

abandoned and will be handled in accordance with the escheat laws of the state of Washington.

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Passed the House April 12, 1989.

Approved by the Governor May 13, 1989.

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CHAPTER 391

[Substitute Senate Bill No. 5085]

FINANCIAL PLANNERS—REGISTRATION

AN ACT Relating to financial planners; and amending RCW 21.20.005 and 21.20.040.

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

Sec. 1. Section 60, chapter 282, Laws of 1959 as last amended by section 1, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.005 are each amended to read as follows:

The definitions set forth in this section shall apply throughout this chapter, unless the context otherwise requires:

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

(2) "Salesperson" 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 "salesperson" does not include an individual who represents an issuer in (a) effecting a transaction in a security exempted by RCW 21.20.310(1), (2), (3), (4), (9), (10), (11), (12), or (13), as now or hereafter amended, (b) effecting transactions exempted by RCW 21.20.320, 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.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for that person's own account. "Broker-dealer" does not include (a) a salesperson, issuer, bank, savings institution, or trust company, (b) a person who has no place of business in this state if the person 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 that person 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.

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

(5) "Full business day" means all calendar days, excluding therefrom Saturdays, Sundays, and all legal holidays, as defined by statute.

(6) "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" also includes financial planners and other persons who, as an integral component of other financially related services, (a) provide the foregoing investment advisory services to others for compensation as part of a business or (b) hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser shall also include any person who holds himself out as a financial planner.

"Investment adviser" does not include (a) a bank, savings institution, or trust company, (b) a lawyer, accountant, certified public accountant licensed under chapter 18.04 RCW, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, (c) a broker-dealer, (d) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation, (e) a radio or television station, (f) a person whose advice, analyses, or reports relate only to securities exempted by RCW 21.20.310(1), ~~((f))~~ (g) a person who has no place of business in this state if (i) that person's 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 that person 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))~~ (h) such other persons not within the intent of this paragraph as the director may by rule or order designate.

(7) "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.

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

(9) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interest of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(10) "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.

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.

(11) "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 June 10, 1959.

(12) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; investment of money or other consideration in the risk capital of a venture with the expectation of some valuable benefit to the investor where the investor does not receive the right to exercise practical and actual control over the managerial decisions of the venture; 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; charitable gift annuity; or, in general, any interest or instrument commonly known as a "security", or 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; or any sale of or indenture, bond or contract for the conveyance of land or any interest therein where such land is situated outside of the state of Washington and such sale or its offering is not conducted by a real estate broker licensed by the state of Washington. "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.

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

(14) "Investment adviser salesperson" means a person retained or employed by an investment adviser to solicit clients or offer the services of the investment adviser or manage the accounts of said clients.

(15) "Relatives", as used in RCW 21.20.310(11) as now or hereafter amended, shall include:

- (a) A member's spouse;
- (b) Parents of the member or the member's spouse;
- (c) Grandparents of the member or the member's spouse;
- (d) Natural or adopted children of the member or the member's spouse;
- (e) Aunts and uncles of the member or the member's spouse; and
- (f) First cousins of the member or the member's spouse.

Sec. 2. Section 4, chapter 282, Laws of 1959 as last amended by section 2, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.040 are each amended to read as follows:

(1) It is unlawful for any person to transact business in this state as a broker-dealer or salesperson, unless he or she is registered under this chapter: PROVIDED, That an exemption from registration as a broker-dealer or salesperson to sell or resell condominium units sold in conjunction with an investment contract, may be provided by rule or regulation of the director as to persons who are licensed pursuant to the provisions of chapter 18.85 RCW. It is unlawful for any broker-dealer or issuer to employ a salesperson unless the salesperson is registered or exempted from registration. It is unlawful for any person to transact business in this state as an investment adviser unless ~~((1))~~ (a) the person is so registered under this chapter, or ~~((2))~~ (b) the person is registered as a broker-dealer under this chapter, or ~~((3))~~ (c) the person's only clients in this state are investment companies as defined in the Investment Company Act of 1940, or insurance companies. It is unlawful for any person to transact business in this state as an investment adviser salesperson or for any investment adviser to employ an investment adviser salesperson unless such person is registered.

(2) It is unlawful for any person to hold himself out as, or otherwise represent that he or she is a "financial planner", "investment counselor", or other similar term, as may be specified in rules adopted by the director, unless the person is registered as an investment adviser or investment adviser sales person, is exempt from registration under RCW 21.20.040(1), or is excluded from the definition of investment adviser under RCW 21.20.005(6).

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