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SECOND SUBSTITUTE SENATE BILL 5184

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State of Washington

53rd Legislature

1994 Regular Session

By Senate Committee on Labor & Commerce (originally sponsored by Senator Moore)

Read first time 02/01/94.

1 AN ACT Relating to the securities brokers recovery account; adding  
2 a new chapter to Title 21 RCW; prescribing penalties; and providing an  
3 effective date.

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

5 NEW SECTION. **Sec. 1.** Unless the context clearly requires  
6 otherwise, the definitions in this section apply throughout this  
7 chapter.

8 (1) "Application" means an application filed under section 4 of  
9 this act.

10 (2) "Department" means the department of financial institutions.

11 (3) "Director" means the director of financial institutions.

12 (4) "Recovery account" means the securities brokers recovery  
13 account created under section 2 of this act.

14 (5) "Registered person" means a broker-dealer, salesperson,  
15 investment adviser, or investment adviser salesperson registered under  
16 the securities act of Washington, chapter 21.20 RCW.

17 NEW SECTION. **Sec. 2.** The securities brokers recovery account is  
18 created in the state treasury. All receipts from collections made

1 under this chapter shall be deposited into the account. Expenditures  
2 from the account may be used only for the purposes designated under  
3 this chapter, including those expenses incurred by the department in  
4 administering this chapter. Only the director or the director's  
5 designee may authorize expenditures from the account. The account is  
6 subject to allotment procedures under chapter 43.88 RCW, but no  
7 appropriation is required for expenditures.

8 NEW SECTION. **Sec. 3.** A registered person shall pay a fee of  
9 twenty-five dollars in addition to the registration fee when applying  
10 for or upon the renewal of a license under chapter 21.20 RCW. The  
11 department shall deposit the fee collected under this section into the  
12 recovery account. If the balance of the recovery account is more than  
13 five hundred thousand dollars on June 30th of any year, the director  
14 shall establish the fee payable under this section, but in no case may  
15 the fee be greater than twenty-five dollars. In setting the fee, the  
16 director shall consider anticipated future claims on and expenses of  
17 the recovery account.

18 NEW SECTION. **Sec. 4.** (1) Within the limitations specified in  
19 section 15 of this act, a claimant may file an application with the  
20 department for payment from the recovery account of the amount unpaid  
21 on a judgment in an action or entered on an arbitration award that  
22 represents an actual and direct loss to the claimant in a transaction  
23 or account. The judgment must be a final judgment in a court of  
24 competent jurisdiction. The judgment must include findings of fact and  
25 conclusions of law based on intentional fraud, misrepresentation,  
26 deceit, or conversion of trust funds, by a registered person, including  
27 a person under suspension proceedings, or a formerly registered person  
28 who holds himself or herself out as a registered person. The judgment  
29 must also be based on acts or omissions arising directly out of a  
30 transaction or account in which the person performed acts for which  
31 registration under chapter 21.20 RCW was required or appropriate.

32 (2) The application must be delivered in person or by certified  
33 mail to the department not later than one year after the judgment  
34 became final.

35 (3) The application must be made on a form prescribed by the  
36 department, verified by the claimant, and include the following:

37 (a) The name and address of the claimant;

1 (b) If the claimant is represented by an attorney, the name,  
2 business address, and telephone number of the attorney;

3 (c) The identification of the judgment, the amount of the claim,  
4 and an explanation of the claim's computation;

5 (d) A detailed narrative statement of the facts in explanation of  
6 the allegations of the complaint upon which the underlying judgment is  
7 based;

8 (e) A statement by the claimant, signed under penalty of perjury,  
9 that the complaint upon which the underlying judgment is based was  
10 prosecuted conscientiously and in good faith. As used in this section,  
11 "conscientiously and in good faith" means that a party potentially  
12 liable to the claimant in the underlying transaction or account was not  
13 intentionally and without good cause omitted from the complaint, that  
14 a party named in the complaint who otherwise reasonably appeared  
15 capable of responding in damages was not dismissed from the complaint  
16 intentionally and without good cause, and that the claimant employed no  
17 other procedural tactics contrary to the diligent prosecution of the  
18 complaint in order to provide access to the recovery account;

