

and less the required contributions to its guaranty fund and reserves exceeded two percent of its gross current operating earnings.

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CHAPTER 172

[House Bill No. 618]

SECURITIES REGULATION

AN ACT Relating to security regulations; amending section 31, chapter 282, Laws of 1959 as amended by section 16, chapter 84, Laws of 1975 1st ex. sess. and RCW 21.20.310; amending section 32, chapter 282, Laws of 1959 as last amended by section 17, chapter 84, Laws of 1975 1st ex. sess. and RCW 21.20.320; amending section 34, chapter 282, Laws of 1959 as last amended by section 20, chapter 84, Laws of 1975 1st ex. sess. and RCW 21.20.340; amending section 43, chapter 282, Laws of 1959 as last amended by section 24, chapter 84, Laws of 1975 1st ex. sess. and RCW 21.20.430; and repealing section 26, chapter 84, Laws of 1975 1st ex. sess. and RCW 21.20.335.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 31, chapter 282, Laws of 1959 as amended by section 16, chapter 84, Laws of 1975 1st ex. sess. and RCW 21.20.310 are each amended to read as follows:

RCW 21.20.140 through 21.20.300, inclusive, shall not apply to any of the following securities:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing; but this exemption shall not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless such payments shall be made or unconditionally guaranteed by a person whose securities are exempt from registration by subsections (7) or (8) of this section.

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations(~~(, if the security is recognized as a valid obligation by the issuer or guarantor)~~); but this exemption shall not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless such payments shall be made or unconditionally guaranteed by a person whose securities are exempt from registration by subsections (7) or (8) of this section.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank or trust company organized or supervised under the laws of any state.

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of this state and authorized to do and actually doing business in this state.

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state.

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (a) subject to the jurisdiction of the interstate commerce commission; (b) a registered holding company under the public utility holding company act of 1935 or a subsidiary of such a company within the meaning of that act; (c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or (d) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect of equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection.

(8) Any security listed or approved for listing upon notice of issuance on the New York stock exchange, the American stock exchange, the Midwest stock exchange, the Spokane stock exchange or any other stock exchange registered with the federal securities and exchange commission and approved by the director; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing. The director shall have power at any time by written order to withdraw the exemption so granted as to any particular security.

(9) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies.

(10) Any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if the director is notified in writing thirty days before the inception of the plan or, with respect to plans which are in effect on the effective date of this chapter, within sixty days thereafter (or within thirty days before they are reopened if they are closed on the effective date of this chapter).

Sec. 2. Section 32, chapter 282, Laws of 1959 as last amended by section 17, chapter 84, Laws of 1975 1st ex. sess. and RCW 21.20.320 are each amended to read as follows:

Except as hereinafter in this section expressly provided, RCW 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.110, 21.20.120, 21.20.130, 21.20.135, 21.20.140, 21.20.180, 21.20.190, 21.20.200, 21.20.210, 21.20.220, 21.20.230, 21.20.240, 21.20.250, 21.20.260, 21.20.270, 21.20.280, 21.20.290 and 21.20.300, shall not apply to any of the following transactions:

(1) Any isolated transaction, or sales not involving a public offering, whether effected through a broker-dealer or not; or any transaction effected in accordance with any rule by the director establishing a nonpublic offering exemption pursuant to this subsection where registration is not necessary or appropriate in the public interest or for the protection of investors. Every person filing notification of claim of this exemption in accordance with any rule by the director shall pay a filing fee as set forth in RCW 21.20.340(11).

(2) Any nonissuer distribution of an outstanding security by a registered broker-dealer if (a) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (b) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security.

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the director may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter.

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(9) Any transaction pursuant to ~~((offers directed by the issuer or the issuer's representative to offerees in this state: PROVIDED, That:~~

~~(a) The seller reasonably believes that all the buyers are purchasing for investments and for their respective accounts, and~~

~~(b) No public or general solicitation is utilized in said offers or sales, and~~

~~(c) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer, and~~

~~(d) The number of sales by any issuer does not exceed ten individuals in twelve consecutive months and does not exceed an aggregate amount of one hundred thousand dollars, and~~

(e) The issuer first files a notice specifying the terms of the offer as the director may prescribe by rules and regulations and the director does not by order disallow the exemption within the next ten full business days, and

(f) For the purpose of this exemption, if a limited partnership form of business is used, the general partner and not the partnership is deemed to be the issuer, and

(g) The issuer submits a list of security holders within thirty days after the end of each fiscal year it has operated under this exemption. Failure to file such report will not subject the issuer to retroactive loss of this exemption but will result in loss of this exemption during the period the list of security holders is due and not filed)) limited offers and sales by closely-held issuers effected in accordance with any rule by the director establishing a limited offering exemption pursuant to this subsection where there is no general or public advertising or solicitation and no commission or other remuneration is paid or given directly or indirectly in connection with sales of securities. Every person filing notification of claim of this exemption in accordance with any rule by the director shall pay a filing fee as set forth in RCW 21.20.340(11).

