The bill is designed to provide for the functional regulation of annuities. Variable annuities are largely regulated by federal law, where they are classified as a type of "security". This bill redefines "security" under state law so that it includes variable

annuities, though it does not impose any additional regulatory burdens on such annuities. Fixed annuities will continue to be regulated by the insurance commissioner. The bill also increases the regulatory authority of the department with respect to registration applicants and registered securities professionals. Specifically, the bill allows the department to consider court and regulatory actions against the registrant/applicant in other state and federal jurisdictions.

Testimony Against: None.

Testified: Representative McIntire, prime sponsor; and Bill Beatty, Department of Financial Institutions.