

Title 21

SECURITIES AND INVESTMENTS

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- 21.30** Commodity transactions.
- 21.35** Uniform transfer on death security registration act.

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The Washington Principal and Income Act of 2002: Chapter 11.104A RCW.

Chapter 21.20 RCW SECURITIES ACT OF WASHINGTON

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SHORT TITLE

21.20.940 Short title.

Reviser's note: Powers, duties, and functions of the department of licensing relating to securities were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

"Bucket shop": RCW 9.47.080, 9.47.090.

Business corporations: Title 23B RCW.

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Permit to sell stock of domestic insurance company: Chapter 48.06 RCW.

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Sale of capital notes and debentures by banks and trust companies: Chapter 30A.36 RCW.

Securities of public utilities: Chapter 80.08 RCW.

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DEFINITIONS

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

(1) "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 or make more than five sales in this state in any manner to persons other than those specified in (b) of this subsection.

(2) "Customer" means a person other than a broker-dealer or investment adviser.

(3) "Director" means the director of financial institutions of this state.

(4) "Federal covered adviser" means any person registered as an investment adviser under section 203 of the investment advisers act of 1940.

(5) "Federal covered security" means any security defined as a covered security in the securities act of 1933.

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

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

(8) "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 or herself 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 or its salesperson whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for them, (d) a publisher of any bona fide newspaper, news magazine, news column, newsletter, or business or financial publication or service, whether communicated in hard copy form, by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client, (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), (g) an investment adviser representative, or (h) such other persons not within the intent of this paragraph as the director may by rule or order designate.

(9) "Investment adviser representative" means any partner, officer, director, or a person occupying similar status or performing similar functions, or other individual, who is employed by or associated with an investment adviser, and who does any of the following:

(a) Makes any recommendations or otherwise renders advice regarding securities;

(b) Manages accounts or portfolios of clients;

(c) Determines which recommendation or advice regarding securities should be given;

(d) Solicits, offers, or negotiates for the sale of or sells investment advisory services; or

(e) Supervises employees who perform any of the functions under (a) through (d) of this subsection.

(10) "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 certifi-

ates, 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.

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

(12) "Person" means an individual, a corporation, a partnership, a limited liability company, a limited liability 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.

(13) "Relatives," as used in RCW 21.20.310(11) includes:

(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.

(14) "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.

(15) "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. "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), (b) effecting transactions exempted by RCW 21.20.320 unless otherwise expressly required by the terms of the exemption, 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.

(16) "Securities act of 1933," "securities exchange act of 1934," "public utility holding company act of 1935," "investment company act of 1940," and "investment advisers act of 1940" means the federal statutes of those names as amended before or after June 10, 1959.

(17)(a) "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; fractional undivided interest in an oil, gas, or mineral lease or in payments out of production under a lease, right, or royalty; charitable gift annuity; any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof; or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; 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 security under this subsection. This subsection applies whether or not the security is evidenced by a written document.

(b) "Security" does not include: (i) Any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period; or (ii) an interest in a contributory or noncontributory pension or welfare plan subject to the employee retirement income security act of 1974.

(18) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico. [2011 c 336 § 594; 2002 c 65 § 1; 1998 c 15 § 1; 1994 c 256 § 3. Prior: 1993 c 472 § 14; 1993 c 470 § 4; 1989 c 391 § 1; 1979 ex.s. c 68 § 1; 1979 c 130 § 3; 1977 ex.s. c 188 § 1; 1975 1st ex.s. c 84 § 1; 1967 c 199 § 1; 1961 c 37 § 1; 1959 c 282 § 60.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Findings—Construction—1994 c 256: See RCW 43.320.007.

Additional notes found at www.leg.wa.gov

FRAUDULENT AND OTHER PROHIBITED PRACTICES

21.20.010 Unlawful offers, sales, purchases. It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly:

- (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. [1959 c 282 § 1.]

21.20.020 Unlawful acts of person advising another.

(1) 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:

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

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

(c) To engage in any dishonest or unethical practice as the director may define by rule.

This subsection (1) applies whether or not the person is an investment adviser, federal covered adviser, or investment adviser under this chapter or the Investment Advisers Act of 1940.

(2) It is unlawful for an investment adviser, acting as principal for his or her own account, knowingly to sell any security to or purchase any security from a client, or act as a broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the execution of such transaction the capacity in which he or she is acting and obtaining the consent of the client to such transaction.

This subsection (2) does not apply to a transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction. [2002 c 65 § 2; 1998 c 15 § 2; 1959 c 282 § 2.]

21.20.030 Unlawful acts of investment adviser. 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; however, this subsection does not prohibit: (a) An investment advisory contract which provides for compensation based upon the total of a fund averaged over a definite period, or as of definite dates or taken as of a definite date; or (b) performance compensation arrangements permitted under any rule the director may adopt in order to allow performance compensation arrangements permitted under the Investment Advisers Act of 1940 and regulations promulgated by the securities and exchange commission thereunder;

(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.

"Assignment", as used in subsection (2) of this section, 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. [1993 c 114 § 1; 1959 c 282 § 3.]