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber.

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days.

(12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act.

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock.

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi reorganization, stock split, reverse stock split, merger, consolidation or sale of assets.

(15) The offer or sale by a registered broker-dealer, or a person exempted from the registration requirements pursuant to RCW 21.20.040, acting either as principal or agent, of securities previously sold and distributed to the public: PROVIDED, That:

(a) Such securities are sold at prices reasonably related to the current market price thereof at the time of sale, and, if such broker-dealer is acting as agent, the commission collected by such broker-dealer on account of the sale thereof is not in

excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics;

(b) Such securities do not constitute the whole or a part of an unsold allotment to or subscription or participation by such broker-dealer as an underwriter of such securities or as a participant in the distribution of such securities by the issuer, by an underwriter or by a person or group of persons in substantial control of the issuer or of the outstanding securities of the class being distributed; and

(c) The security has been lawfully sold and distributed in this state or any other state of the United States under this or any act regulating the sale of such securities.

(16) Any transactions by a mutual or cooperative association issuing to its patrons any receipt, written notice, certificate of indebtedness or stock for a patronage dividend, or for contributions to capital by such patrons in the association provided that any such receipt, written notice or certificate made pursuant to this paragraph shall be nontransferable except in the case of death or by operation of law and shall so state conspicuously on its face.

The director may by order deny or revoke the exemption specified in subsection (2) of this section with respect to a specific security. Upon the entry of such an order, the director shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the director, the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of an opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order. In any proceeding under this chapter, the burden of proving an exemption from a definition is upon the person claiming it.

Sec. 3. Section 34, chapter 282, Laws of 1959 as last amended by section 20, chapter 84, Laws of 1975 1st ex. sess. and RCW 21.20.340 are each amended to read as follows:

The following fees shall be paid in advance under the provisions of this chapter:

(1) For registration of all securities other than investment trusts and securities registered by coordination the fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-twentieth of one percent for any excess over one hundred thousand dollars which are to be offered during that year: PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty dollar fee renew for one additional twelve month period only the unsold portion for which the registration fee has been paid.

(2) For registration of securities issued by a face-amount certificate company or redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940, the fee shall be one hundred dollars for the first one hundred thousand dollars of

initial issue, or portion thereof in this state, based on offering price, plus one-twentieth of one percent for any excess over one hundred thousand dollars which are to be offered in this state during that year: PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty dollar fee renew for an additional twelve month period the unsold portion for which the registration fee has been paid.

(3) For registration by coordination, other than investment trusts, the fee shall be one hundred dollars for initial filing fee for the first twelve month period plus one hundred dollars for each additional twelve months in which the same offering is continued.

(4) For filing annual financial statements, the fee shall be twenty-five dollars.

(5) For filing an amended offering circular after the initial registration permit has been granted the fee shall be ten dollars.

(6) For registration of a broker-dealer or investment adviser, the fee shall be one hundred fifty dollars for original registration and fifty dollars for each annual renewal. When an application is denied or withdrawn the director shall retain one-half of the fee.

(7) For registration of a salesman or investment adviser salesman, the fee shall be twenty-five dollars for original registration with each employer and fifteen dollars for each annual renewal. When an application is denied or withdrawn the director shall retain one-half of the fee.

(8) For written examination for registration as a salesman or investment adviser salesman, the fee shall be fifteen dollars. For examinations for registration as a broker-dealer or investment adviser, the fee shall be fifty dollars.

(9) If the application for a renewal license is not received by the department on or before March 5 of each year the renewal license fee for a late license for a broker-dealer or an investment adviser shall be one hundred dollars and for a salesman or investment adviser salesman shall be twenty-five dollars. Acceptance by the director of an application for renewal after March 5 shall not be a waiver of delinquency.

(10) (a) For the transfer of a broker-dealer license to a successor, the fee shall be twenty-five dollars.

(b) For the transfer of a salesman from a broker-dealer or issuer to another broker-dealer or issuer, the transfer fee shall be fifteen dollars.

(c) For the transfer of an investment adviser salesman from an investment adviser to another investment adviser, the transfer fee shall be fifteen dollars.

(d) For the transfer of an investment adviser license to a successor, the fee shall be twenty-five dollars.