19 (f) The name and address of the judgment debtor or, if those are  
20 not known, the names and addresses of persons who may know the judgment  
21 debtor's present location; and

22 (g) The following representations and information from the  
23 claimant:

24 (i) That the claimant is not a relative of the judgment debtor;

25 (ii) That the claimant has complied with all of the requirements of  
26 this chapter;

27 (iii) That the judgment underlying the claim meets the requirements  
28 of subsection (1) of this section;

29 (iv) A description of searches and inquiries conducted by or on  
30 behalf of the claimant with respect to the judgment debtor's assets  
31 liable to be sold or applied to satisfaction of the judgment, an  
32 itemized valuation of the assets discovered, and the results of actions  
33 by the claimant to have the assets applied to satisfaction of the  
34 judgment;

35 (v) That the claimant has diligently pursued collection efforts  
36 against other judgment debtors and all other persons liable to the  
37 claimant in the transaction that is the basis for the underlying  
38 judgment; and

1 (vi) That the application was mailed or delivered to the department  
2 no later than one year after the underlying judgment became final.

3 (4) The application form must include detailed instructions with  
4 respect to documentary evidence, pleadings, court rulings, and the  
5 products of discovery in the underlying litigation, all of which must  
6 be appended to the application.

7 NEW SECTION. **Sec. 5.** (1) To continue with a claim, the claimant  
8 shall serve a copy of the notice prescribed in subsection (3) of this  
9 section upon the judgment debtor by personal service or by registered  
10 mail, together with a copy of the application, no later than fifteen  
11 days after submission of the application.

12 (2) If the judgment debtor is currently registered under chapter  
13 21.20 RCW, service of the notice and a copy of the application may be  
14 made by registered mail addressed to the judgment debtor at the latest  
15 business or residence address on file with the department. If the  
16 judgment debtor is not currently registered under chapter 21.20 RCW and  
17 personal service cannot be effected through the exercise of reasonable  
18 diligence, the claimant shall serve the judgment debtor by one  
19 publication of the notice in each of two successive weeks in a  
20 newspaper of general circulation published in the county in which the  
21 judgment debtor was last known to reside.

22 (3) The notice served upon the judgment debtor must include the  
23 following statement:

24 "NOTICE: Based upon a judgment entered against you in favor of  
25 . . . . . (name of claimant), application for payment from the  
26 securities brokers recovery account is being made to the department of  
27 licensing.

28 "If payment is made from the securities brokers recovery account,  
29 all registrations and registration rights that you have under the  
30 securities act of Washington, chapter 21.20 RCW, will be automatically  
31 suspended on the date of payment and cannot be reinstated until the  
32 recovery account has been reimbursed for the amount paid plus interest  
33 at the prevailing interest rate.

34 "If you wish to contest payment by the director of licensing, you  
35 must file a written response to the application addressed to the  
36 department of licensing at . . . . ., within thirty days after  
37 mailing, delivery, or publication of this notice and send a copy of

1 that response to the claimant. If you fail to do so, you waive your  
2 right to present your objections to payment."

3 (4) If a judgment debtor fails to file a written response to the  
4 application with the department within forty-five days after personal  
5 service, mailing, or final publication of the notice, the judgment  
6 debtor is not entitled to subsequent notice of an action taken or  
7 proposed to be taken by the director with respect to the claim.

8 NEW SECTION. **Sec. 6.** (1) If the director determines that the  
9 application as submitted by the claimant fails to comply with  
10 substantially all of the requirements of section 4 of this act, or any  
11 rule adopted by the director, the director shall, within forty-five  
12 days after receipt of the application, mail an itemized list of the  
13 failures to the claimant.

14 (2) The time within which the director is required to act under  
15 section 7 of this act is measured from the date of receipt by the  
16 department of an application that is substantially complete. The  
17 claimant may immediately file the claim with the court under section 11  
18 of this act when there is an irreconcilable dispute between the  
19 claimant and the director on the question of whether the application is  
20 substantially complete.