21.20.035 Unlawful purchases or sales for customer's account. It is unlawful for a broker-dealer, salesperson, investment adviser, or investment adviser representative knowingly to effect or cause to be effected, with or for a customer's account, transactions of purchase or sale (1) that are excessive in size or frequency in view of the financial resources and character of the account and (2) that are effected because the broker-dealer, salesperson, investment adviser, or investment adviser representative is vested with discretionary power or is able by reason of the customer's trust and confidence to influence the volume and frequency of the trades. [1994 c 256 § 4; 1993 c 470 § 1.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

VARIABLE CONTRACTS

21.20.037 Variable contracts—Registration required—Rules. As required by chapter 48.18A RCW, a person selling variable contracts shall be registered as a broker-dealer or securities salesperson as required by this chapter. This chapter, and any rules or orders adopted under this chapter, applies to any person engaged in the offer, sale, or purchase of a variable contract. "Variable contract" means the same as set forth under chapter 48.18A RCW. [2002 c 65 § 8.]

REGISTRATION AND NOTICE FOR BROKER-DEALERS, SALESPERSONS, INVESTMENT ADVISERS, AND INVESTMENT ADVISER SALESPERSONS

21.20.040 Registration and notification required—Exemptions. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesperson, unless: (a) The person is registered under this chapter; (b) the person is exempted from registration as a broker-dealer or salesperson to sell or resell condominium units sold in conjunction with an investment contract as may be provided by rule or order of the director as to persons who are licensed pursuant to the provisions of chapter 18.85 RCW; (c) the person is a salesperson who satisfies the requirements of section 15(i)(3) of the Securities Exchange Act of 1934 and effects in this state no transactions other than those described by section 15(i)(4) of the Securities Exchange Act of 1934; (d) the person is a salesperson effecting transactions in open-end investment company securities sold at net asset value without any sales charges; or (e) the person participates only in the sale or offering for sale of variable contracts which fund corporate plans meeting the requirements for qualification under section 401 or 403 of the United States Internal Revenue Code as set forth in RCW 48.18A.060.

(2) It is unlawful for any broker-dealer or issuer to employ a salesperson unless the salesperson is registered or exempted from registration.

(3) It is unlawful for any person to transact business in this state as an investment adviser or investment adviser representative unless: (a) The person is so registered or exempt from registration under this chapter; (b) the person has no place of business in this state and (i) the person's only clients in this state are investment advisers registered under this chapter, federal covered advisers, broker-dealers, banks, sav-

ings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, employee benefit plans with assets of not less than one million dollars, or governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or (ii) during the preceding twelve-month period the person has had fewer than six clients who are residents of this state other than those specified in (b)(i) of this subsection; (c) the person is an investment adviser to an investment company registered under the Investment Company Act of 1940; (d) the person is a federal covered adviser and the person has complied with requirements of RCW 21.20.050; or (e) the person is excepted from the definition of investment adviser under section 202(a)(11) of the Investment Advisers Act of 1940.

(4) It is unlawful for any person, other than a federal covered adviser, to hold himself or herself 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 representative, is exempt from registration as an investment adviser or investment adviser representative under RCW 21.20.040, or is excluded from the definition of investment adviser under RCW 21.20.005.

(5)(a) It is unlawful for any person registered or required to be registered as an investment adviser under this chapter to employ, supervise, or associate with an investment adviser representative unless such investment adviser representative is registered as an investment adviser representative under this chapter.

(b) It is unlawful for any federal covered adviser or any person required to be registered as an investment adviser under section 203 of the Investment Advisers Act of 1940 to employ, supervise, or associate with an investment adviser representative having a place of business located in this state, unless such investment adviser representative is registered or is exempted from registration under this chapter. [2016 c 61 § 1; 2002 c 65 § 3; 1998 c 15 § 3; 1994 c 256 § 5; 1989 c 391 § 2; 1979 ex.s. c 68 § 2; 1975 1st ex.s. c 84 § 2; 1974 ex.s. c 77 § 1; 1959 c 282 § 4.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Insurance, solicitation permits for sale of securities: RCW 48.06.090.

Additional notes found at www.leg.wa.gov

21.20.050 Application for registration—Filing of documents—Consent to service of process—Fee. (1) A broker-dealer, salesperson, investment adviser, or investment adviser representative may apply for registration by filing with the director or his or her 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.

(2) A federal covered adviser shall file such documents as the director may, by rule or otherwise, require together with a consent to service of process and the payment of the fee prescribed in RCW 21.20.340. [2011 c 336 § 595; 1998 c 15 § 4; 1994 c 256 § 6; 1981 c 272 § 1; 1979 ex.s. c 68 § 3; 1975 1st ex.s. c 84 § 3; 1961 c 37 § 2; 1959 c 282 § 5.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.060 Contents of application for registration—Capital requirements. 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, or any person occupying a similar status or performing similar functions; or any person directly or indirectly controlling the broker-dealer or investment adviser;
- (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;
- (5) The applicant's financial condition and history;
- (6) The address of the principal place of business of the applicant and the addresses of all branch offices of the applicant in this state; and
- (7) Any information to be furnished or disseminated to any client or prospective client, if the applicant is an investment adviser.

