

Washington and promoting the official song of the state.

Passed the Senate February 23, 1959.

Passed the House March 8, 1959.

Approved by the Governor March 24, 1959.

CHAPTER 282.

[Sub. S. B. 52.]

THE SECURITIES ACT OF WASHINGTON.

AN ACT relating to securities; defining terms; providing for an administrator of securities and an advisory committee; defining powers and duties; providing penalties; and repealing chapter 69, Laws of 1923, chapter 97, Laws of 1935, chapter 182, Laws of 1937; chapter 124, Laws of 1939; chapter 169, Laws of 1943; chapter 231, Laws of 1943; chapter 189, Laws of 1947; chapter 150, Laws of 1949; and chapter 230, Laws of 1951; and chapter 21.04 RCW; chapter 178, Laws of 1937, chapter 64, Laws of 1951 and chapter 21.08 RCW; chapter 110, Laws of 1939 and chapter 21.12 RCW.

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

FRAUDULENT AND OTHER PROHIBITED PRACTICE

SECTION 1. It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly:

Unlawful acts as to offer, sale or purchase.

(1) To employ any device, scheme, or artifice to defraud;

(2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Unlawful acts when advising another.

SEC. 2. It is unlawful for any person who receives any consideration from another party primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

(1) To employ any device, scheme, or artifice to defraud the other person; or

(2) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

Requisites for investment advisory contract—otherwise unlawful.

SEC. 3. It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

(1) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(3) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

Subsection (1) above does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in subsection (2) above, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of

the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

REGISTRATION OF BROKER-DEALERS, SALESMEN, AND INVESTMENT ADVISERS

SEC. 4. It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under section 32 of this act, unless he is registered under this act. It is unlawful for any broker-dealer or issuer to employ a salesman unless the salesman is registered. It is unlawful for any person to transact business in this state as an investment adviser unless (1) he is so registered under this act, or (2) he is registered as a broker-dealer under this act, or (3) his only clients in this state are investment companies as defined in the investment company act of 1940, or insurance companies.

Registration required.

SEC. 5. A broker-dealer, salesman, or investment adviser may apply for registration by filing with the director an application together with a consent to service of process in such form as the director shall prescribe and payment of the fee prescribed in section 34 of this act. Registration of a broker-dealer automatically constitutes registration of all partners, officers or directors of such broker-dealer as salesmen (except any partner, officer or director whose registration as a salesman is denied, suspended or revoked under section 11 of this act) without the filing of applications for registration as salesmen or the payment of fees for registration as salesmen.

Registration application, consent form, fee—Scope of registration.

Contents of application.

SEC. 6. The application shall contain whatever information the director requires concerning such matters as:

- (1) The applicant's form and place of organization;
- (2) The applicant's proposed method of doing business;
- (3) The qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, any partner, officer, or director;
- (4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and
- (5) The applicant's financial condition and history.

When registration effective —Written exams.

SEC. 7. If no denial order is in effect and no proceeding is pending under section 11 of this act, registration becomes effective when the applicant has successfully passed the written examination required under this section. The director shall require as a condition of registration that the applicant (and, in the case of a corporation or partnership, all officers, directors or partners doing securities business in this state) pass a written examination as evidence of knowledge of the securities business: *Provided*, That not more than two officers of an issuer may be registered as a salesman for a particular original offering of the issuers securities without being required to pass such written examination: *And provided further*, That no such officer may again register within five years as such salesman for this or any other issuer without passing the written examination. Such examination shall be given twice a year or at such more frequent intervals as the advisory committee shall direct.

SEC. 8. Registration of a broker-dealer, salesman or investment adviser shall be effective until March

1 of the following year and may be renewed as hereinafter provided. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application or a notice filed with the director. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the director.

Duration of registration—Salesman's notice of association.

SEC. 9. Registration of a broker-dealer, salesman or investment adviser may be renewed by filing with the director prior to the expiration thereof an application containing such information as the director may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman or investment adviser filed with the director by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ninety days. A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year without payment of any fee.

Registration renewal, requisites—Successor application.