21 NEW SECTION. **Sec. 7.** (1) The director shall render a final  
22 written decision on a completed application within ninety days after it  
23 has been received unless the claimant agrees in writing to extend the  
24 time within which the director may render a decision. If the director  
25 fails to render a written decision in response to the claim within  
26 ninety days after its receipt or within the extended period agreed to  
27 by the claimant, the claim is denied by the director on the final day  
28 available for rendering the decision.

29 (2) The director may deny or grant the application, or may enter  
30 into a compromise with the claimant to pay less in settlement than the  
31 full amount of the claim. The director shall make a written decision  
32 to deny the claim, or the claim is denied if a written decision is not  
33 rendered within the time specified in subsection (1) of this section,  
34 if the claimant refuses to accept a settlement of the claim offered by  
35 the director. Evidence of settlement offers and discussions between  
36 the director and the claimant are not competent evidence in judicial  
37 proceedings undertaken by the claimant under section 11 of this act.

1        NEW SECTION.    **Sec. 8.**    The department may use all appropriate means  
2 of investigation and discovery available to it under chapter 21.20 RCW  
3 in its consideration and investigation of an application.

4        NEW SECTION.    **Sec. 9.**    (1) The director shall give notice of a  
5 decision rendered with respect to the claim to the claimant and to a  
6 judgment debtor who has filed a timely response to the claim in  
7 accordance with section 5 of this act.

8        (2) If the application is denied, the notice to the claimant and  
9 judgment debtor must include the following:

10        "Claimant's application has been denied. If the claimant wishes to  
11 pursue the application in court, the claimant must file the application  
12 in the court in which the underlying judgment was entered no later than  
13 six months after receipt of this notice, under section 11 of this act."

14        (3) If the decision of the director is to make a payment to the  
15 claimant out of the recovery account, the director shall give the  
16 following notice to the judgment debtor along with a copy of the  
17 decision of the director:

18        "The decision of the director of licensing on the claim of  
19 . . . . . is to pay \$. . . . . from the securities brokers recovery  
20 account. A copy of that decision is enclosed.

21        "Under section 17 of this act, all of your registrations and  
22 registration rights under the securities act of Washington, chapter  
23 21.20 RCW, will be suspended effective on the date of payment, and you  
24 will not be eligible for reinstatement of registration issued under the  
25 securities act of Washington until you have reimbursed the recovery  
26 account for this payment plus interest at the prevailing legal rate.

27        "If you desire a judicial review of the suspension of your  
28 registrations and registration rights, you may petition the superior  
29 court in the county in which the judgment that is the basis of this  
30 claim was rendered for a writ of mandamus. To be timely, the petition  
31 must be filed with the court within thirty days of receipt of this  
32 notice."

33        NEW SECTION.    **Sec. 10.**    Prior to the rendering of a decision on a  
34 claim, if the director determines that the aggregate valid claims of  
35 all aggrieved persons against the registered person are likely to  
36 exceed the limits of liability under section 15 of this act, the  
37 director shall initiate a proration proceeding instead of further

1 administrative proceedings under section 16 of this act in a court of  
2 competent jurisdiction in which a judgment meeting the requirements of  
3 section 4 of this act has been entered against the registered person.

4 NEW SECTION. **Sec. 11.** (1) A claimant against whom the director  
5 has rendered a decision denying an application under section 4 of this  
6 act may, within six months after receipt of notice of the denial, file  
7 a verified complaint in the court in which judgment was entered in  
8 favor of the claimant for an order directing payment out of the  
9 recovery account based upon the grounds set forth in the claimant's  
10 application to the director.

11 (2) A copy of the verified complaint must be served upon the  
12 director and upon the judgment debtor. The claimant shall file with  
13 the court a certificate or affidavit of service. Service on the  
14 director may be made by registered mail addressed to the headquarters  
15 office of the department. Service upon a judgment debtor may be made  
16 in accordance with section 5 of this act. The notice served upon the  
17 judgment debtor shall read as follows:

18 "NOTICE: A complaint has been filed with the court for a payment  
19 from the securities brokers recovery account that was previously denied  
20 by the director of financial institutions.