(11) ((For certified copies of any documents filed with the director, the fee shall be the cost to the department.)) For the filing of notification of claim of exemption from registration pursuant to RCW 21.20.320(1), the fee shall be three hundred dollars for each filing. For the filing of notification of claim of exemption pursuant to RCW 21.20.320(9), the fee shall be fifty dollars for each filing.

(12) For rendering interpretative opinions, the fee shall be thirty-five dollars.

(13) For certified copies of any documents filed with the director, the fee shall be the cost to the department.

((+2)) All fees collected under this chapter shall be turned in to the state treasury and shall not be refundable, except as herein provided.

Sec. 4. Section 43, chapter 282, Laws of 1959 as last amended by section 24, chapter 84, Laws of 1975 1st ex. sess. and RCW 21.20.430 are each amended to read as follows:

(1) Any person, who offers or sells a security in violation of any provisions of RCW 21.20.010 or 21.20.140 through ((21.20.220 and)) 21.20.230, ((or offers or sells a security by means of fraud or misrepresentation)) is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at eight percent per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at eight percent per annum from the date of disposition.

(2) Any person who buys a security ((by means of fraud or misrepresentation)) in violation of the provisions of RCW 21.20.010 is liable to the person selling the security to him, who may sue either at law or in equity to recover the security, together with any income received on the security, upon tender of the consideration received, costs, and reasonable attorneys' fees, or if the security cannot be recovered, ((the value of the security, any profits arising from the security, costs, and reasonable attorneys' fees)) for damages. Damages are the value of the security when the buyer disposed of it, and any income received on the security, less the consideration received for the security, plus interest at eight percent per annum from the date of disposition, costs, and reasonable attorneys' fees.

(3) Every person who directly or indirectly controls a seller or buyer liable under subsection (1) or (2) above, every partner, officer, ((or)) director ((f)) or person ((occupying)) who occupies a similar status or ((performing)) performs a similar function((s) or) of such seller or buyer, every employee of such a seller or buyer who materially aids in the transaction, and every broker-dealer, salesman or person exempt under the provisions of RCW 21.20.040 who materially aids in the transaction is also liable jointly and severally with and to the same extent as the seller or buyer, unless ((he)) such person sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(4) (a) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(b) No person may sue under this section more than three years after the contract of sale for any violation of the provisions of RCW 21.20.140 through 21.20.230, or more than three years after a violation of the provisions of RCW 21.20.010, either was discovered by such person or would have been discovered by him in the exercise of reasonable care. No person may sue under this section if the buyer or seller receives a written rescission offer, which has been passed upon by the director before suit and at a time when he owned the security, to refund the consideration paid together with interest at eight percent per annum from the date of payment, less the amount of any income received on the security in the case of a buyer, or plus the amount of income received on the security in the case of a seller.

(5) No person who has made or engaged in the performance of any contract in violation of any provision of this chapter or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this chapter or any rule or order hereunder is void.

(6) Any tender specified in this section may be made at any time before entry of judgment.

NEW SECTION. Sec. 5. Section 26, chapter 84, Laws of 1975 1st ex. sess. and RCW 21.20.335 are each repealed.

Passed the House March 31, 1977.

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CHAPTER 173

[Substitute House Bill No. 662]

INSTITUTIONS OF HIGHER EDUCATION—PROFESSIONAL LEAVES

AN ACT Relating to institutions of higher education; amending section 28B.10.650, chapter 223, Laws of 1969 ex. sess. and RCW 28B.10.650; amending section 7, chapter 283, Laws of 1969 ex. sess. as last amended by section 148, chapter 275, Laws of 1975 1st ex. sess. and RCW 28B.50.551; creating new sections; providing penalties; and making an effective date.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 28B.10.650, chapter 223, Laws of 1969 ex. sess. and RCW 28B.10.650 are each amended to read as follows:

It is the intent of the legislature that when the state universities, state colleges, and community colleges grant professional leaves to faculty and exempt staff, such leaves be for the purpose of providing opportunities for study, research, and creative activities for the enhancement of the institution's instructional and research programs.

The boards of regents of the state universities ((and)), the boards of trustees of the state colleges and the board of trustees of each community college district may grant ((sabbatical and other)) remunerated professional leaves to faculty members and exempt staff, as defined in RCW 28B.16.040, in accordance with regulations adopted by the respective governing boards ((and with such remunerations as the respective boards may prescribe)) for periods not to exceed twelve consecutive months in accordance with the following provisions:

(1) The remuneration from state general funds and general local funds for any such leave granted for any academic year shall not exceed the average of the highest quartile of a rank order of salaries of all full time teaching faculty holding academic year contracts or appointments at the institution or in the district.

(2) Remunerated professional leaves for a period of more or less than an academic year shall be compensated at rates not to exceed a proportional amount of the average salary as otherwise calculated for the purposes of subsection (1) hereof.