SEC. 10. Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under section 31 (1) of this act, which accounts and other records shall be prescribed by the director. All records so required shall be preserved for three years unless the director prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special or other examinations by representatives of the director, within or with-

Accounts, records—Examination of.

out this state, as the director deems necessary or appropriate in the public interest or for the protection of investors.

Denial, sus-
pension,
revocation of
registration.
Grounds.

SEC. 11. The director may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(1) Has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false, or misleading with respect to any material fact;

(2) Has willfully violated or willfully failed to comply with any provision of this act or a predecessor act or any rule or order under this act or a predecessor act;

(3) Has been convicted, within the past five years, of any misdemeanor involving a security or any aspect of the securities business, or any felony involving moral turpitude;

(4) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(5) Is the subject of an order of the director denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(6) Is the subject of an order entered within the past five years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesman, or the substantial equivalent of those terms as defined in this act, or is the

subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the securities exchange act of 1934, or is the subject of a United States post office fraud order; but (a) the director may not institute a revocation or suspension proceeding under this clause more than one year from the date of the order relied on, and (b) he may not enter any order under this clause on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(7) Has engaged in dishonest or unethical practices in the securities business;

(8) Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the director may not enter an order against a broker-dealer or investment adviser under this clause without a finding of insolvency as to the broker-dealer or investment adviser; or

(9) Has not complied with a condition imposed by the director under section 10 of this act, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(10) Has failed to pay the proper filing fee; but the director may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected.

The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

SEC. 12. Upon the entry of the order under section 11 of this act, the director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or

—Order
—Request
for notice
of, hearing.

registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within fifteen days after the receipt of the director's notification the matter will be promptly 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 and opportunity for hearing, may modify or vacate the order or extend it until final determination. No order may be entered under section 11 denying or revoking registration without appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is a salesman), opportunity for hearing, and written findings of fact and conclusions of law.

Cancellation of registration, application for—Grounds.

SEC. 13. If the director finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser or salesman, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the director may by order cancel the registration or application.

REGISTRATION OF SECURITIES

Offer, sale, unregistered securities, unlawful—Exceptions.

SEC. 14. It is unlawful for any person to offer or sell any security in this state, except securities exempt under section 31 of this act or when sold in transactions exempt under section 32 of this act, unless such security is registered by notification, coordination, or qualification under this act.

REGISTRATION BY NOTIFICATION

SEC. 15. The following securities may be registered by notification, whether or not they are also

eligible for registration by coordination under this act:

Registration
by notification
—Require-
ments.

(1) Any security whose issuer and any predecessors have been in continuous operation for at least five years if,

(a) there has been no default during the current fiscal year or within the three preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision, and

(b) the issuer and any predecessors during the past three fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which (i) equal at least five percent of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed (as measured by the maximum offering price or the market price on a day selected by the registrant within thirty days before the date of filing the registration statement whichever is higher, or if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within ninety days of the date of filing the registration statement), or (ii) if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for three full fiscal years, equal [to] at least five percent of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued.

(2) Any security (other than a certificate of in-

terest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease) registered for nonissuer distribution if any security of the same class has ever been registered under this act or a predecessor act, or the security being registered was originally issued pursuant to an exemption under this act or a predecessor act.

Registration
statement
by notifica-
tion. Contents.

SEC. 16. A registration statement by notification shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 34 of this act and, if required under section 33 of this act, a consent to service of process meeting the requirements of that section:

(1) A statement demonstrating eligibility for registration by notification.

(2) With respect to the issuer: Its name, address, and form of organization; the state (or foreign jurisdiction) and the date of its organization; and the general character and location of its business.

(3) A description of the securities being registered.

(4) Total amount of securities to be offered and amount of securities to be offered in this state.

(5) The price at which the securities are to be offered for sale to the public; any variation therefrom at which any portion of the offering is to be made to any persons, other than as underwriting and selling discounts or commissions; and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees (including cash, securities, or anything else of value).

(6) Names and addresses of the managing underwriters and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

(7) Description of any security options out-

standing or to be created in connection with the offering.

(8) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the federal securities and exchange commission.

(9) A copy of any offering circular or prospectus to be used in connection with the offering.