21 "If the department of financial institutions makes a payment from  
22 the securities brokers recovery account under a court order, all of  
23 your registrations and registration rights under the securities act of  
24 Washington, chapter 21.20 RCW, will be automatically suspended until  
25 the recovery account has been reimbursed by you for the amount paid  
26 plus interest at the prevailing rate.

27 "If you wish to defend in court against this claim, you must file  
28 a written response with the court within thirty days after having been  
29 served with a copy of the complaint. If you do not file a written  
30 response, you will have waived your right to defend against the claim."

31 NEW SECTION. **Sec. 12.** (1) The director and the judgment debtor  
32 each have thirty days after being served with the complaint in which to  
33 file a written response. The court shall subsequently set the matter  
34 for hearing upon the petition of the claimant. The court shall grant  
35 a request of the director for a continuance of as much as thirty days  
36 and may, upon a showing of good cause by a party, continue the hearing  
37 for a time the court finds appropriate.

1 (2) At the hearing, the claimant shall establish compliance with  
2 section 4 of this act.

3 (3) If the judgment debtor fails to file a written response to the  
4 complaint, the claim may be compromised or settled by the director at  
5 any time during the court proceedings and the court shall, upon joint  
6 petition of the complainant and the director, issue an order directing  
7 payment out of the recovery account.

8 NEW SECTION. **Sec. 13.** Whenever the court proceeds upon a  
9 complaint under section 11 of this act, it shall order payment out of  
10 the recovery account only upon a determination that the aggrieved party  
11 has a valid cause of action under section 4 of this act and has  
12 complied with section 11 of this act.

13 The director may defend an action under section 11 of this act on  
14 behalf of the recovery account and has recourse to all appropriate  
15 means of defense and review, including examination of witnesses and the  
16 right to relitigate material and relevant issues in the proceeding  
17 against the recovery account that were determined in the underlying  
18 action on which the judgment in favor of the complainant was based. If  
19 the judgment in favor of the complainant was by default, stipulation,  
20 consent, or when the action against the registered person was defended  
21 by a trustee in bankruptcy, the complainant has the burden of proving  
22 that the cause of action against the registered person was for fraud,  
23 misrepresentation, deceit, or conversion of trust funds. Otherwise,  
24 the judgment creates a rebuttable presumption of the fraud,  
25 misrepresentation, deceit, or conversion of trust funds by the  
26 registered person, that presumption affecting the burden of producing  
27 evidence.

28 The director may move the court to dismiss the complaint when it  
29 appears there are no triable issues and the petition is without merit.  
30 The motion may be supported by affidavit of anyone having knowledge of  
31 the facts, and may be made on the basis that the petition, and the  
32 judgment referred to in the petition, does not form the basis for a  
33 meritorious recovery claim under section 4 of this act. However, the  
34 director shall give written notice at least ten days before the motion.

35 The director may, subject to court approval, compromise a claim  
36 based upon the complaint of an aggrieved party. The director is not  
37 bound by a compromise or stipulation of the judgment debtor.



1        NEW SECTION.    **Sec. 14.**    The judgment debtor may defend an action  
2 against the recovery account on his or her own behalf and has recourse  
3 to all appropriate means of defense and review, including examination  
4 of witnesses.    Matters finally adjudicated in the underlying action  
5 including, but not limited to, the issues of fraud, misrepresentation,  
6 deceit, or conversion of trust funds are conclusive as to the judgment  
7 debtor and the complainant in the proceeding against the recovery  
8 account.

9        NEW SECTION.    **Sec. 15.**    (1) The maximum liability of the recovery  
10 account may not exceed twenty-five thousand dollars per transaction and  
11 one hundred fifty thousand dollars per registered person regardless of  
12 the number of persons aggrieved or securities involved in a transaction  
13 or the number of judgments against a registered person.

