
SENATE BILL 5178

State of Washington

54th Legislature

1995 Regular Session

By Senators Fraser, Hale and Prentice

Read first time 01/13/95. Referred to Committee on Financial Institutions & Housing.

1 AN ACT Relating to securities investments; and adding new sections
2 to chapter 21.20 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) A broker-dealer or investment adviser
5 shall provide the customer with a copy of the following documents
6 within seven days of the execution or amendment of those documents:

7 (a) A contract or agreement between the broker-dealer or investment
8 adviser and the customer;

9 (b) A new account form of the customer with the broker-dealer or
10 investment adviser;

11 (c) A form describing the investment objectives, financial
12 position, or financial needs of the customer;

13 (d) A subscription agreement or investor questionnaire completed in
14 connection with the sale of a security to the customer by or through
15 the broker-dealer or investment adviser;

16 (e) An investment advisory agreement or application to enter into
17 an investment advisory agreement between the customer and a third party
18 investment adviser entered into through the broker-dealer or investment
19 adviser; and

1 (f) An acknowledgement by the customer or receipt of a disclosure
2 document in connection with the sale of a security, the opening of an
3 account, or the execution of a contract between the customer and the
4 broker-dealer or investment adviser.

5 (2) A customer must sign a new account form or form describing the
6 investment objectives, financial position, or financial needs of the
7 customer upon execution or amendment of those documents.

8 NEW SECTION. **Sec. 2.** (1) A broker-dealer or investment adviser
9 shall neither charge nor collect a fee from a customer for closing an
10 account, for transferring an account, or for low activity in an account
11 unless:

12 (a) The broker-dealer or investment adviser gives notice to the
13 customer upon establishing the account of the circumstances under which
14 the fee would be charged and the amount of the fee or the basis on
15 which the amount of the fee is calculated; or

16 (b) The broker-dealer or investment adviser gives notice to the
17 customer ninety days in advance of charging the fee.

18 (2) A broker-dealer or investment adviser shall give prominent
19 notice of its fees.

20 NEW SECTION. **Sec. 3.** (1) A broker-dealer, salesperson, investment
21 adviser, or investment adviser representative who violates:

22 (a) RCW 21.20.035 is liable to that customer, who may sue for:

23 (i) Rescission, or for damages including, if appropriate,
24 commissions, interest, losses suffered, and profit that would have been
25 realized under proper management of the customer's account;

26 (ii) Costs; and

27 (iii) Attorneys' fees; or

28 (b) RCW 21.20.702 is liable to that customer, who may sue for:

29 (i) Rescission, or for damages if the customer no longer owns the
30 security. Damages are in the amount that would be recoverable upon a
31 tender for rescission less the value of the security when the customer
32 disposed of it, plus interest from the date of disposition;

33 (ii) Costs; and

34 (iii) Attorneys' fees.

35 (2) A person who, directly or indirectly, controls a broker-dealer,
36 salesperson, investment adviser, or investment adviser representative
37 liable under subsection (1) of this section is also liable jointly and

1 severally with and to the same extent as the broker-dealer,
2 salesperson, investment adviser, or investment adviser representative
3 to that customer if the person:

4 (a) Knew or should have known that the broker-dealer, salesperson,
5 investment adviser, or investment adviser representative was engaging
6 in the violation; or

7 (b) Failed to establish, maintain, or enforce compliance procedures
8 reasonably designed to detect the violation and that failure
9 contributed to the violation.

10 (3)(a) A cause of action under this section survives the death of
11 a customer.

12 (b) A customer may not sue under this section more than three years
13 after a violation of RCW 21.20.035 or 21.20.702 was discovered by the
14 customer or would have been discovered by the customer in the exercise
15 of reasonable care.

16 (4) A tender specified in this section may be made at any time
17 before entry of judgment.

18 (5) Remedies provided under this section do not supplant other
19 remedies available under the common law or another statute.

20 NEW SECTION. **Sec. 4.** (1) A broker-dealer or investment adviser
21 shall not engage in an act or practice in connection with the
22 securities business that constitutes or would constitute a breach of
23 fiduciary duty owed to a customer.

24 (2) A broker-dealer owes a fiduciary duty to a customer when:

25 (a) The broker-dealer has discretionary authority over the
26 customer's account; or

27 (b) The broker-dealer has substantial control and influence over
28 the exercise of investment decision making and judgment by the
29 customer.

30 (3) An investment adviser owes a fiduciary duty to a customer when:

31 (a) The investment adviser has discretionary authority over the
32 customer's account; or

33 (b) The investment adviser provides individualized investment
34 advice to the customer for which the customer agrees to pay a fee.

35 (4) The fiduciary duty owed to a customer under this section
36 includes the duty to act with loyalty, in good faith, and with
37 reasonable care.

1 (5) This section does not detract from duties, fiduciary or
2 otherwise, owed by broker-dealers or investment advisers to customers
3 under other statutes or at common law.

4 NEW SECTION. **Sec. 5.** It is the fundamental policy of the state of
5 Washington that a provision in an agreement between a broker-dealer or
6 investment adviser and a customer that determines the venue of a
7 judicial or arbitration proceeding before the proceeding is of no force
8 and effect.

9 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act are each
10 added to chapter 21.20 RCW.

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