(10) In the case of any registration under section 15 (2) of this act which does not also satisfy the conditions of section 15 (1) of this act, a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement, and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than two years.

SEC. 17. If no stop order is in effect and no proceeding is pending under sections 28 and 30 of this act, a registration statement by notification automatically becomes effective at three o'clock pacific standard time in the afternoon of the second full business day after the filing of the registration statement or the last amendment, or at such earlier time as the director determines.

—Time
effective.

REGISTRATION BY COORDINATION

SEC. 18. Any security for which a registration statement has been filed under the securities act of 1933 or any securities for which filings have been made pursuant to rules and regulations A and A-M pursuant to subsection (b) of Sec. 3 of said securities act in connection with the same offering may be registered by coordination. A registration statement under this section shall contain the following information and be accompanied by the following

Registration
by coordina-
tion. Require-
ments for—
Contents.

documents, in addition to payment of the registration fee prescribed in section 34 of this act and, if required under section 33 of this act, a consent to service of process meeting the requirements of that section:

(1) Three copies of the prospectus, offering circular and/or letters of notification, filed under the securities act of 1933 together with all amendments thereto;

(2) The amount of securities to be offered in this state;

(3) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(4) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the securities and exchange commission;

(5) If the director, by rule or otherwise, requires a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(6) If the director requests, any other information, or copies of any other documents, filed under the securities act of 1933; and

(7) An undertaking to forward promptly all amendments to the federal registration statement, offering circular and/or letters of notification, other than an amendment which merely delays the effective date.

SEC. 19. A registration statement by coordination under section 18 of this act automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

—Time effective (if conditions satisfied).

(1) No stop order is in effect and no proceeding is pending under sections 28 and 30 of this act;

(2) The registration statement has been on file with the director for at least ten days; and

(3) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or such shorter period as the director permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the director by telephone or telegram of the date and time when the federal registration statement or other filing became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

"Price amendment."

SEC. 20. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment referred to in section 19 of this act, the director may enter a stop order, without notice of hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with section 19, if he promptly notified the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements as to notice and post-effective amendment, the stop order is void as of the time of its entry. The director may by rule or otherwise waive either or both of the conditions specified in subsections 19 (2) and (3). If the federal

Stop order upon noncompliance with section 19—Waiver authorized.

registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the director of the date when the federal registration statement or other filing is expected to become effective the director shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under sections 28 and 30 of this act; but this advice by the director does not preclude the institution of such a proceeding at any time.

REGISTRATION BY QUALIFICATION

Registration
by qualifica-
tion. Contents.

SEC. 21. Any security may be registered by qualification. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 34 of this act, and, if required under section 33 of this act, a consent to service of process meeting the requirements of that section:

(1) With respect to the issuer and any significant subsidiary: Its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; and a description of its physical properties and equipment.

(2) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: His name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him as of a specified date within ninety days of the filing of the registration statement; the remuneration paid to all such persons in the aggregate during the past twelve months, and estimated to be paid during the next

twelve months, directly or indirectly, by the issuer (together with all predecessors, parents and subsidiaries).

Registration
by qualifica-
tion. Contents.

(3) With respect to any person not named in subsection 21 (2) of this act, owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: The information specified in subsection 21 (2) other than his occupation.

(4) With respect to every promoter, not named in subsection 21 (2) of this act, if the issuer was organized within the past three years. The information specified in subsection 21 (2), any amount paid to him by the issuer within that period or intended to be paid to him, and the consideration for any such payment.

(5) The capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities.

(6) The kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering); the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred

Registration
by qualifica-
tion. Contents.

by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a finders' fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

(7) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price.

(8) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subsections 21 (2), (3), (4), (5) or (7) of this act and by any person who holds or will hold ten percent or more in the aggregate of any such options.

(9) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed.

(10) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission; a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including

any such litigation or proceeding known to be contemplated by governmental authorities).

(11) A copy of any prospectus or circular intended as of the effective date to be used in connection with the offering.

(12) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.

(13) A signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered.

(14) A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant.

