
SENATE BILL 5195

State of Washington

53rd Legislature

1993 Regular Session

By Senator Moore

Read first time 01/15/93. Referred to Committee on Labor & Commerce.

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, with or
8 for a customer's account, transactions of purchase or sale (1) that are
9 excessive in size or frequency in view of the financial resources and
10 character of the account and (2) that are effected because the broker-
11 dealer, salesperson, investment adviser, or investment adviser
12 salesperson is vested with discretionary power or is able by reason of
13 the customer's trust and confidence to influence the volume and
14 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) A broker-dealer, salesperson, investment adviser, or investment
18 adviser salesperson who violates section 1 of this act is liable to

1 that customer, who may sue to recover damages, costs, reasonable
2 attorneys' fees, and all commissions paid for the sale, transfer, or
3 purchase of any security for the account. In addition, the court may
4 award three times the damages sustained.

5 (2) A person who, directly or indirectly, controls a broker-dealer,
6 salesperson, investment adviser, or investment adviser salesperson
7 liable under subsection (1) of this section is also liable jointly and
8 severally with and to the same extent as the broker-dealer,
9 salesperson, investment adviser, or investment adviser salesperson to
10 that customer, if the person: (a) Knew or should have known that the
11 broker-dealer, salesperson, investment adviser, or investment adviser
12 salesperson was engaging in the violation; or (b) failed to establish,
13 maintain, or enforce compliance procedures reasonably designed to
14 detect the violation and that failure contributed to the violation.

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

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

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

23 **Sec. 3.** RCW 21.20.005 and 1989 c 391 s 1 are each amended to read
24 as follows:

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

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

28 (2) "Salesperson" means any individual other than a broker-dealer
29 who represents a broker-dealer or issuer in effecting or attempting to
30 effect sales of securities, but "salesperson" does not include an
31 individual who represents an issuer in (a) effecting a transaction in
32 a security exempted by RCW 21.20.310 (1), (2), (3), (4), (9), (10),
33 (11), (12), or (13), as now or hereafter amended, (b) effecting
34 transactions exempted by RCW 21.20.320, or (c) effecting transactions
35 with existing employees, partners, or directors of the issuer if no
36 commission or other remuneration is paid or given directly or
37 indirectly for soliciting any person in this state.

1 (3) "Broker-dealer" means any person engaged in the business of
2 effecting transactions in securities for the account of others or for
3 that person's own account. "Broker-dealer" does not include (a) a
4 salesperson, issuer, bank, savings institution, or trust company, (b)
5 a person who has no place of business in this state if the person
6 effects transactions in this state exclusively with or through the
7 issuers of the securities involved in the transactions, other broker-
8 dealers, or banks, savings institutions, trust companies, insurance
9 companies, investment companies as defined in the investment company
10 act of 1940, pension or profit-sharing trusts, or other financial
11 institutions or institutional buyers, whether acting for themselves or
12 as trustees, or (c) a person who has no place of business in this state
13 if during any period of twelve consecutive months that person does not
14 direct more than fifteen offers to sell or to buy into this state in
15 any manner to persons other than those specified in subsection (b)
16 above.

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

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

22 (6) "Investment adviser" means any person who, for compensation,
23 engages in the business of advising others, either directly or through
24 publications or writings, as to the value of securities or as to the
25 advisability of investing in, purchasing, or selling securities, or
26 who, for compensation and as a part of a regular business, issues or
27 promulgates analyses or reports concerning securities. "Investment
28 adviser" also includes financial planners and other persons who, as an
29 integral component of other financially related services, (a) provide
30 the foregoing investment advisory services to others for compensation
31 as part of a business or (b) hold themselves out as providing the
32 foregoing investment advisory services to others for compensation.
33 Investment adviser shall also include any person who holds himself out
34 as a financial planner.

