

---

SENATE BILL 5184

---

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 the securities brokers recovery account; adding  
2 a new chapter to Title 21 RCW; and prescribing penalties.

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

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

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

9 (2) "Department" means the department of licensing.

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

11 (4) "Recovery account" means the securities brokers recovery  
12 account.

13 (5) "Registered person" means a person registered under the  
14 securities act of Washington, chapter 21.20 RCW.

15 NEW SECTION. **Sec. 2.** The securities brokers recovery account is  
16 created in the state treasury. All receipts from collections made  
17 under this chapter shall be deposited into the account. Expenditures  
18 from the account may be used only for the purposes designated under

1 this chapter. Only the director or the director's designee may  
2 authorize expenditures from the account. The account is subject to  
3 allotment procedures under chapter 43.88 RCW, but no appropriation is  
4 required for expenditures.

5 NEW SECTION. **Sec. 3.** A person required to register under chapter  
6 21.20 RCW shall pay a fee of one hundred dollars in addition to the  
7 registration fee when obtaining or renewing a license under chapter  
8 21.20 RCW if, on June 30, the balance remaining in the recovery account  
9 is less than two hundred thousand dollars. The department shall  
10 deposit the fee collected under this section into the recovery account.  
11 If the balance on June 30 is more than two hundred thousand dollars,  
12 the fee is fifty dollars per registration or renewal.

13 NEW SECTION. **Sec. 4.** (1) When an aggrieved person obtains a final  
14 judgment in a court of competent jurisdiction or an arbitration award  
15 that includes findings of fact and conclusions of law rendered in  
16 accordance with the rules established by the American arbitration  
17 association or another recognized arbitration body, against a defendant  
18 based upon the defendant's fraud, misrepresentation, or deceit, made  
19 with intent to defraud, or the defendant's conversion of trust funds  
20 arising directly out of a transaction in which the defendant, while  
21 registered under chapter 21.20 RCW, performed acts for which that  
22 registration was required, the aggrieved person may file an application  
23 with the department for payment from the recovery account, within the  
24 limitations specified in section 15 of this act, of the amount unpaid  
25 on the judgment that represents an actual and direct loss to the  
26 claimant in the transaction.

27 (2) The application must be delivered in person or by certified  
28 mail to an office of the department not later than one year after the  
29 judgment became final.

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

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

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

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

1 (d) A detailed narrative statement of the facts in explanation of  
2 the allegations of the complaint upon which the underlying judgment is  
3 based;

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

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

18 (g) The following representations and information from the  
19 claimant:

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

21 (ii) That the claimant has complied with all of the requirements of  
22 this chapter;

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

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

31 (v) That the claimant has diligently pursued collection efforts  
32 against other judgment debtors and all other persons liable to the  
33 claimant in the transaction that is the basis for the underlying  
34 judgment; and

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

37 (4) The application form must include detailed instructions with  
38 respect to documentary evidence, pleadings, court rulings, and the

1 products of discovery in the underlying litigation, all of which must  
2 be appended to the application.

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

8 (2) If the judgment debtor is currently registered under chapter  
9 21.20 RCW, service of the notice and a copy of the application may be  
10 made by registered mail addressed to the judgment debtor at the latest  
11 business or residence address on file with the department. If the  
12 judgment debtor is not currently registered under chapter 21.20 RCW and  
13 personal service cannot be effected through the exercise of reasonable  
14 diligence, the claimant shall serve the judgment debtor by one  
15 publication of the notice in each of two successive weeks in a  
16 newspaper of general circulation published in the county in which the  
17 judgment debtor was last known to reside.

18 (3) The notice served upon the judgment debtor must include the  
19 following statement:

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

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

30 "If you wish to contest payment by the director of licensing, you  
31 must file a written response to the application addressed to the  
32 department of licensing at . . . . ., within thirty days after  
33 mailing, delivery, or publication of this notice and send a copy of  
34 that response to the claimant. If you fail to do so, you waive your  
35 right to present your objections to payment."

36 (4) If a judgment debtor fails to file a written response to the  
37 application with the department within thirty days after personal  
38 service, mailing, or final publication of the notice, the judgment

1 debtor is not entitled to subsequent notice of an action taken or  
2 proposed to be taken by the director with respect to the claim.

3 NEW SECTION. **Sec. 6.** (1) If the director determines that the  
4 application as submitted by the claimant fails to comply with  
5 substantially all of the requirements of section 4 of this act, or with  
6 the requirements of a rule adopted by the director under RCW 43.24.010,  
7 43.24.020, or 43.24.024, the director shall, within fifteen days after  
8 receipt of the application, mail an itemized list of the failures to  
9 the claimant.

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

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

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

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

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

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

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

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

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

18        "Under section 17 of this act, all of your registrations and  
19 registration rights under the securities act of Washington, chapter  
20 21.20 RCW, will be suspended effective on the date of payment, and you  
21 will not be eligible for reinstatement of registration issued under the  
22 securities act of Washington until you have reimbursed the recovery  
23 account for this payment plus interest at the prevailing legal rate.

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

30        NEW SECTION.    **Sec. 10.**    Prior to the rendering of a decision on a  
31 claim, if the director determines that the aggregate valid claims of  
32 all aggrieved persons against the registered person are likely to  
33 exceed the limits of liability under section 15 of this act, the  
34 director shall initiate a proration proceeding instead of further  
35 administrative proceedings under section 16 of this act in a court of  
36 competent jurisdiction in which a judgment meeting the requirements of  
37 section 4 of this act has been entered against the registered person.

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

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

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

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

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

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

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

37        (3) If the judgment debtor fails to file a written response to the  
38 application, the claim may be compromised or settled by the director at

1 any time during the court proceedings and the court shall, upon joint  
2 petition of the applicant and the director, issue an order directing  
3 payment out of the recovery account.

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

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

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

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

34 NEW SECTION. **Sec. 14.** The judgment debtor may defend an action  
35 against the recovery account on his or her own behalf and has recourse  
36 to all appropriate means of defense and review, including examination  
37 of witnesses. Matters finally adjudicated in the underlying action

1 including, but not limited to, the issues of fraud, misrepresentation,  
2 deceit, or conversion of trust funds are conclusive as to the judgment  
3 debtor and the applicant in the proceeding against the recovery  
4 account.

5 NEW SECTION. **Sec. 15.** The liability of the recovery account may  
6 not exceed the following amounts, notwithstanding any other provision  
7 of this chapter and regardless of the number of persons aggrieved or  
8 securities involved in a transaction or the number of judgments against  
9 a registered person:

10 (1) For causes of action that occurred on or after January 1, 1990,  
11 ten thousand dollars per transaction and one hundred thousand dollars  
12 per registered person; and

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

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

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

1 of payment from the recovery account. A registered person may not be  
2 granted reinstatement until he or she has repaid in full, plus interest  
3 at the prevailing applicable legal rate, the amount paid from the  
4 recovery account on his or her account. A discharge in bankruptcy does  
5 not relieve a person from the penalties and disabilities provided in  
6 this chapter.

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

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

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

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

28 NEW SECTION. **Sec. 22.** This chapter does not limit the authority  
29 of the director to take disciplinary action against a registered person  
30 for a violation of chapter 21.20 RCW or the rules of the director. The  
31 repayment in full of obligations to the recovery account by a  
32 registered person does not nullify or modify the effect of another  
33 disciplinary proceeding brought under the securities act of Washington.

1        NEW SECTION.    **Sec. 23.**    Sections 1 through 22 of this act shall  
2    constitute a new chapter in Title 21 RCW.

--- **END** ---