SEC. 22. In the case of a non-issuer distribution, information may not be required under section 21 of this act unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

Non-issuer
distribution,
when infor-
mation re-
quired.

SEC. 23. A registration statement by qualification under section 21 of this act becomes effective if no stop order is in effect and no proceeding is pending under sections 28 and 30 of this act, at three o'clock pacific standard time in the afternoon of the fifteenth day after the filing of the registration state-

Registration
by qualifica-
tion statement
—When effec-
tive—Condi-
tions.

ment or the last amendment, or at such earlier time as the director determines. The director may require as a condition of registration under this section that a prospectus containing any designated part of the information specified in section 21 be sent or given to each person to whom an offer is made before or concurrently with (1) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution, (2) the confirmation of any sale made by or for the account of any such person, (3) payment pursuant to any such sale, or (4) delivery of the security pursuant to any such sale, whichever first occurs; but the director shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the securities act of 1933 or regulations thereunder.

GENERAL PROVISIONS REGARDING REGISTRATION OF SECURITIES

Registration
statement,
generally.

SEC. 24. A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under this act or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The director may by rule or otherwise permit the omission of any item of information or document from any registration statement.

SEC. 25. The director may by rule or order require as a condition of registration by qualification or coordination (1) that any security issued within

the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow for a period not to exceed one year after termination of the offering; and (2) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The director may by rule or order determine the conditions of any escrow or impounding required hereunder but he may not reject a depository solely because of location in another state.

Conditions,
registration by
qualification or
coordination.

SEC. 26. When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered or by any registered broker-dealer. Every registration shall remain effective until revoked by the director or until terminated upon request of the registrant with the consent of the director. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any non-issuer transaction.

Registered securities, offer and sale—
Duration of registration.

SEC. 27. (1) The director may require the person who filed the registration statement to file reports, not more often than quarterly to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which (a) are issued by a face-amount certificate company or a 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, or (b) are being offered and sold directly by or for the account of the issuer.

Person filing statement, reports of—
Financial statement.

(2) During the period of public offering of securities registered under the provisions of this

act by notification or qualification financial data or statements corresponding to those required under the provisions of sections 16 and 21 of this act and to the issuer's fiscal year shall be filed with the director annually, not less than ninety days after the end of each such year. If such statements are not certified the director may verify them by examining the issuer's books and records.

DENIAL, SUSPENSION AND REVOCATION OF REGISTRATION OF SECURITIES

Stop order
—Grounds.

SEC. 28. The director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds that the order is in the public interest and that:

(1) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Any provision of this act or any rule, order, or condition lawfully imposed under this act has been wilfully violated, in connection with the offering by (a) the person filing the registration statement, (b) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (c) any underwriter;

(3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but (a) the director may not institute a proceeding against an effective regis-

tration statement under this clause more than one year from the date of the injunction relief on, and (b) he may not enter an order under this clause on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(4) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(5) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(6) When a security is sought to be registered by notification, it is not eligible for such registration;

(7) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by subsection 18 (7) of this act, or

(8) The applicant or registrant has failed to pay the proper registration fee; but the director may enter only a denial order under this subsection and he shall vacate any such order when the deficiency has been corrected;

Denial order.

(9) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or compensation or promoters' profits or participation, or unreasonable amounts or kinds of options.

SEC. 29. The director may not enter a stop order against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective.

Stop order prohibited, when.

SEC. 30. Upon the entry of a stop order under any part of section 28 of this act, the director shall promptly notify the issuer of the securities and the applicant or registrant that the order has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request

Stop order entered—Procedure thereafter.

the matter will be set down for hearing. If no hearing is requested within fifteen days and none is ordered by the director, the director shall enter his written findings of fact and conclusions of law and 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 and opportunity for hearing to the issuer and to the applicant or registrant, shall enter his written findings of fact and conclusions of law and may modify or vacate the order. The director may modify or vacate a stop order if he finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

EXEMPT SECURITIES

Exempt
securities
listed.

SEC. 31. Sections 14 through 30, inclusive, of this act 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.

(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.

(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.

Exempt securities listed.

(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 war-

rants 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 security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or professional association.

(10) 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.