The director may by rule or otherwise require a minimum capital for registered broker-dealers, not to exceed the limitations provided in section 15 of the Securities Exchange Act of 1934, and establish minimum financial requirements for investment advisers, not to exceed the limitations provided in section 222 of the Investment Advisers Act of 1940, which may include different requirements for investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over those funds or securities, and may allow registrants to maintain a surety bond of appropriate amount as an alternative method of compliance with minimum capital or financial requirements. [1998 c 15 § 5; 1995 c 46 § 1; 1994 c 256 § 7; 1965 c 17 § 1; 1959 c 282 § 6.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.070 When registration effective—Requirements determined by rule. If the application meets the requirements for registration, as the director may by rule or otherwise determine, and no denial order is in effect and no proceeding is pending under RCW 21.20.110, the director shall make the registration effective. [1998 c 15 § 6; 1981 c 272 § 2; 1979 ex.s. c 68 § 4; 1975 1st ex.s. c 84 § 4; 1974 ex.s. c 77 § 2; 1959 c 282 § 7.]

Additional notes found at www.leg.wa.gov

21.20.080 Duration of registration—Association with issuer, broker-dealer, federal covered adviser, or investment adviser—Notice to director—Extension of licensing period. Registration of a broker-dealer, salesperson, investment adviser representative, or investment adviser shall be effective 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 representative is not effective during any period when the salesperson is not employed by or associated with an issuer or a registered bro-

ker-dealer or when the investment adviser representative is not employed by or associated with an investment adviser registered under this chapter or a federal covered adviser who has made a notice filing pursuant to RCW 21.20.050. To be employed by or associated with an issuer, broker-dealer, federal covered adviser, or investment adviser within the meaning of this section notice, either in writing or in some other format as the director may by rule or otherwise specify, must be given to the director. When a salesperson begins or terminates employment or 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 representative registered under this chapter begins or terminates employment or association with an investment adviser registered under this chapter or a federal covered adviser required to make a notice filing pursuant to RCW 21.20.050, the investment adviser representative and investment adviser or federal covered 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 adopted in accordance with the provisions of chapter 34.05 RCW. Such rules may provide a method for imposing and collecting such additional proportional fee as may be required for the extended period. [1998 c 15 § 7; 1994 c 256 § 8; 1981 c 272 § 3; 1979 ex.s. c 68 § 5; 1975 1st ex.s. c 84 § 5; 1959 c 282 § 8.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.090 Renewal of registration—Financial reports—Application for a successor. Registration of a broker-dealer, salesperson, investment adviser representative, or investment adviser may be renewed by filing with the director or his or her 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 representative, or investment adviser filed with the director or his or her authorized agent by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer or investment adviser such financial reports as the director may prescribe by rule or otherwise. The reporting requirements so prescribed for a broker-dealer may not exceed the limitations provided in section 15 of the Securities Exchange Act of 1934. A registered broker-dealer or investment adviser may file an application for registration of a successor, and the director may at his or her discretion grant or deny the application. [1998 c 15 § 8; 1995 c 46 § 2; 1994 c 256 § 9; 1981 c 272 § 4; 1979 ex.s. c 68 § 6; 1975 1st ex.s. c 84 § 6; 1961 c 37 § 3; 1959 c 282 § 9.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.100 Accounts, correspondence, memoranda, papers, books, and other records—Release of information—Correction of filed document—Examination. (1) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records, except with respect to secu-

rities exempt under RCW 21.20.310(1), which books and other records shall be prescribed by the director by rule or otherwise. The recordmaking and recordkeeping requirements prescribed for a broker-dealer shall not exceed the limitations provided in section 15 of the Securities Exchange Act of 1934. The recordmaking and recordkeeping requirements prescribed for a registered investment adviser shall not exceed the limitations provided in section 222 of the Investment Advisers Act of 1940. All records required to be made and kept by a registered investment adviser shall be preserved for such a period as the director prescribes by rule or otherwise.

(2) With respect to investment advisers, the director may require that certain information be furnished or disseminated as necessary or appropriate in the public interest or for the protection of investors and advisory clients.

(3) If the information contained in any document filed with the director is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under RCW 21.20.090.

(4) 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 without this state, as the director deems necessary or appropriate in the public interest or for the protection of investors. [1998 c 15 § 9; 1959 c 282 § 10.]

21.20.110 Director may deny, suspend, revoke, restrict, condition, or limit any application or registration—Director may censure or fine registrant—Grounds—Procedures—Costs—Accounting. (1) The director may by order deny, suspend, revoke, restrict, condition, or limit any application or registration of any broker-dealer, salesperson, investment adviser representative, or investment adviser; or censure or fine the registrant or an officer, director, partner, or person performing similar functions for a registrant; if the director 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, director, or person performing similar functions:

(a) 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;

(b) Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act, or any provision of chapter 21.30 RCW or any rule or order thereunder;

(c) Has been convicted, within the past ten years, of any misdemeanor involving a security, or a commodity contract or commodity option as defined in RCW 21.30.010, or any aspect of the securities, commodities, business investments, franchises, business opportunities, insurance, banking, or finance business, or any felony involving moral turpitude;

