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**SUBSTITUTE SENATE BILL 5195**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

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

Read first time 02/12/93.

1 AN ACT Relating to excessive securities transactions; amending RCW  
2 21.20.005; and adding new sections to chapter 21.20 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 21.20 RCW  
5 to read as follows:

6 It is unlawful for a broker-dealer, salesperson, investment  
7 adviser, or investment adviser salesperson knowingly to effect or cause  
8 to be effected, with or for a customer's account, transactions of  
9 purchase or sale (1) that are excessive in size or frequency in view of  
10 the financial resources and character of the account and (2) that are  
11 effected because the broker-dealer, salesperson, investment adviser, or  
12 investment adviser salesperson is vested with discretionary power or is  
13 able by reason of the customer's trust and confidence to influence the  
14 volume and frequency of the trades.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 21.20 RCW  
16 to read as follows:

17 (1) In recommending to a customer the purchase, sale, or exchange  
18 of a security, a broker-dealer, salesperson, investment adviser, or

1 investment adviser salesperson must have reasonable grounds for  
2 believing that the recommendation is suitable for the customer upon the  
3 basis of the facts, if any, disclosed by the customer as to his or her  
4 other security holdings and as to his or her financial situation and  
5 needs.

6 (2) Before the execution of a transaction recommended to a  
7 noninstitutional customer, other than transactions with customers where  
8 investments are limited to money market mutual funds, a broker-dealer,  
9 salesperson, investment adviser, or investment adviser salesperson  
10 shall make reasonable efforts to obtain information concerning:

11 (a) The customer's financial status;

12 (b) The customer's tax status;

13 (c) The customer's investment objectives; and

14 (d) Such other information used or considered to be reasonable by  
15 the broker-dealer, salesperson, investment adviser, or investment  
16 adviser salesperson or registered representative in making  
17 recommendations to the customer.

18 NEW SECTION. **Sec. 3.** A new section is added to chapter 21.20 RCW  
19 to read as follows:

20 (1) A broker-dealer, salesperson, investment adviser, or investment  
21 adviser salesperson who violates section 1 of this act is liable to  
22 that customer, who may sue to recover damages, costs, reasonable  
23 attorneys' fees, and all commissions paid for the sale, transfer, or  
24 purchase of any security for the account. The court may award two  
25 times the damages sustained.

26 (2) A person who, directly or indirectly, controls a broker-dealer,  
27 salesperson, investment adviser, or investment adviser salesperson  
28 liable under subsection (1) of this section is also liable jointly and  
29 severally with and to the same extent as the broker-dealer,  
30 salesperson, investment adviser, or investment adviser salesperson to  
31 that customer, if the person: (a) Knew or should have known that the  
32 broker-dealer, salesperson, investment adviser, or investment adviser  
33 salesperson was engaging in the violation; or (b) failed to establish,  
34 maintain, or enforce compliance procedures reasonably designed to  
35 detect the violation and that failure contributed to the violation.

36 (3)(a) A cause of action under this section survives the death of  
37 a customer who might have been a plaintiff or defendant.

1 (b) A customer may not sue under this section more than three years  
2 after a violation of section 1 of this act either was discovered by the  
3 customer or would have been discovered by the customer in the exercise  
4 of reasonable care.

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

7 **Sec. 4.** RCW 21.20.005 and 1989 c 391 s 1 are each amended to read  
8 as follows:

9 The definitions set forth in this section shall apply throughout  
10 this chapter, unless the context otherwise requires:

11 (1) "Director" means the director of licensing of this state.

12 (2) "Salesperson" means any individual other than a broker-dealer  
13 who represents a broker-dealer or issuer in effecting or attempting to  
14 effect sales of securities, but "salesperson" does not include an  
15 individual who represents an issuer in (a) effecting a transaction in  
16 a security exempted by RCW 21.20.310 (1), (2), (3), (4), (9), (10),  
17 (11), (12), or (13), as now or hereafter amended, (b) effecting  
18 transactions exempted by RCW 21.20.320, or (c) effecting transactions  
19 with existing employees, partners, or directors of the issuer if no  
20 commission or other remuneration is paid or given directly or  
21 indirectly for soliciting any person in this state.

22 (3) "Broker-dealer" means any person engaged in the business of  
23 effecting transactions in securities for the account of others or for  
24 that person's own account. "Broker-dealer" does not include (a) a  
25 salesperson, issuer, bank, savings institution, or trust company, (b)  
26 a person who has no place of business in this state if the person  
27 effects transactions in this state exclusively with or through the  
28 issuers of the securities involved in the transactions, other broker-  
29 dealers, or banks, savings institutions, trust companies, insurance  
30 companies, investment companies as defined in the investment company  
31 act of 1940, pension or profit-sharing trusts, or other financial  
32 institutions or institutional buyers, whether acting for themselves or  
33 as trustees, or (c) a person who has no place of business in this state  
34 if during any period of twelve consecutive months that person does not  
35 direct more than fifteen offers to sell or to buy into this state in  
36 any manner to persons other than those specified in subsection (b)  
37 above.

1 (4) "Guaranteed" means guaranteed as to payment of principal,  
2 interest, or dividends.

3 (5) "Full business day" means all calendar days, excluding  
4 therefrom Saturdays, Sundays, and all legal holidays, as defined by  
5 statute.

6 (6) "Investment adviser" means any person who, for compensation,  
7 engages in the business of advising others, either directly or through  
8 publications or writings, as to the value of securities or as to the  
9 advisability of investing in, purchasing, or selling securities, or  
10 who, for compensation and as a part of a regular business, issues or  
11 promulgates analyses or reports concerning securities. "Investment  
12 adviser" also includes financial planners and other persons who, as an  
13 integral component of other financially related services, (a) provide  
14 the foregoing investment advisory services to others for compensation  
15 as part of a business or (b) hold themselves out as providing the  
16 foregoing investment advisory services to others for compensation.  
17 Investment adviser shall also include any person who holds himself out  
18 as a financial planner.

