

## CHAPTER 272

[Substitute Senate Bill No. 3780]

## SECURITIES—LICENSING—REGISTRATION—FEES—ENFORCEMENT

AN ACT Relating to securities; amending section 5, chapter 282, Laws of 1959 as last amended by section 3, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.050; amending section 7, chapter 282, Laws of 1959 as last amended by section 4, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.070; amending section 8, chapter 282, Laws of 1959 as last amended by section 5, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.080; amending section 9, chapter 282, Laws of 1959 as last amended by section 6, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.090; amending section 1, chapter 8, Laws of 1979 as last amended by section 20, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.310; amending section 32, chapter 282, Laws of 1959 as last amended by section 21, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.320; amending section 24, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.340; amending section 39, chapter 282, Laws of 1959 as last amended by section 27, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.390; amending section 43, chapter 282, Laws of 1959 as last amended by section 30, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.430; amending section 58, chapter 282, Laws of 1959 as amended by section 40, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.580; and amending section 59, chapter 282, Laws of 1959 as amended by section 65, chapter 34, Laws of 1975-'76 2nd ex. sess. and RCW 21.20.590.

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

Section 1. Section 5, chapter 282, Laws of 1959 as last amended by section 3, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.050 are each amended to read as follows:

A broker-dealer, salesperson, investment adviser, or investment adviser salesperson may apply for registration by filing with the director or his authorized agent 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 RCW 21.20.340.

Sec. 2. Section 7, chapter 282, Laws of 1959 as last amended by section 4, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.070 are each amended to read as follows:

If no denial order is in effect and no proceeding is pending under RCW 21.20.110, registration becomes effective when the applicant has successfully passed ~~((the))~~ a written examination ~~((required under this section))~~ as prescribed by rule or order of the director with the advice of the advisory committee, or has satisfactorily demonstrated that ~~((he or she))~~ the applicant is exempt from the written examination requirements of 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 or two individual general partners or two officers of a corporate general partner may be registered as a salesperson for a particular original offering of the issuer's securities without being required to pass such written examination. AND PROVIDED FURTHER, That no~~

~~such person may again register within five years as such salesperson 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.~~

~~Any applicant for registration as a salesperson who has successfully passed, within the preceding five years, a salesperson examination by a national securities association registered under the Securities and Exchange Act of 1934, (15 U.S.C. Sec. 78a-78jj), and since the passage of such examination, has been employed by broker-dealers, who were at the time of said employment members of such an association or duly licensed in accordance with this chapter, are exempt from the written examination requirements of this section, unless otherwise provided by rule or order of the director.))~~

Sec. 3. Section 8, chapter 282, Laws of 1959 as last amended by section 5, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.080 are each amended to read as follows:

Registration of a broker-dealer, salesperson, investment adviser salesperson, or investment adviser shall be effective (~~until March 1st of the following year and may be renewed as hereinafter provided~~) for a one-year period unless the director by rule or order provides otherwise. The director by rule or order may schedule registration or renewal so that all registrations and renewals expire December 31st. The director may adjust the fee for registration or renewal proportionately. The registration of a salesperson or investment adviser salesperson is not effective during any period when the salesperson is not associated with an issuer or a registered broker-dealer or when the investment adviser salesperson is not associated with a registered investment adviser. To be associated with an issuer, broker-dealer, or investment adviser within the meaning of this section written notice must be given to the director. When a salesperson begins or terminates an association with an issuer or registered broker-dealer, the salesperson and the issuer or broker-dealer shall promptly notify the director. When an investment adviser salesperson begins or terminates an association with a registered investment adviser, the investment adviser salesperson and registered investment adviser shall promptly notify the director.

Notwithstanding any provision of law to the contrary, the director may, from time to time, extend the duration of a licensing period for the purpose of staggering renewal periods. Such extension of a licensing period shall be by rule or regulation adopted in accordance with the provisions of chapter 34.04 RCW. Such rules and regulations may provide a method for imposing and collecting such additional proportional fee as may be required for the extended period.

Sec. 4. Section 9, chapter 282, Laws of 1959 as last amended by section 6, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.090 are each amended to read as follows:

Registration of a broker-dealer, salesperson, investment adviser salesperson, or investment adviser may be renewed by filing with the director or his authorized agent 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, salesperson, investment adviser salesperson, or investment adviser filed with the director or his authorized agent 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, and the administrator may at his or her discretion grant or deny the application.