(11) 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 act, within sixty days thereafter (or within thirty days before they are reopened if they are closed on the effective date of this act).

EXEMPT TRANSACTIONS

Exempt transactions listed.

SEC. 32. Except as hereinafter in this section expressly provided, sections 4 through 30 inclusive of this act 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.

(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.

Exempt
transactions
listed.

(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 act.

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment

Exempt
transactions
listed.

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 an offer directed by the offerer to not more than twenty persons (other than those designated in subsection (8) of this section) in this state during any period of twelve consecutive months, whether or not the offerer or any of the offerees is then present in this state, if (a) the seller reasonably believes that all the buyers are purchasing for investment, and (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer.

(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 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 act and the securities act of 1933 if no stop order or refusal order is in effect and no public pro-

ceeding or examination looking toward such an order is pending under either act.

Exempt
transactions
listed.

(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.

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 and 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 act 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 act, the burden of proving an exemption from a definition is upon the person claiming it.

(15) The offer or sale by a registered broker-

Exempt
transactions
listed.

dealer, 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) The director may, in his discretion, exempt by the issuance of a certificate of exemption, transactions whereby interests in oil and gas leases or property are acquired by a partnership or joint enterprise, if the partnership or joint venture file in writing with the department a statement containing the following information:

- (1) Proposed plan of operation.
- (2) Amount of money to be raised and the amount per subscription.
- (3) A copy of proposed subscription.

If said plan appears to be just, fair and equitable, and will not work a fraud upon the public, upon payment to the director of a permit fee of ten dollars, said certificate of exemption may be issued and upon

issuance of said certificate, any such transaction shall be exempt from all of the provisions of this act.

CONSENT TO SERVICE OF PROCESS

SEC. 33. Every applicant for registration as a broker-dealer, investment adviser, or salesman under this act and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common law sense shall file with the director, in such form as he by rule prescribes, an irrevocable consent appointing the director or his successor in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or it or his successor, executor or administrator which arises under this act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the director, but it is not effective unless (1) the plaintiff, who may be the director in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at it or his last address on file with the director, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

Irrevocable consent to service of process—Service, how made.

FEEES

SEC. 34. The following fees shall be paid in advance under the provisions of this act:

(1) For registration of all securities other than investment trusts and securities registered by coordination the fee shall be fifty dollars for the first

Fees (in advance)—Disposition.

Fees—
Disposition.

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, with maximum of five hundred dollars.

(2) For registration of investment trusts, the fee shall be fifty 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 with a maximum of one thousand dollars.

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

(4) For filing an annual statement, the fee shall be five dollars.

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

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

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

(8) For certified copies of any documents filed

with the director, the fee shall be the cost to the department.

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

MISLEADING FILINGS

SEC. 35. It is unlawful for any person to make or cause to be made, in any document filed with the director or in any proceeding under this act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

Misleading filings unlawful.

UNLAWFUL REPRESENTATIONS CONCERNING REGISTRATION OR EXEMPTION

SEC. 36. Neither the fact that an application for registration under section 5 of this act, a registration statement under sections 15, 18 or 21 of this act has been filed, nor the fact that a person or security if effectively registered, constitutes a finding by the director that any document filed under this act is true, complete and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the director has passed in any way upon the merits of qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.

Registration, exemption, not finding—Unlawful to so represent.

INVESTIGATIONS AND SUBPOENAS

SEC. 37. The director in his discretion (1) may make such public or private investigations within or without this state as he deems necessary to determine whether any registration should be granted, denied or revoked or whether any person has violated or is about to violate any provision of this act

Investigations. Subpoenas, findings, authorized.

or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder, (2) may require or permit any person to file a statement in writing, under oath or otherwise as the director may determine, as to all the facts and circumstances concerning the matter to be investigated, and (3) may publish information concerning any violation of this act or any rule or order hereunder.

Investigative
rights of
director—
Enforcement.
—Exemption
from criminal
liability.

SEC. 38. For the purpose of any investigation or proceeding under this act, the director or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(1) In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him to appear before the director, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question; and any failure to obey the order of the court may be punished by the court as a contempt of court.