(d) Is permanently or temporarily enjoined or restrained by any court of competent jurisdiction in an action brought by the director, a state, or a federal government agency from engaging in or continuing any conduct or practice involving any aspect of the securities, commodities, business investments, franchises, business opportunities, insurance, banking, or finance business;

(e) Is the subject of an order entered after notice and opportunity for hearing:

(i) By the securities administrator of a state or by the Securities and Exchange Commission denying, revoking, barring, or suspending registration as a broker-dealer, salesperson, investment adviser, or investment adviser representative;

(ii) By the securities administrator of a state or by the Securities and Exchange Commission against a broker-dealer, salesperson, investment adviser, or an investment adviser representative;

(iii) By the Securities and Exchange Commission or self-regulatory organization suspending or expelling the registrant from membership in a self-regulatory organization; or

(iv) By a court adjudicating a United States Postal Service fraud;

The director may not commence a revocation or suspension proceeding more than one year after the date of the order relied on. The director may not enter an order on the basis of an order under another state securities act unless that order was based on facts that would constitute a ground for an order under this section;

(f) Is the subject of an order, adjudication, or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodities Futures Trading Commission, the Federal Trade Commission, or a securities or insurance regulator of any state that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodities Exchange Act, the securities, insurance, or commodities law of any state, or a federal or state law under which a business involving investments, franchises, business opportunities, insurance, banking, or finance is regulated;

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

(h) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature; but the director may not enter an order against an applicant or registrant under this subsection (1)(h) without a finding of insolvency as to the applicant or registrant;

(i) Has not complied with a condition imposed by the director under RCW 21.20.100, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business, except as otherwise provided in subsection (2) of this section;

(j) Has failed to supervise reasonably a salesperson or an investment adviser representative, or employee, if the salesperson, investment adviser representative, or employee was subject to the person's supervision and committed a violation of this chapter or a rule adopted or order issued under this chapter. For the purposes of this subsection, no person fails to supervise reasonably another person, if:

(i) There are established procedures, and a system for applying those procedures, that would reasonably be expected to prevent and detect, insofar as practicable, any violation by another person of this chapter, or a rule or order under this chapter; and

(ii) The supervising person has reasonably discharged the duties and obligations required by these procedures and system without reasonable cause to believe that another person was violating this chapter or rules or orders under this chapter;

(k) Has failed to pay the proper filing fee within thirty days after being notified by the director of a deficiency, but the director shall vacate an order under this subsection (1)(k) when the deficiency is corrected;

(l) Within the past ten years has been found, after notice and opportunity for a hearing to have:

(i) Violated the law of a foreign jurisdiction governing or regulating the business of securities, commodities, insurance, or banking;

(ii) Been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, or investment adviser representative; or

(iii) Been suspended or expelled from membership by a securities exchange or securities association operating under the authority of the securities regulator of a foreign jurisdiction;

(m) Is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities or commodities laws of a state; or

(n) Refuses to allow or otherwise impedes the director from conducting an audit, examination, or inspection, or refuses access to any branch office or business location to conduct an audit, examination, or inspection.

(2) The director, by rule or order, may require that an examination, including an examination developed or approved by an organization of securities administrators, be taken by any class of or all applicants. The director, by rule or order, may waive the examination as to a person or class of persons if the administrator determines that the examination is not necessary or appropriate in the public interest or for the protection of investors.

(3) The director may issue a summary order pending final determination of a proceeding under this section upon a finding that it is in the public interest and necessary or appropriate for the protection of investors.

(4) The director may not impose a fine under this section except after notice and opportunity for hearing. The fine imposed under this section may not exceed ten thousand dollars for each act or omission that constitutes the basis for issuing the order. If a petition for judicial review has not been timely filed under RCW 34.05.542(2), a certified copy of the director's order requiring payment of the fine may be filed in the office of the clerk of the superior court in any county of this state. The clerk shall treat the order of the director in the same manner as a judgment of the superior court. The director's order so filed has the same effect as a judgment of the superior court and may be recorded, enforced, or satisfied in like manner.

(5) Withdrawal from registration as a broker-dealer, salesperson, investment adviser, or investment adviser representative becomes effective thirty days after receipt of an application to withdraw or within such shorter period as the administrator determines, unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective upon such conditions as the director, by order, determines. If no proceeding is pending or commenced and withdrawal automatically becomes effective, the administrator may nevertheless commence a revocation or suspension proceeding under subsection (1)(b) of this section within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(6) A person who, directly or indirectly, controls a person not in compliance with any part of this section may also be sanctioned to the same extent as the noncomplying person, unless the controlling person acted in good faith and did not directly or indirectly induce the conduct constituting the violation or cause of action.

(7) In any action under subsection (1) of this section, the director may charge the costs, fees, and other expenses incurred by the director in the conduct of any administrative investigation, hearing, or court proceeding against any person found to be in violation of any provision of this section or any rule or order adopted under this section.

(8) In any action under subsection (1) of this section, the director may enter an order requiring an accounting, restitution, and disgorgement, including interest at the legal rate under RCW 4.56.110. The director may by rule or order provide for payments to investors, rates of interest, periods of accrual, and other matters the director deems appropriate to implement this subsection.

