

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5195

Chapter 470, Laws of 1993

53rd Legislature
1993 Regular Session

EXCESSIVE SECURITIES TRANSACTIONS PROHIBITED

EFFECTIVE DATE: 7/25/93

Passed by the Senate April 22, 1993
YEAS 38 NAYS 8

JOEL PRITCHARD

President of the Senate

Passed by the House April 8, 1993
YEAS 97 NAYS 0

BRIAN EBERSOLE

**Speaker of the
House of Representatives**

Approved May 17, 1993

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5195** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

Secretary

FILED

May 17, 1993 - 2:06 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5195

AS AMENDED BY THE HOUSE

Passed Legislature - 1993 Regular Session

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 21.20.110 and 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 **Sec. 3.** RCW 21.20.110 and 1986 c 14 s 45 are each amended to read
19 as follows:

20 The director may by order deny, suspend, or revoke registration of
21 any broker-dealer, salesperson, investment adviser salesperson, or
22 investment adviser; censure or fine the registrant or an officer,
23 director, partner, or person occupying similar functions for a
24 registrant; or restrict or limit a registrant's function or activity of
25 business for which registration is required in this state; if the
26 director finds that the order is in the public interest and that the
27 applicant or registrant or, in the case of a broker-dealer or
28 investment adviser, any partner, officer, or director:

29 (1) Has filed an application for registration under this section
30 which, as of its effective date, or as of any date after filing in the
31 case of an order denying effectiveness, was incomplete in any material
32 respect or contained any statement which was, in the light of the
33 circumstances under which it was made, false, or misleading with
34 respect to any material fact;

35 (2) Has willfully violated or willfully failed to comply with any
36 provision of this chapter or a predecessor act or any rule or order
37 under this chapter or a predecessor act, or any provision of chapter
38 21.30 RCW or any rule or order thereunder;

1 (3) Has been convicted, within the past five years, of any
2 misdemeanor involving a security, or a commodity contract or commodity
3 option as defined in RCW 21.30.010, or any aspect of the securities or
4 investment commodities business, or any felony involving moral
5 turpitude;

6 (4) Is permanently or temporarily enjoined by any court of
7 competent jurisdiction from engaging in or continuing any conduct or
8 practice involving any aspect of the securities or investment
9 commodities business;

10 (5) Is the subject of an order of the director denying, suspending,
11 or revoking registration as a broker-dealer, salesperson, investment
12 adviser, or investment adviser salesperson;

13 (6) Is the subject of an order entered within the past five years
14 by the securities administrator of any other state or by the federal
15 securities and exchange commission denying or revoking registration as
16 a broker-dealer or salesperson, or a commodity broker-dealer or sales
17 representative, or the substantial equivalent of those terms as defined
18 in this chapter or by the commodity futures trading commission denying
19 or revoking registration as a commodity merchant as defined in RCW
20 21.30.010, or is the subject of an order of suspension or expulsion
21 from membership in or association with a self-regulatory organization
22 registered under the securities exchange act of 1934 or the federal
23 commodity exchange act, or is the subject of a United States post
24 office fraud order; but (a) the director may not institute a revocation
25 or suspension proceeding under this clause more than one year from the
26 date of the order relied on, and (b) the director may not enter any
27 order under this clause on the basis of an order unless that order was
28 based on facts which would currently constitute a ground for an order
29 under this section;

30 (7) Has engaged in dishonest or unethical practices in the
31 securities or investment commodities business;

32 (8) Is insolvent, either in the sense that his or her liabilities
33 exceed his or her assets or in the sense that he or she cannot meet his
34 or her obligations as they mature; but the director may not enter an
35 order against a broker-dealer or investment adviser under this clause
36 without a finding of insolvency as to the broker-dealer or investment
37 adviser;

1 (9) Has not complied with a condition imposed by the director under
2 RCW 21.20.100, or is not qualified on the basis of such factors as
3 training, experience, or knowledge of the securities business; or

4 (10)(a) Has failed to supervise reasonably (~~(his or her)~~) a
5 salesperson(~~(s if he or she is a broker-dealer)~~) or (~~(his or her)~~) an
6 investment adviser salesperson (~~(if he or she is an investment adviser.~~

7 ~~The director may by order summarily postpone or suspend~~
8 ~~registration pending final determination of any proceeding under this~~
9 ~~section)). For the purposes of this subsection, no person fails to~~
10 ~~supervise reasonably another person, if:~~

11 (i) There are established procedures, and a system for applying
12 those procedures, that would reasonably be expected to prevent and
13 detect, insofar as practicable, any violation by another person of this
14 chapter, or a rule or order under this chapter; and

15 (ii) The supervising person has reasonably discharged the duties
16 and obligations required by these procedures and system without
17 reasonable cause to believe that another person was violating this
18 chapter or rules or orders under this chapter.

19 (b) The director may issue a summary order pending final
20 determination of a proceeding under this section upon a finding that it
21 is in the public interest and necessary or appropriate for the
22 protection of investors. The director may not impose a fine under this
23 section except after notice and opportunity for hearing. The fine
24 imposed under this section may not exceed five thousand dollars for
25 each act or omission that constitutes the basis for issuing the order.

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

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

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

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

1 commission or other remuneration is paid or given directly or
2 indirectly for soliciting any person in this state.

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

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

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

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

37 "Investment adviser" does not include (a) a bank, savings
38 institution, or trust company, (b) a lawyer, accountant, certified
39 public accountant licensed under chapter 18.04 RCW, engineer, or

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

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

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

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

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

1 Any security given or delivered with, or as a bonus on account of,
2 any purchase of securities or any other thing is considered to
3 constitute part of the subject of the purchase and to have been offered
4 and sold for value. A purported gift of assessable stock is considered
5 to involve an offer and sale. Every sale or offer of a warrant or
6 right to purchase or subscribe to another security of the same or
7 another issuer, as well as every sale or offer of a security which
8 gives the holder a present or future right or privilege to convert into
9 another security of the same or another issuer, is considered to
10 include an offer of the other security.

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

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

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

1 (14) "Investment adviser salesperson" means a person retained or
2 employed by an investment adviser to solicit clients or offer the
3 services of the investment adviser or manage the accounts of said
4 clients.

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

7 (a) A member's spouse;

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

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

10 (d) Natural or adopted children of the member or the member's
11 spouse;

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

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

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

Passed the Senate April 22, 1993.

Passed the House April 8, 1993.

Approved by the Governor May 17, 1993.

Filed in Office of Secretary of State May 17, 1993.