19 "Investment adviser" does not include (a) a bank, savings  
20 institution, or trust company, (b) a lawyer, accountant, certified  
21 public accountant licensed under chapter 18.04 RCW, engineer, or  
22 teacher whose performance of these services is solely incidental to the  
23 practice of his or her profession, (c) a broker-dealer, (d) a publisher  
24 of any bona fide newspaper, news magazine, or business or financial  
25 publication of general, regular, and paid circulation, (e) a radio or  
26 television station, (f) a person whose advice, analyses, or reports  
27 relate only to securities exempted by RCW 21.20.310(1), (g) a person  
28 who has no place of business in this state if (i) that person's only  
29 clients in this state are other investment advisers, broker-dealers,  
30 banks, savings institutions, trust companies, insurance companies,  
31 investment companies as defined in the investment company act of 1940,  
32 pension or profit-sharing trust, or other financial institutions or  
33 institutional buyers, whether acting for themselves or as trustees, or  
34 (ii) during any period of twelve consecutive months that person does  
35 not direct business communications into this state in any manner to  
36 more than five clients other than those specified in clause (i) above,  
37 or (h) such other persons not within the intent of this paragraph as  
38 the director may by rule or order designate.

1 (7) "Issuer" means any person who issues or proposes to issue any  
2 security, except that with respect to certificates of deposit, voting  
3 trust certificates, or collateral-trust certificates, or with respect  
4 to certificates of interest or shares in an unincorporated investment  
5 trust not having a board of directors (or persons performing similar  
6 functions) or of the fixed, restricted management, or unit type; the  
7 term "issuer" means the person or persons performing the acts and  
8 assuming the duties of depositor or manager pursuant to the provisions  
9 of the trust or other agreement or instrument under which the security  
10 is issued.

11 (8) "Nonissuer" means not directly or indirectly for the benefit of  
12 the issuer.

13 (9) "Person" means an individual, a corporation, a partnership, an  
14 association, a joint-stock company, a trust where the interest of the  
15 beneficiaries are evidenced by a security, an unincorporated  
16 organization, a government, or a political subdivision of a government.

17 (10) "Sale" or "sell" includes every contract of sale of, contract  
18 to sell, or disposition of, a security or interest in a security for  
19 value. "Offer" or "offer to sell" includes every attempt or offer to  
20 dispose of, or solicitation of an offer to buy, a security or interest  
21 in a security for value.

22 Any security given or delivered with, or as a bonus on account of,  
23 any purchase of securities or any other thing is considered to  
24 constitute part of the subject of the purchase and to have been offered  
25 and sold for value. A purported gift of assessable stock is considered  
26 to involve an offer and sale. Every sale or offer of a warrant or  
27 right to purchase or subscribe to another security of the same or  
28 another issuer, as well as every sale or offer of a security which  
29 gives the holder a present or future right or privilege to convert into  
30 another security of the same or another issuer, is considered to  
31 include an offer of the other security.

32 (11) "Securities Act of 1933", "Securities Exchange Act of 1934",  
33 "Public Utility Holding Company Act of 1935", and "Investment Company  
34 Act of 1940" means the federal statutes of those names as amended  
35 before or after June 10, 1959.

36 (12) "Security" means any note; stock; treasury stock; bond;  
37 debenture; evidence of indebtedness; certificate of interest or  
38 participation in any profit-sharing agreement; collateral-trust  
39 certificate; preorganization certificate or subscription; transferable

1 share; investment contract; investment of money or other consideration  
2 in the risk capital of a venture with the expectation of some valuable  
3 benefit to the investor where the investor does not receive the right  
4 to exercise practical and actual control over the managerial decisions  
5 of the venture; voting-trust certificate; certificate of deposit for  
6 a security; certificate of interest or participation in an oil, gas or  
7 mining title or lease or in payments out of production under such a  
8 title or lease; charitable gift annuity; or, in general, any interest  
9 or instrument commonly known as a "security", or any certificate of  
10 interest or participation in, temporary or interim certificate for,  
11 receipt for, guarantee of, or warrant or right to subscribe to or  
12 purchase, any of the foregoing; or any sale of or indenture, bond or  
13 contract for the conveyance of land or any interest therein where such  
14 land is situated outside of the state of Washington and such sale or  
15 its offering is not conducted by a real estate broker licensed by the  
16 state of Washington. "Security" does not include any insurance or  
17 endowment policy or annuity contract under which an insurance company  
18 promises to pay money either in a lump sum or periodically for life or  
19 some other specified period.

20 (13) "State" means any state, territory, or possession of the  
21 United States, as well as the District of Columbia and Puerto Rico.

22 (14) "Investment adviser salesperson" means a person retained or  
23 employed by an investment adviser to solicit clients or offer the  
24 services of the investment adviser or manage the accounts of said  
25 clients.

26 (15) "Relatives", as used in RCW 21.20.310(11) as now or hereafter  
27 amended, shall include:

28 (a) A member's spouse;

29 (b) Parents of the member or the member's spouse;

30 (c) Grandparents of the member or the member's spouse;

31 (d) Natural or adopted children of the member or the member's  
32 spouse;

33 (e) Aunts and uncles of the member or the member's spouse; and

34 (f) First cousins of the member or the member's spouse.

35 (16) "Customer" means a person other than a broker-dealer or  
36 investment adviser.

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