(9) The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [2016 c 61 § 2; 2003 c 288 § 4; 2002 c 65 § 4; 1998 c 15 § 10; 1997 c 58 § 856; 1994 c 256 § 10; 1993 c 470 § 3; 1986 c 14 § 45; 1979 ex.s. c 68 § 7; 1975 1st ex.s. c 84 § 7; 1965 c 17 § 2; 1959 c 282 § 11.]

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Findings—Construction—1994 c 256: See RCW 43.320.007.

Additional notes found at www.leg.wa.gov

21.20.120 Denial, suspension, revocation of registration—Order—Request for, notice of hearing—Findings and conclusions. Upon the entry of an order under RCW 21.20.110, the director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesperson or investment adviser representative, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within twenty 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 RCW 21.20.110 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 salesperson or an investment adviser representative), opportunity for hearing, and written findings of fact and conclusions of law. [2016 c 61 § 3; 1994 c 256 § 11; 1979 ex.s. c 68 § 8; 1975 1st ex.s. c 84 § 8; 1959 c 282 § 12.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.130 Cancellation of registration or application—Grounds. 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, investment adviser representative, or salesperson, 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. [1994 c 256 § 12; 1979 ex.s. c 68 § 9; 1975 1st ex.s. c 84 § 9; 1959 c 282 § 13.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.135 License as salesperson or broker-dealer prerequisite to suit for commission. No suit or action shall be brought for the collection of a commission for the sale of a security, as defined within this chapter without alleging and proving that the plaintiff was a duly licensed salesperson for an issuer or a broker-dealer, or exempt under the provisions of RCW 21.20.040, or a duly licensed broker-dealer in this state or another state at the time the alleged cause of action arose. [1979 ex.s. c 68 § 10; 1974 ex.s. c 77 § 3; 1961 c 37 § 10.]

Additional notes found at www.leg.wa.gov

REGISTRATION OF SECURITIES

21.20.140 Unlawful to offer or sell unregistered securities—Exceptions. It is unlawful for any person to offer or sell any security in this state unless: (1) The security is registered by coordination or qualification under this chapter; (2) the security or transaction is exempted under RCW 21.20.310, 21.20.320, or 21.20.880; or (3) the security is a federal covered security, and, if required, the filing is made and a fee is paid in accordance with RCW 21.20.327. [2016 c 61 § 4; 1998 c 15 § 11; 1975 1st ex.s. c 84 § 10; 1959 c 282 § 14.]

REGISTRATION BY COORDINATION

21.20.180 Registration by coordination—Requirements—Statement, contents. 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 regulation A pursuant to subsection (b) of Sec. 3 of the 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 documents, in addition to payment of the registration fee prescribed in RCW 21.20.340 and, if required under RCW 21.20.330, a consent to service of process meeting the requirements of that section:

(1) One copy 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;

(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; and

(8) If the aggregate sales price of the offering exceeds one million dollars, audited financial statements and other financial information prepared as to form and content under rules adopted by the director. [1994 c 256 § 13; 1979 ex.s. c 68 § 11; 1961 c 37 § 4; 1959 c 282 § 18.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.190 Time of taking effect of registration statement by coordination—Conditions—"Price amendment", notification. A registration statement by coordination under RCW 21.20.180 automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

(1) No stop order is in effect and no proceeding is pending under RCW 21.20.280 and 21.20.300;

(2) The registration statement has been on file with the director for at least ten full business 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 or such person as the director may by rule or order designate by facsimile, electronic transmission, 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, con-

version rates, call prices, and other matters dependent upon the offering price. [1994 c 256 § 14; 1961 c 37 § 5; 1959 c 282 § 19.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.200 Failure to notify of price amendment, proof of compliance—Stop order—Waiver of certain conditions. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment referred to in RCW 21.20.190, 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 RCW 21.20.190, if the director promptly notified the registrant by telephone, facsimile, or electronic transmission (and promptly confirms by letter or facsimile when the director 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 RCW 21.20.190 (2) and (3). If the federal 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, electronic transmission, or facsimile, at the registrant's expense, whether all the conditions are satisfied and whether the director then contemplates the institution of a proceeding under RCW 21.20.280 and 21.20.300; but this advice by the director does not preclude the institution of such a proceeding at any time. [1994 c 256 § 15; 1979 ex.s. c 68 § 12; 1959 c 282 § 20.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

REGISTRATION BY QUALIFICATION

21.20.210 Registration by qualification—Statements—Requirements—Audits. 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 RCW 21.20.340, and, if required under RCW 21.20.330, 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 or her name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him or her 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).

(3) With respect to any person not named in RCW 21.20.210(2), 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 RCW 21.20.210(2) other than his or her occupation.

(4) With respect to every promoter, not named in RCW 21.20.210(2), if the issuer was organized within the past three years: The information specified in RCW 21.20.210(2), any amount paid to that person by the issuer within that period or intended to be paid to that person, 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 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 RCW 21.20.210 (2), (3), (4), (5) or (7) 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) The following financial statements:

(i)(A) Balance sheets as of the end of each of the three most recent fiscal years; and, if the date of the most recent fiscal year end is more than four months prior to the date of filing, (B) a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement.