Sec. 5. Section 1, chapter 8, Laws of 1979 as last amended by section 20, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.310 are each amended to read as follows:

RCW 21.20.140 through 21.20.300, inclusive, (~~shall~~) do 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~~) does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless such payments (~~shall be~~) are made or unconditionally guaranteed by a person whose securities are exempt from registration by subsections (7) or (8) of this section: PROVIDED, That the director, by rule or order, may exempt any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise if the director finds that registration with respect to such securities is not necessary in the public interest and for the protection of investors.

(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~~) does 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 which meets the criteria for investment grade securities that the director may adopt by rule.

(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 with a copy of the plan thirty days before ((the inception of the plan or, with respect to plans which are in effect on June 10, 1959, within sixty days thereafter (or within thirty days before they are reopened if they are closed on June 10, 1959))) offering the plan to employees in this state. In the event of late filing of notification the director may upon application, for good cause excuse such late filing if he or she finds it in the public interest to grant such relief.

(11) Any security issued by any person organized and operated as a nonprofit organization as defined in RCW 84.36.800(4) exclusively for religious, educational, or charitable purposes and which nonprofit organization also possesses a current tax exempt status under the laws of the United States, which security is offered or sold only to persons who, prior to their solicitation for the purchase of said securities, were members of, contributors to, or listed as participants in, the organization, or their relatives, if such nonprofit organization first files a notice specifying the terms of the offering and the director does not by order disallow the exemption within the next ten full business days: PROVIDED, That no offerings (~~shall~~) may be made until expiration of the ten full business days. Every such nonprofit organization which files a notice of exemption of such securities shall pay a filing fee as set forth in RCW 21.20.340(12) as now or hereafter amended.

The notice shall consist of the following:

- (a) The name and address of the issuer;
- (b) The names, addresses, and telephone numbers of the current officers and directors of the issuer;
- (c) A short description of the security, price per security, and the number of securities to be offered;
- (d) A statement of the nature and purposes of the organization as a basis for the exemption under this section;
- (e) A statement of the proposed use of the proceeds of the sale of the security; and
- (f) A statement that the issuer shall provide to a prospective purchaser written information regarding the securities offered prior to consummation of any sale, which information shall include the following statements: (i) "ANY PROSPECTIVE PURCHASER IS ENTITLED TO REVIEW FINANCIAL STATEMENTS OF THE ISSUER WHICH SHALL BE FURNISHED UPON REQUEST."; (ii) "RECEIPT OF NOTICE OF EXEMPTION BY THE WASHINGTON ADMINISTRATOR OF SECURITIES DOES NOT SIGNIFY THAT THE ADMINISTRATOR HAS APPROVED OR RECOMMENDED THESE SECURITIES, NOR HAS THE ADMINISTRATOR PASSED UPON THE OFFERING. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."; and (iii) "THE RETURN OF THE FUNDS OF THE PURCHASER IS DEPENDENT UPON THE FINANCIAL CONDITION OF THE ORGANIZATION."

(12) Any charitable gift annuities issued by a board of a state university, regional university, or of the state college.

(13) Any charitable gift annuity issued by an insurer or institution holding a certificate of exemption under RCW 48.38.010.

Sec. 6. Section 32, chapter 282, Laws of 1959 as last amended by section 21, chapter 68, Laws of 1979 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))~~ The following transactions are exempt from RCW 21.20.040 through 21.20.300 except as expressly provided:

(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 ~~((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)))~~ an offering not exceeding five hundred thousand dollars effected in accordance with any rule by the director if the director finds that registration is not necessary in the public interest and for the protection of investors.

(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~~) if any such receipt, written notice, or certificate made pursuant to this paragraph (~~shall be~~) is nontransferable except in the case of death or by operation of law and (~~shall~~) so states conspicuously on its face.

Sec. 7. Section 24, chapter 68, Laws of 1979 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 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 initial filing 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-fortieth of one percent for any excess over one hundred thousand dollars 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 seventy-five 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 salesperson or investment adviser salesperson, the fee shall be thirty-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 salesperson or investment adviser salesperson, 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 fifty dollars and for a salesperson or investment adviser salesperson shall be thirty dollars. Acceptance by the director of an application for renewal after March 5 shall not be a waiver of delinquency. If a late license renewal has not been filed by May 31, the license will be automatically considered canceled. For reinstatement of a salesperson or investment adviser salesperson's license after cancellation, the fee shall be fifty dollars. For reinstatement of a broker-dealer or investment adviser's license after cancellation, the fee shall be two hundred dollars.))~~ If a registration of a broker-dealer, salesperson, investment adviser, or investment adviser salesperson is not renewed on or before December 31st of each year the renewal is delinquent. The director by rule or order may set and assess a fee for delinquency not to exceed two hundred dollars. Acceptance by the director of an application for renewal after December 31st is not a waiver of delinquency. A delinquent application for renewal will not be accepted for filing after March 1st.