14        (2) When more than one registered person is involved in a  
15 transaction and the individual conduct of two or more of the registered  
16 persons results in a judgment meeting the requirements of section 4(1)  
17 of this act, the claimant may seek recovery from the recovery account  
18 based on the judgment against any of the registered persons, subject to  
19 this section and section 4(3)(g)(v) of this act.

20        NEW SECTION.    **Sec. 16.**    If the amount of liability of the recovery  
21 account under section 15 of this act is insufficient to pay in full the  
22 valid claims of all aggrieved persons by whom claims have been filed  
23 against a registered person, the amount must be distributed among them  
24 in the ratio that their respective claims bear to the aggregate of the  
25 valid claims, or in another manner as the court deems equitable.  
26 Distribution of moneys must be among the persons entitled to share  
27 therein, without regard to the order of priority in which their  
28 respective judgments may have been obtained or their claims have been  
29 filed.    Upon petition of the director, the court may require all  
30 claimants and prospective claimants against one registered person to be  
31 joined in one action, to the end that the respective rights of all  
32 claimants to the recovery account may be equitably adjudicated and  
33 settled.

34        NEW SECTION.    **Sec. 17.**    If the director pays from the recovery  
35 account an amount in settlement of a claim or toward satisfaction of a  
36 judgment against a registered person, the department shall

1 automatically suspend the registered person's registration on the date  
2 of payment from the recovery account subject to the registered person's  
3 right to file a petition with the superior court in the county from  
4 which the underlying judgment was rendered for a writ of mandamus. The  
5 registered person has this right to petition notwithstanding chapter  
6 34.05 RCW. A registered person may not be granted reinstatement until  
7 he or she has repaid in full, plus interest at the prevailing  
8 applicable legal rate, the amount paid from the recovery account on his  
9 or her account. A discharge in bankruptcy does not relieve a person  
10 from the penalties and disabilities provided in this chapter.

11 NEW SECTION. **Sec. 18.** If the money deposited in the recovery  
12 account is insufficient to satisfy an authorized claim or portion of a  
13 claim, the director shall, when sufficient money has been deposited in  
14 the recovery account, satisfy the unpaid claim or portion in the order  
15 that the claim or portion was originally filed.

16 NEW SECTION. **Sec. 19.** A person or the agent of a person may not  
17 file with the director a notice, statement, or other document required  
18 under this chapter that is false, untrue, or contains a willful,  
19 material misstatement of fact. A violation of this section constitutes  
20 a public offense punishable by imprisonment for a period of not more  
21 than one year or a fine of not more than one thousand dollars, or both.

22 NEW SECTION. **Sec. 20.** When the director has paid from the  
23 recovery account a sum to the judgment creditor, the director is  
24 subrogated to the rights of the judgment creditor to the extent of the  
25 amount paid by the director from the recovery account and the judgment  
26 creditor shall assign his or her right, title, and interest in the  
27 judgment to the director to that extent, and an amount and interest  
28 recovered by the director on the judgment shall be deposited in the  
29 recovery account.

30 NEW SECTION. **Sec. 21.** The failure of an aggrieved person to  
31 comply with this chapter constitutes a waiver of the person's rights  
32 under this chapter.

33 NEW SECTION. **Sec. 22.** This chapter does not limit the authority  
34 of the director to take disciplinary action against a registered person

1 for any violation of chapter 21.20 RCW or any rule or order of the  
2 director. The repayment in full of obligations to the recovery account  
3 by a registered person does not nullify or modify the effect of another  
4 disciplinary proceeding brought under the securities act of Washington.

5 NEW SECTION. **Sec. 23.** The director may adopt rules necessary or  
6 appropriate for the enforcement of this chapter.

7 NEW SECTION. **Sec. 24.** Sections 1 through 23 of this act shall  
8 constitute a new chapter in Title 21 RCW.

9 NEW SECTION. **Sec. 25.** If any provision of this act or its  
10 application to any person or circumstance is held invalid, the  
11 remainder of the act or the application of the provision to other  
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 26.** This act takes effect July 1, 1995.

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