(ii)(A) Statements of income, shareholders' equity, and cash flows for each of the three fiscal years preceding the date of the latest balance sheet or for the period of the issuer's and any predecessor's existence if less than three years and (B) statements of income, shareholders' equity, and cash flows for any period between the close of the last fiscal year and the date of the latest balance sheet.

(iii) If any part of the proceeds of the offering is to be applied to the purchase of any business whose annual sales or revenues are in excess of fifteen percent of the registrant's sales or revenues or involves acquisition of assets in excess of fifteen percent of the registrant's assets, except as specifically exempted by the director, financial statements shall be filed which would be required if that business were the registrant.

(b)(i) If the estimated proceeds to be received from the offering, together with the proceeds from securities registered under this section during the year preceding the date of the filing of this registration statement, exceed one million dollars, the balance sheet specified in (a)(i)(A) of this subsection as of the end of the last fiscal year and the related financial statements specified in (a)(ii)(A) of this subsection for the last fiscal year shall be audited.

(ii) If such proceeds exceed one million dollars but are not more than five million dollars, the balance sheet specified in (a)(i)(A) of this subsection as of the end of the most recent fiscal year and the financial statements specified in (a)(ii)(A) of this subsection for the last fiscal year shall be audited.

(iii) If such proceeds exceed five million dollars but are not more than twenty-five million dollars, the balance sheets specified in (a)(i)(A) of this subsection as of the end of the last two fiscal years and the related financial statements specified in (a)(ii)(A) of this subsection for the last two fiscal years shall be audited.

(iv) If such proceeds exceed twenty-five million dollars, the balance sheets specified in (a)(i)(A) of this subsection and the related financial statements specified in (a)(ii)(A) of this subsection for the last three fiscal years shall be audited.

(c) The financial statements of this subsection and such other financial information as may be prescribed by the direc-

tor shall be prepared as to form and content in accordance with generally accepted accounting principles and with the rules prescribed by the director, and when applicable, shall be audited by an independent certified public accountant who is registered and in good standing as a certified public accountant under the laws of the place of his or her residence or principal office and who is not an employee, officer, or member of the board of directors of the issuer or a holder of the securities of the issuer. An audit report of such independent certified public accountant shall be based upon an audit made in accordance with generally accepted auditing standards. The audit report shall have no limitations on its scope unless expressly authorized in writing by the director. The director may also verify such statements by examining the issuer's books and records.

(15) The written consent of any accountant, engineer, appraiser, attorney, or any person whose profession gives authority to a statement made by him or her, who is named as having prepared or audited any part of the registration statement or is named as having prepared or audited a report or valuation for use in connection with the registration statement. [1994 c 256 § 16; 1979 ex.s. c 68 § 13; 1973 1st ex.s. c 171 § 1; 1959 c 282 § 21.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Additional notes found at www.leg.wa.gov

21.20.220 Information not required when nonissuer distribution. In the case of a nonissuer distribution, information may not be required under RCW 21.20.210 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. [1959 c 282 § 22.]

21.20.230 Time of taking effect of registration statement by qualification—Conditions. A registration statement by qualification under RCW 21.20.210 becomes effective if no stop order is in effect and no proceeding is pending under RCW 21.20.280 and 21.20.300, at three o'clock Pacific standard time in the afternoon of the fifteenth full business day after the filing of the registration statement 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 information necessary for complete disclosure of any material fact relating to the security offering 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 or her (other 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 or her 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 may 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. [1979 ex.s. c 68 § 14; 1975 1st ex.s. c 84 § 11; 1974 ex.s. c 77 § 4; 1961 c 37 § 6; 1959 c 282 § 23.]

Additional notes found at www.leg.wa.gov

GENERAL PROVISIONS REGARDING REGISTRATION OF SECURITIES

21.20.240 Registration statements—Generally. 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. The director may by rule or otherwise permit the omission of any item of information or document from any registration statement. [1975 1st ex.s. c 84 § 12; 1959 c 282 § 24.]

21.20.250 Registration by qualification or coordination—Escrow—Impounding proceeds. 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; 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 the director may not reject a depository solely because of location in another state. [1979 ex.s. c 68 § 15; 1959 c 282 § 25.]

21.20.260 Registration by coordination or qualification—Offer and sale—Duration of effectiveness. When securities are registered by 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 or any person acting within the exemption provided in RCW 21.20.040. Every registration shall remain effective until its expiration date or 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 nonissuer transaction. [1975 1st ex.s. c 84 § 13; 1974 ex.s. c 77 § 5; 1959 c 282 § 26.]

Additional notes found at www.leg.wa.gov

21.20.270 Reports by filer of statement—Annual financial statements. (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.