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

(b) For the transfer of a salesperson license from a broker-dealer or issuer to another broker-dealer or issuer, the transfer fee shall be twenty-five dollars.

(c) For the transfer of an investment adviser salesperson license from an investment adviser to another investment adviser, the transfer fee shall be twenty-five dollars.

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

(11) ~~((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.))~~ The director may provide by rule for the filing of notice of claim of exemption under RCW 21.20.320 (1) or (9) and set fees accordingly not to exceed three hundred dollars.

(12) For filing of notification of claim of exemption from registration pursuant to RCW 21.20.310(11), as now or hereafter amended, the fee shall be fifty dollars for each filing.

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

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

(15) For a duplicate license the fee shall be five dollars.

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

Sec. 8. Section 39, chapter 282, Laws of 1959 as last amended by section 27, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.390 are each amended to read as follows:

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 chapter or any rule or order hereunder, the director may in his or her discretion:

(1) Issue an order directing the person to cease and desist from continuing the act or practice: PROVIDED, That reasonable notice of and opportunity for a hearing shall be given: PROVIDED, FURTHER, That the director may issue a temporary order pending the hearing which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within fifteen days after the receipt of notice; or

(2) The director may without issuing a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter 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. If the director prevails, the director shall be entitled to a reasonable attorney's fee to be fixed by the court.

(3) Whenever it appears to the director that any person who has received a permit to issue, sell, or otherwise dispose of securities under this chapter, whether current or otherwise, has become insolvent, the director may petition a court of competent jurisdiction to appoint a receiver or conservator for the defendant or the defendant's assets. The director may not be required to post a bond.

(4) The director may ~~((include in any))~~ bring an action ~~((authorized by subsection (2) of this section a claim))~~ for restitution or damages on behalf of the persons injured by ~~((the act or practice constituting the subject matter of the action. The court shall have the power to award appropriate relief to such persons))~~ a violation of this chapter, if the court finds that ~~((enforcement of the rights of such persons by))~~ private civil action ~~((, whether by class action or otherwise,))~~ would be so burdensome or expensive as to be impractical.

Sec. 9. Section 43, chapter 282, Laws of 1959 as last amended by section 30, chapter 68, Laws of 1979 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 21.20.230, is liable to the person buying the security from him or her, 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 or she 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 in violation of the provisions of RCW 21.20.010 is liable to the person selling the security to him or her, 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, 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, director or person who occupies a similar status or performs a similar function of such

seller or buyer, every employee of such a seller or buyer who materially aids in the transaction, and every broker-dealer, salesperson, 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 such person sustains the burden of proof that he or she 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 or her 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 or she 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.

(7) Notwithstanding subsections (1) through (6) of this section, if an initial offer or sale of securities by the state or its agencies is in violation of RCW 21.20.010(2), each member of the governing body or person in control of the state or agency, each committee member, public officer, or director acting on its behalf, and each employee thereof who materially aids in the offer or sale, are liable to the purchaser of the security only if the purchaser establishes scienter on the part of the defendant.

Sec. 10. Section 58, chapter 282, Laws of 1959 as amended by section 40, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.580 are each amended to read as follows:

The advisory committee shall:

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

(2) Acquaint themselves fully with the operations of the director's office as to the administration of securities, broker-dealers, salespersons, 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 chapter 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 chapter.))~~

Sec. 11. Section 59, chapter 282, Laws of 1959 as amended by section 65, chapter 34, Laws of 1975-'76 2nd ex. sess. and RCW 21.20.590 are each amended to read as follows:

The advisory committee shall be reimbursed for their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended(~~(: 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))~~).

Passed the Senate March 30, 1981.

Passed the House April 22, 1981.

Approved by the Governor May 18, 1981.

Filed in Office of Secretary of State May 18, 1981.

## CHAPTER 273

[Senate Bill No. 3157]

### CITIES AND TOWNS—ENERGY CONSERVATION FINANCING

AN ACT Relating to energy conservation; and adding a new section to chapter 35.92 RCW.

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

NEW SECTION. Section 1. There is added to chapter 35.92 RCW a new section to read as follows:

A city or town may issue revenue bonds or warrants in the manner provided by this chapter for the purpose of defraying the cost of financing programs for the conservation or more efficient use of energy. The bonds or