(2) No person is excused from attending and testifying or from producing any document or record before the director or in obedience to the subpoena of the director or any officer designated by him, or in any proceeding instituted by the director, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning

which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

INJUNCTIONS

SEC. 39. Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, he may in his discretion bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The director may not be required to post a bond.

Injunctions.

CRIMINAL LIABILITIES

SEC. 40. Any person who wilfully violates any provision of this act except section 35, or who wilfully violates any rule or order under this act, or who wilfully violates section 35 knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than five thousand dollars or imprisoned not more than three years, or both; but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order. No indictment or information may be returned under this act more than five years after the alleged violation.

Violations,
penalty—
Statute of
limitation.

SEC. 41. The director may refer such evidence as may be available concerning violations of this act or of any rule or order hereunder to the attorney

Instituting
criminal
proceedings.

general or the proper prosecuting attorney, who may in his discretion, with or without such a reference, institute the appropriate criminal proceedings under this act.

Punishment
not exclusive.

SEC. 42. Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

CIVIL LIABILITIES

Civil li-
abilities—
Survival,
limitation
of actions—
Waiver of
act, void.

SEC. 43. (1) Any person, who offers or sells a security in violation of any provisions of sections 14 through 23 of this act, 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 six 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 six percent per annum from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1) above, every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of such a seller who materially aids in the sale, and every broker-dealer or salesman who materially aids in the sale is also liable jointly and severally with and to the same extent as the seller, unless the nonseller who is so liable 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.

(3) Any tender specified in this section may be made at any time before entry of judgment. Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant. No person may sue under this section more than two years after the contract of sale. No person may sue under this section (a) if the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at six percent per annum from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within thirty days of its receipt, or (b) if the buyer received such an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within thirty days of its receipt.

(4) No person who has made or engaged in the performance of any contract in violation of any provision of this act 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 act or any rule or order hereunder is void.

JUDICIAL REVIEW OF ORDERS

SEC. 44. Any person aggrieved by a final order of the director may obtain a review of the order in the county in which he resides or in any other court of competent jurisdiction by filing in court, within sixty days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition

Judicial
review, pro-
cedure—
Modification
by director.

shall be forthwith served upon the director, and thereupon the director shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. No objection to the order may be considered by the court unless it was urged before the director or there were reasonable grounds for failure to do so. The findings of the director as to the facts, if supported by substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the director, the court may order the additional evidence to be taken before the director and to be adduced upon the hearing in such manner and upon such conditions as the court may consider proper. The director may modify his findings as the facts, by reason of the additional evidence so taken; and he shall file any modified or new findings, which if supported by substantial evidence shall be conclusive, and any recommendation for the modification or setting aside of the original order. The commencement of proceedings under this action does not, unless specifically ordered by the court, operate as a stay of the director's order.

ADMINISTRATION OF ACT

SEC. 45. The administration of the provisions of this act shall be under the department of licenses. The director may from time to time make, amend, and rescind such rules and forms as are necessary to carry out the provisions of this act. No rule or form, may be made unless the director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent

Administra-
tion—Rules
and forms.

with the purposes fairly intended by the policy and provisions of this act. In prescribing rules and forms the director may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and forms of the director shall be published.

SEC. 46. The director shall appoint a competent person to administer this act who shall be designated administrator of securities. The director shall delegate to the administrator such powers, subject to the authority of the director, as may be necessary to carry out the provisions of this act. The administrator shall hold office at the pleasure of the director.

Administrator
of securities
—Duties.

SEC. 47. The administrator, and any person employed by him, shall be paid, in addition to regular compensation, transportation, fare, board, lodging and other traveling expenses necessary and actually incurred by each of them in the performance of their duties under this act: *Provided*, That such sum shall not exceed the amount set by RCW 43.03.050.

Administra-
tor, em-
ployees, ex-
penses and
compensation.

SEC. 48. It is unlawful for the director or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the director and which is not made public. The director or any of his officers or employees shall not disclose any such information or the fact that any investigation is being made except among themselves or when necessary or appropriate in a proceeding or investigation under this act. No provision of this act either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a

Disclosure,
use, of filed
information,
unlawful.

subpoena directed to the director or any of his officers or employees.