(2) During the period of public offering of securities registered under the provisions of this chapter by qualification financial data or statements corresponding to those required under the provisions of RCW 21.20.210 and to the issuer's fiscal year shall be filed with the director annually, not more

than one hundred twenty days after the end of each such year. Such statements at the discretion of the director or administrator shall be audited by a certified public accountant who is not an employee of the issuer, and the director may verify them by examining the issuer's books and records. The report of such independent certified public accountant shall be based upon an audit of not less in scope or procedures followed than that which independent public accountants would ordinarily make for the purpose of presenting comprehensive and dependable financial statements, and shall contain such information as the director may prescribe, by rules in the public interest or for the protection of investors, as to the nature and scope of the audit and the findings and opinions of the accountants. Each such report shall state that such independent certified public accountant has verified securities owned, either by actual examination, or by receipt of a certificate from the custodian, as the director may prescribe by rules. [2016 c 61 § 5; 1995 c 46 § 3; 1975 1st ex.s. c 84 § 14; 1965 c 17 § 3; 1961 c 37 § 7; 1959 c 282 § 27.]

21.20.275 Pending registration—Notice of termination—Application for continuation. The director may in his or her discretion send notice to the applicant in any pending registration in which no action has been taken for nine months immediately prior to the sending of such notice, advising such applicant that the pending registration will be terminated thirty days from the date of sending unless on or before the termination date the applicant makes application in writing to the director showing good cause why it should be continued as a pending registration. If such application is not made or good cause shown, the director shall terminate the pending registration. [2016 c 61 § 6; 1994 c 256 § 17; 1979 ex.s. c 68 § 16; 1974 ex.s. c 77 § 12.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Additional notes found at www.leg.wa.gov

DENIAL, SUSPENSION AND REVOCATION OF REGISTRATION OF SECURITIES

21.20.280 Stop orders—Grounds. The director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if the director 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 chapter or any rule, order, or condition lawfully imposed under this chapter has been willfully 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 registration statement under this clause more than one year from the date of the injunction relied on, and (b) the director 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 coordination, there has been a failure to comply with the undertaking required by RCW 21.20.180(7);

(7) 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 shall vacate any such order when the deficiency has been corrected; or

(8) 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. [2016 c 61 § 7; 1979 ex.s. c 68 § 17; 1975 1st ex.s. c 84 § 15; 1959 c 282 § 28.]

21.20.290 Stop order prohibited if facts known on effective date of statement. The director may not enter a stop order against an effective registration statement on the basis of a fact or transaction known to the director when the registration statement became effective. [1979 ex.s. c 68 § 18; 1959 c 282 § 29.]

21.20.300 Notification of entry of stop order—Hearing—Findings, conclusions, modification, etc. Upon the entry of a stop order under any part of RCW 21.20.280, 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 twenty days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within twenty days and none is ordered by the director, the director shall enter 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 hearings to the issuer and to the applicant or registrant, shall enter 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 the director finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so. [2016 c 61 § 8; 1979 ex.s. c 68 § 19; 1959 c 282 § 30.]

EXEMPT SECURITIES

21.20.310 Securities exempt from registration. RCW 21.20.140 through 21.20.300, inclusive, and 21.20.327 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 does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless such payments are made or unconditionally guaranteed by a person whose securities are exempt from registration by subsection (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 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 subsection (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 insured or guaranteed by, any insurance company authorized to do 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) 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; (b) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or (c) 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; and 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 prime quality negotiable commercial paper not intended to be marketed to the general public and not advertised for sale to the general public that is of a type eligible for discounting by federal reserve banks, that arises out of a current transaction or the proceeds of which have been or are to be used for a current transaction, and that 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.

(10) Any security issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if: (a) The plan meets the requirements for qualification as a pension, profit sharing, or stock bonus plan under section 401 of the internal revenue code, as an incentive stock option plan under section 422 of the internal revenue code, as a nonqualified incentive stock option plan adopted with or as a supplement to an incentive stock option plan under section 422 of the internal revenue code, or as an employee stock purchase plan under section 423 of the internal revenue code; or (b) the director is notified in writing with a copy of the plan thirty days before 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, fraternal, 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 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(11) 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. [2002 c 65 § 5; 1998 c 15 § 13; 1995 c 46 § 4; 1994 c 256 § 18; 1981 c 272 § 5; 1979 ex.s. c 68 § 20; 1979 c 130 § 4; 1979 c 8 § 1. Prior: 1977 ex.s. c 188 § 2; 1977 ex.s. c 172 § 1; 1975 1st ex.s. c 84 § 16; 1959 c 282 § 31.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Additional notes found at www.leg.wa.gov

EXEMPT TRANSACTIONS

21.20.320 Exempt transactions. The following transactions are exempt from RCW 21.20.040 through 21.20.300 and 21.20.327 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.

(2) Any nonissuer transaction by a registered salesperson of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940 pursuant to any rule adopted by the director.

(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. A bond or other evidence of indebtedness is not offered and sold as a unit if the transaction involves:

(a) A partial interest in one or more bonds or other evidences 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; or

(b) One of multiple bonds or other evidences of indebtedness secured by one or more real or chattel mortgages or deeds of trust, or agreements for the sale of real estate or chat-

tels, sold to more than one purchaser as part of a single plan of financing; or

(c) A security including an investment contract other than the bond or other evidence of indebtedness.

