HB 1054

Department of Legislative Services

Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1054 (Delegates Barve and Kach)
Economic Matters

Maryland Securities Act - Broker-Dealers and Agents - Fiduciary Duty

This bill imposes fiduciary duties on broker-dealers and agents under the Maryland Securities Act and authorizes the Maryland Securities Commissioner to sanction violators.

Fiscal Summary

State Effect: General fund expenditures could increase by approximately $128,500 in FY 2005 to cover the cost of investigation and enforcement by the Office of the Attorney General. Out-year expenditures reflect annualization and inflation. Revenues would not be affected.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	$0	$0	$0	$0	$0
GF Expenditure	128,500	160,900	169,800	179,200	189,300
Net Effect	($128,500)	($160,900)	($169,800)	($179,200)	($189,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill provides that a broker-dealer and an agent are fiduciaries and have a duty to act primarily for the benefit of their clients. The bill prohibits a broker-dealer or an agent from engaging in dishonest or unethical practices.

The bill authorizes the commissioner, by order, to deny, suspend, or revoke any registration if the commissioner finds that: (1) the order is in the public interest; and (2) a broker-dealer or any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer has violated or failed to comply with the duties imposed on a broker-dealer under the bill.

The bill authorizes the commissioner, by order, to deny, suspend, or revoke any registration if the commissioner finds that: (1) the order is in the public interest; and (2) an agent has violated or failed to comply with the duties imposed on an agent under the bill.

Current Law: While no fiduciary duty is imposed on broker-dealers or their agents, by regulation, investment adviser is a fiduciary and has a duty to act primarily for the benefit of its clients.

It is unlawful for a person, in connection with an offer, sale, or purchase of any security, directly or indirectly, to: (1) employ any device, scheme, or artifice to defraud; (2) make any untrue statement of a material fact or omit to state a material fact necessary to make the statements made not misleading; or (3) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit on any person.

Generally, it is unlawful for a person who receives any consideration from another person for advising the other person as to the value of securities, or their purchase or sale, or for acting as an investment advisor or representative to: (1) employ any device, scheme, or artifice to defraud the other person; (2) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit on the other person; (3) engage in dishonest or unethical practices as the commissioner defines by rule; (4) when acting as principal for the person's own account, knowingly sell any security to or purchase any security from a client; or (5) when acting in an agency capacity for a person other than that client, knowingly make any sale or purchase of any security for the account of that client without disclosing to the client in writing before completing the transaction the capacity in which the person is acting and obtaining the client's consent.

Background: Generally, a fiduciary is a person having a duty, created by an undertaking, to act primarily for another's benefit in matters connected with the undertaking. The fiduciary duty also requires one to subordinate one's personal interests to that of the person to whom the duty is owed.

State Expenditures: Generally, when the Securities Division receives a complaint about a broker-dealer or an agent, the division refers the complainant to arbitration. The imposition of a fiduciary duty on broker-dealers and agents would entail increased scrutiny, and greater enforcement efforts, by the division when it receives a complaint about a broker-dealer or an agent. Therefore, general fund expenditures could increase by an estimated $128,500 in fiscal 2005, which accounts for the bill's October 1, 2004 effective date. This estimate reflects the cost of hiring one Assistant Attorney General, one part-time fraud investigator, and one administrative specialist to process and investigate complaints, and pursue enforcement actions under the bill. It includes salaries, fringe benefits, litigation-related expenses, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	$111,200
Litigation-related Expenses	6,000
Other Operating Expenses	11,300
Total FY 2005 State Expenditures	**$128,500**

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Small Business Effect: The bill imposes a higher standard of care on broker-dealers and agents in their dealings with their clients. Broker-dealers and agents that are not already in compliance with this standard could incur increased compliance costs, including any potential enforcement actions by the Securities Division.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Securities Division), Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2004
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