

State Corporation Commission 2007 Fiscal Impact Statement

1. Bill Number SB1349

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron Potts

3. Committee Commerce and Labor

4. Title Securities Act; reporting short sales.

5. Summary/Purpose: Securities Act; reporting short sales. Requires a registered broker-dealer that is selling or purchasing for a customer or its own account to notify the State Corporation Commission of the failure to settle, by delivery of securities of like kind and quality, a trade in a threshold security of an issuer domiciled in the Commonwealth or with its principal office located in the Commonwealth. The notice is required to be filed within 24 hours following the failure to settle. A broker-dealer who fails to file the notice during the period July 1, 2007, until July 1, 2008, is liable to the company for \$1,000 for each business day the broker-dealer fails to provide the required notice and if the notice is not filed for six or more business days, is liable for the greater of (i) \$1,000 for each business day or (ii) the sum of the sales price for each securities share in the subject trade that has not been delivered in settlement; however, if the failure occurs on or after July 1, 2008, liability increases from \$1,000 to \$10,000 per day. Threshold securities are equity securities that have an aggregate fail-to-deliver position for five consecutive settlement days at a registered clearing agency, total 10,000 shares or more, and are equal to at least 0.5% of the issuer's total shares outstanding. The measure applies to securities transactions occurring on or after July 1, 2007.

6. Fiscal Impact Estimates are: Not Available. See Item 8 below.

6a. Expenditure Impact: Major

6b. Revenue Impact: None

7. Budget amendment necessary: No

8. Fiscal implications:

The State Corporation Commission will need approximately \$500,000 to cover expected challenges through litigation from industry. See Item 11 below.

9. Specific agency or political subdivisions affected: State Corporation Commission

10. Technical amendment necessary: The legislation has been discussed with the Patron.

11. Other comments: Bill background

- 189 million shares of stock fail to deliver daily.

- The Securities and Retail Franchising Division of the State Corporation Commission does not know how many of those shares are tied to a Virginia company or Virginia customers.
- Brokerage firms do not track which clients or accounts have failed positions.
- The information is maintained by Depository Trust And Clearing Corporation, (“DTCC”), over which states have no jurisdiction.
- DTCC maintains that the information is protected from disclosure based upon privacy concerns.
- DTCC advises that they will release the information to the states if the broker dealer firm subject to the inquiry consents to the release. While the records are electronic, DTCC will only commit to provide written records.
- The state of Utah recently enacted the proposed statute. Utah stipulated to a Federal injunction against enforcement of the law pending the results of the Securities and Exchange Commission’s current rule making process on short selling and to give the securities industry an opportunity to work with the Utah legislature in finding other solutions to the problem of abusive trading.
- The Securities Industry Association in its suit against Utah maintains that
 - The information is not available to the states due to preemption by various provisions of federal securities law, including the National Securities Market Improvement Act of 1996, Section 17a of the Securities Exchange Act of 1934, as amended and the Securities and Exchange Commission’s Regulation SHO.
 - The legislation attempts to regulate an area that is the exclusive province of federal law.
 - The Securities and Exchange Commission does not require broker-dealers to track or report information mandated by the proposed statute. Few, if any, broker-dealers have in place the systems to generate reports that contain even a part of the required information.
Broker-dealers do not have access to certain information that they would be required to report under the proposed amendment.

Date: 01/18/07 / TMG

cc: Secretary of Commerce and Trade