35 "Investment adviser" does not include (a) a bank, savings
36 institution, or trust company, (b) a lawyer, accountant, certified
37 public accountant licensed under chapter 18.04 RCW, engineer, or
38 teacher whose performance of these services is solely incidental to the
39 practice of his or her profession, (c) a broker-dealer, (d) a publisher

1 of any bona fide newspaper, news magazine, or business or financial
2 publication of general, regular, and paid circulation, (e) a radio or
3 television station, (f) a person whose advice, analyses, or reports
4 relate only to securities exempted by RCW 21.20.310(1), (g) a person
5 who has no place of business in this state if (i) that person's only
6 clients in this state are other investment advisers, broker-dealers,
7 banks, savings institutions, trust companies, insurance companies,
8 investment companies as defined in the investment company act of 1940,
9 pension or profit-sharing trust, or other financial institutions or
10 institutional buyers, whether acting for themselves or as trustees, or
11 (ii) during any period of twelve consecutive months that person does
12 not direct business communications into this state in any manner to
13 more than five clients other than those specified in clause (i) above,
14 or (h) such other persons not within the intent of this paragraph as
15 the director may by rule or order designate.

16 (7) "Issuer" means any person who issues or proposes to issue any
17 security, except that with respect to certificates of deposit, voting
18 trust certificates, or collateral-trust certificates, or with respect
19 to certificates of interest or shares in an unincorporated investment
20 trust not having a board of directors (or persons performing similar
21 functions) or of the fixed, restricted management, or unit type; the
22 term "issuer" means the person or persons performing the acts and
23 assuming the duties of depositor or manager pursuant to the provisions
24 of the trust or other agreement or instrument under which the security
25 is issued.

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

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

32 (10) "Sale" or "sell" includes every contract of sale of, contract
33 to sell, or disposition of, a security or interest in a security for
34 value. "Offer" or "offer to sell" includes every attempt or offer to
35 dispose of, or solicitation of an offer to buy, a security or interest
36 in a security for value.

37 Any security given or delivered with, or as a bonus on account of,
38 any purchase of securities or any other thing is considered to
39 constitute part of the subject of the purchase and to have been offered

1 and sold for value. A purported gift of assessable stock is considered
2 to involve an offer and sale. Every sale or offer of a warrant or
3 right to purchase or subscribe to another security of the same or
4 another issuer, as well as every sale or offer of a security which
5 gives the holder a present or future right or privilege to convert into
6 another security of the same or another issuer, is considered to
7 include an offer of the other security.

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

12 (12) "Security" means any note; stock; treasury stock; bond;
13 debenture; evidence of indebtedness; certificate of interest or
14 participation in any profit-sharing agreement; collateral-trust
15 certificate; preorganization certificate or subscription; transferable
16 share; investment contract; investment of money or other consideration
17 in the risk capital of a venture with the expectation of some valuable
18 benefit to the investor where the investor does not receive the right
19 to exercise practical and actual control over the managerial decisions
20 of the venture; voting-trust certificate; certificate of deposit for
21 a security; certificate of interest or participation in an oil, gas or
22 mining title or lease or in payments out of production under such a
23 title or lease; charitable gift annuity; or, in general, any interest
24 or instrument commonly known as a "security", or any certificate of
25 interest or participation in, temporary or interim certificate for,
26 receipt for, guarantee of, or warrant or right to subscribe to or
27 purchase, any of the foregoing; or any sale of or indenture, bond or
28 contract for the conveyance of land or any interest therein where such
29 land is situated outside of the state of Washington and such sale or
30 its offering is not conducted by a real estate broker licensed by the
31 state of Washington. "Security" does not include any insurance or
32 endowment policy or annuity contract under which an insurance company
33 promises to pay money either in a lump sum or periodically for life or
34 some other specified period.

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

37 (14) "Investment adviser salesperson" means a person retained or
38 employed by an investment adviser to solicit clients or offer the

1 services of the investment adviser or manage the accounts of said
2 clients.

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

5 (a) A member's spouse;

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

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

8 (d) Natural or adopted children of the member or the member's
9 spouse;

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

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

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

--- END ---