Nonliability,
good faith
acts.

SEC. 49. No provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the director, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

Public
hearings—
Exception.

SEC. 50. Every hearing in an administrative proceeding shall be public unless the director in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.

Documents
filed—Regis-
ter kept—
When public.

SEC. 51. A document is filed when it is received by the director. The director shall keep a register of all applications for registration and registration statements which are or have ever been effective under this act and all denial, suspension, or revocation orders which have ever been entered under this act. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the director prescribes.

Copies
furnished—
As evidence.

SEC. 52. Upon request and at such reasonable charges as he prescribes, the director shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this act, any copy so certified is prima facie evidence of the contents of the entry or document certified.

Interpretative
opinions.

SEC. 53. The director in his discretion may honor requests from interested persons for interpretative opinions.

PROOF OF EXEMPTION

SEC. 54. In any proceeding under this act, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

Exemption,
burden of
proof.

ADVISORY COMMITTEE

SEC. 55. There is hereby created a state advisory committee which shall consist of seven members to be appointed by the director on the basis of their experience and qualifications. The membership shall be selected, insofar as possible, on the basis of giving both geographic representation and representation to all phases of the securities business including the legal and accounting professions.

Advisory
committee.
Appointment.

SEC. 56. (1) The committee shall select a chairman and a secretary from their group.

—Chairman,
secretary—
Meetings.

(2) Regular meetings may be held quarterly, or semiannually, and special meetings may be called by the administrator upon at least seven days' written notice to each committee member sent by regular mail.

SEC. 57. The first members of the committee shall hold office as follows: Two members to serve two years; two members to serve three years; and three members to serve four years. Upon the expiration of said original terms subsequent appointment shall be for four years except in the case of a vacancy, in which event appointment shall be only for the remainder of the unexpired term in which the vacancy occurs.

—Members'
terms—
Vacancies.

SEC. 58. The advisory committee shall:

—Duties.

(1) Serve in an advisory capacity to the director on all matters pertaining to this act.

(2) Acquaint themselves fully with the operations of the director's office as to the administration of securities, broker-dealers, salesmen, and investment advisers, and periodically recommend to the

director such changes in the rules and regulations of the department in connection therewith as they deem advisable.

(3) Prepare and publish a mimeographed report on their recommendations.

(4) Appoint three of their members to act as an examining committee. All examinations required by this act shall be conducted in the manner provided in chapter 43.24 RCW. The examining committee shall be subject to the provisions of chapter 43.24 RCW unless otherwise provided by this act.

Committee members reimbursed.

SEC. 59. The advisory committee shall receive no compensation, but shall be reimbursed as provided by law for their transportation, lodging and other expenses: *Provided*, That members acting as an examining committee shall be paid in addition to expenses allowed twenty-five dollars per day for conducting examinations provided for herein.

DEFINITIONS

Definitions.

SEC. 60. When used in this act, unless the context otherwise requires:

"Director."

(1) "Director" means the director of licenses of this state.

"Salesman."

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but "salesman" does not include an individual who represents an issuer in (a) effecting a transaction in a security exempted by subsections 31 (1), (2), (3), (4), (9), (10), or (11) of this act, (b) effecting transactions exempted by section 32 of this act, or (c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer, or director of a broker-

dealer or issuer is a "salesman" only if he otherwise comes within this definition.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include (a) a salesman, issuer, bank, savings institution, or trust company, (b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (c) a person who has no place of business in this state if during any period of twelve consecutive months he does not direct more than fifteen offers to sell or to buy into this state in any manner to persons other than those specified in subsection (b) above.

"Broker-dealer."

(4) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

"Guaranteed."

(5) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include (a) a bank, savings institution, or trust company, (b) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession, (c) a broker-dealer, (d) a publisher of any bona fide newspaper, news magazine, or business or

"Investment adviser."

Definitions.

financial publication of general, regular, and paid circulation, (e) a person whose advice, analyses, or reports relate only to securities exempted by subsection 31 (1) of this act, (f) a person who has no place of business in this state if (i) his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trust, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during any period of twelve consecutive months he does not direct business communications into this state in any manner to more than five clients other than those specified in clause (i) above, or (g) such other persons not within the intent of this paragraph as the director may by rule or order designate.

