
SUBSTITUTE SENATE BILL 5184

State of Washington

53rd Legislature

1993 Regular Session

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

Read first time 02/15/93.

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 licensing.

11 (3) "Director" means the director of licensing.

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 advisor, or investment advisor 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 or arbitration award that represents an actual and direct
22 loss to the claimant in a transaction or account. The judgment or
23 award must be a final judgment in a court of competent jurisdiction or
24 an arbitration award rendered in accordance with the rules established
25 by the American arbitration association or another recognized
26 arbitration body. The judgment or award must include findings of fact
27 and conclusions of law based on intentional fraud, misrepresentation,
28 deceit, or conversion of trust funds, by a registered person, including
29 a person under suspension proceedings, or a formerly registered person
30 who holds himself or herself out as a registered person. The judgment
31 or award must also be based on acts or omissions arising directly out
32 of a transaction or account in which the registered person performed
33 acts for which registration under chapter 21.20 RCW was required or
34 appropriate.

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

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

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

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

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

8 (d) A detailed narrative statement of the facts in explanation of
9 the allegations of the complaint upon which the underlying judgment is
10 based;

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

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

25 (g) The following representations and information from the
26 claimant:

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

28 (ii) That the claimant has complied with all of the requirements of
29 this chapter;

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

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

38 (v) That the claimant has diligently pursued collection efforts
39 against other judgment debtors and all other persons liable to the

1 claimant in the transaction that is the basis for the underlying
2 judgment; and

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

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

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

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

24 (3) The notice served upon the judgment debtor must include the
25 following statement:

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

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

36 "If you wish to contest payment by the director of licensing, you
37 must file a written response to the application addressed to the
38 department of licensing at, within thirty days after

1 mailing, delivery, or publication of this notice and send a copy of
2 that response to the claimant. If you fail to do so, you waive your
3 right to present your objections to payment."

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

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

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

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

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

1 the director and the claimant are not competent evidence in judicial
2 proceedings undertaken by the claimant under section 11 of this act.

3 NEW SECTION. **Sec. 8.** The department may use all appropriate means
4 of investigation and discovery available to it in its consideration and
5 investigation of an application.

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

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

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

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

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

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

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

35 NEW SECTION. **Sec. 10.** Prior to the rendering of a decision on a
36 claim, if the director determines that the aggregate valid claims of

1 all aggrieved persons against the registered person are likely to
2 exceed the limits of liability under section 15 of this act, the
3 director shall initiate a proration proceeding instead of further
4 administrative proceedings under section 16 of this act in a court of
5 competent jurisdiction in which a judgment meeting the requirements of
6 section 4 of this act has been entered against the registered person.

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

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

21 "NOTICE: An application has been filed with the court for a payment
22 from the securities brokers recovery account that was previously denied
23 by the director of licensing.

24 "If the department of licensing makes a payment from the securities
25 brokers recovery account under a court order, all of your registrations
26 and registration rights under the securities act of Washington, chapter
27 21.20 RCW, will be automatically suspended until the recovery account
28 has been reimbursed by you for the amount paid plus interest at the
29 prevailing rate.

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

34 NEW SECTION. **Sec. 12.** (1) The director and the judgment debtor
35 each have thirty days after being served with the application in which
36 to file a written response. The court shall subsequently set the
37 matter for hearing upon the petition of the claimant. The court shall

1 grant a request of the director for a continuance of as much as thirty
2 days and may, upon a showing of good cause by a party, continue the
3 hearing for a time the court finds appropriate.

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

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

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

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

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

1 The director may, subject to court approval, compromise a claim
2 based upon the application of an aggrieved party. The director is not
3 bound by a compromise or stipulation of the judgment debtor.

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

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

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

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

1 NEW SECTION. **Sec. 17.** If the director pays from the recovery
2 account an amount in settlement of a claim or toward satisfaction of a
3 judgment against a registered person, the department shall
4 automatically suspend the registered person's registration on the date
5 of payment from the recovery account subject to the registered person's
6 right to file a petition with the superior court in the county from
7 which the underlying judgment was rendered for a writ of mandamus. The
8 registered person has this right to petition notwithstanding chapter
9 34.05 RCW. A registered person may not be granted reinstatement until
10 he or she has repaid in full, plus interest at the prevailing
11 applicable legal rate, the amount paid from the recovery account on his
12 or her account. A discharge in bankruptcy does not relieve a person
13 from the penalties and disabilities provided in this chapter.

14 NEW SECTION. **Sec. 18.** If the money deposited in the recovery
15 account is insufficient to satisfy an authorized claim or portion of a
16 claim, the director shall, when sufficient money has been deposited in
17 the recovery account, satisfy the unpaid claim or portion in the order
18 that the claim or portion was originally filed, plus accumulated
19 interest at the rate of four percent a year.

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

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

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

4 NEW SECTION. **Sec. 22.** This chapter does not limit the authority
5 of the director to take disciplinary action against a registered person
6 for a violation of chapter 21.20 RCW or the rules of the director. The
7 repayment in full of obligations to the recovery account by a
8 registered person does not nullify or modify the effect of another
9 disciplinary proceeding brought under the securities act of Washington.

10 NEW SECTION. **Sec. 23.** The director may adopt rules necessary for
11 the enforcement of this chapter.

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

14 NEW SECTION. **Sec. 25.** This act takes effect January 1, 1994.

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