"Issuer."

(6) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type; the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

"Nonissuer."

(7) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

"Person."

(8) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated or-

ganization, a government, or a political subdivision of a government.

(9) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

"Sale," "sell."

"Offer," "offer to sell."

Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(10) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" means the federal statutes of those names as amended before or after the effective date of this act.

Securities acts enumerated.

(11) "Security" mean any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; pre-organization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security," or

"Security."

Definitions.

any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

"State."

(12) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

STATUTORY POLICY

Construction.

SEC. 61. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of this act with the related federal regulation.

SEVERABILITY OF PROVISIONS

Severability.

SEC. 62. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

REPEAL AND SAVING PROVISIONS

Saving—Civil,
criminal
proceedings.

SEC. 63. Prior law exclusively governs all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this act, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued and in any event within two years after the effective date of this act.

SEC. 64. All effective registrations under prior law and all conditions imposed upon such registrations remain in effect so long as they would have remained in effect if they had become effective under this act. They are considered to have been filed, entered, or imposed under this act. All dealers who are duly registered as brokers and all salesmen and issuers' agents who are duly registered as agents under said securities act, mining act or oil and mining leases act, on the effective date of this act shall be deemed to be duly registered under and subject to the provisions of this act, such registration to expire on the 30th day of June of the year in which this act becomes effective and to be subject to renewal as provided in this act.

Saving—
Prior effective
registration.

SEC. 65. Prior law applies in respect to any offer or sale made within one year after the effective date of this act pursuant to an offering begun in good faith before its effective date on the basis of an exemption available under prior law.

Application
of prior
law.

SEC. 66. Judicial review of all administrative orders as to which review proceedings have not been instituted by the effective date of this act are governed by section 44 of this act except that no review proceeding may be instituted unless the petition is filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within sixty days after the effective date of this act.

Judicial
review of
prior orders.

SEC. 67. Nothing in this act shall in any way limit the provisions of RCW 48.06.030.

RCW 48.06.030
not limited.

SEC. 68. The following acts and parts of acts are hereby repealed:

Repeal.

(1) Chapter 69, Laws of 1923; chapter 97, Laws of 1935; chapter 182, Laws of 1937; chapter 124, Laws of 1939; chapter 169, Laws of 1943; chapter 231, Laws of 1943; chapter 189, Laws of 1947; chapter 150, Laws

of 1949; chapter 230, Laws of 1951; and RCW 21.04-.010 through 21.04.220; and

(2) Chapter 178, Laws of 1937; chapter 64, Laws of 1951; and RCW 21.08.010 through 21.08.120; and

(3) Chapter 110, Laws of 1939 and RCW 21.12-.010 through 21.12.080.

SHORT TITLE

Short title.

SEC. 69. This act shall be known as "The Securities Act of Washington."

Passed the Senate March 8, 1959.

Passed the House March 8, 1959.

Approved by the Governor March 24, 1959.

CHAPTER 283.

[S. B. 375.]

RAILROADS—GRADE CROSSINGS.

AN ACT relating to railroad grade crossings; amending section 3, chapter 310, Laws of 1955 and RCW 81.52.100; amending section 1, chapter 30, Laws of 1913, section 1, chapter 161, Laws of 1941 and RCW 81.52.080; adding new sections to chapter 30, Laws of 1913 and to chapter 81.52 RCW; repealing section 8, chapter 310, Laws of 1955 and RCW 47.36.055.

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

RCW 81.52.100 amended.

SECTION 1. Section 3, chapter 310, Laws of 1955 and RCW 81.52.100 are each amended to read as follows:

Petition for crossing —Hearing —Order.

Whenever any railroad company desires to cross any highway or railroad at grade, it shall file a written petition with the commission setting forth the reasons why the crossing cannot be made either above or below grade, and whenever the county commissioners of any county, or the municipal authorities of any city, or the state officers authorized to lay out and construct state roads, or state parks committee, desire to extend any highway across any