(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 effected in accordance with the terms and conditions of any rule adopted by the director if:

(a) The aggregate offering amount does not exceed five million dollars; and

(b) 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 transaction by a mutual or cooperative association meeting the requirements of (a) and (b) of this subsection:

(a) The transaction:

(i) Does not involve advertising or public solicitation; or

(ii) Involves advertising or public solicitation, and:

(A) The association first files a notice of claim of exemption on a form prescribed by the director specifying the terms of the offer and the director does not by order deny the exemption within the next ten full business days; or

(B) The association is an employee cooperative and identifies itself as an employee cooperative in advertising or public solicitation.

(b) The transaction involves an instrument or interest, that:

(i)(A) Qualifies its holder to be a member or patron of the association;

(B) Represents a contribution of capital to the association by a person who is or intends to become a member or patron of the association;

(C) Represents a patronage dividend or other patronage allocation; or

(D) Represents the terms or conditions by which a member or patron purchases, sells, or markets products, commodities, or services from, to, or through the association; and

(ii) Is nontransferable except in the case of death, operation of law, bona fide transfer for security purposes only to the association, a bank, or other financial institution, intrafamily transfer, transfer to an existing member or person who will become a member, or transfer by gift to any person organized and operated as a nonprofit organization as defined in RCW 84.36.800(4) that also possesses a current tax exempt status under the laws of the United States, and, in the case of an instrument, so states conspicuously on its face.

(17) Any transaction effected in accordance with any rule adopted by the director establishing a limited offering exemption which furthers objectives of compatibility with federal exemptions and uniformity among the states, provided that in adopting any such rule the director may require that no commission or other remuneration be paid or given to any person, directly or indirectly, for effecting sales unless the person is registered under this chapter as a broker-dealer or salesperson. [2006 c 220 § 1; 1998 c 15 § 14; 1989 c 307 § 34. Prior: 1987 c 457 § 13; 1987 c 421 § 9; 1986 c 90 § 1; 1981 c 272 § 6; 1979 ex.s. c 68 § 21; 1977 ex.s. c 172 § 2; 1975 1st ex.s. c 84 § 17; 1974 ex.s. c 77 § 6; 1972 ex.s. c 79 § 1; 1961 c 37 § 8; 1959 c 282 § 32.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Additional notes found at www.leg.wa.gov

EXEMPT SECURITIES AND TRANSACTIONS

21.20.325 Denial, revocation, condition, of exemptions—Authority—Procedure. The director or administrator may by order deny, revoke, or condition any exemption specified in RCW 21.20.310 (10), (11), (12)[,] or (13), 21.20.320, or 21.20.880, with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the director or administrator may by order summarily deny, revoke, or condition any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the director or administrator shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within twenty 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 or administrator, the order will remain in effect until it is modified or vacated by the director or administrator. If a hearing is requested or ordered, the director or administrator, 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 section may operate retroactively. No person may be considered to have violated RCW 21.20.140 as now or hereafter amended by reason of any offer or sale effected after the entry of an order under this section if he or she 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 order. [2016 c 61 § 9; 1979 ex.s. c 68 § 22; 1979 c 130 § 14; 1977 ex.s. c 188 § 3; 1975 1st ex.s. c 84 § 18; 1974 ex.s. c 77 § 7; 1967 c 199 § 3.]

Additional notes found at www.leg.wa.gov

FEDERAL COVERED SECURITY

21.20.327 Required filings—Consent to service—Failure to comply—Rules—Fees. (1) The director, by rule or otherwise, may require the filing of any or all of the following documents and the payment of the following fees with respect to a federal covered security under section 18(b)(2) of the Securities Act of 1933:

(a) Prior to the initial offer of such a federal covered security in this state, all documents that are part of the current federal registration statement filed with the U.S. securities and exchange commission under the Securities Act of 1933, together with a consent to service of process signed by the issuer and the fee prescribed by RCW 21.20.340;

(b) After the initial offer of such a federal covered security in this state, all documents that are part of an amendment to a current federal registration statement filed with the U.S. securities and exchange commission under the Securities Act of 1933 and all fees prescribed by RCW 21.20.340; and

(c) An annual or periodic report of the value of such federal covered securities offered in this state, together with the fee prescribed by RCW 21.20.340.

(2) With respect to any security that is a federal covered security under section 18(b)(4)(D) of the Securities Act of

1933, the director, by rule or otherwise, may require the issuer to file a notice on SEC Form D, together with a consent to service of process signed by the issuer and the fee prescribed pursuant to RCW 21.20.340, no later than fifteen days after the first sale of such a federal covered security in this state.

(3) The director, by rule or otherwise, may require the filing of any document filed with the U.S. securities and exchange commission under the Securities Act of 1933, with respect to a federal covered security under section 18(b)(3) or (4) of the Securities Act of 1933 and/or the payment of the fee prescribed pursuant to RCW 21.20.340.

(4) The director may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, if the director finds that there is a failure to comply with any requirement established under this section.

(5) The director, by rule or otherwise, may waive any or all of the provisions of this section. [1998 c 15 § 12.]

CONSENT TO SERVICE OF PROCESS

21.20.330 Consent to service of process—Service, how made. Every applicant for registration as a broker-dealer, investment adviser, investment adviser representative, or salesperson under this chapter, every issuer that files an application to register or files a claim of exemption from registration to offer a security in this state through any person acting on an agency basis in the common law sense, and every person filing pursuant to RCW 21.20.050 or 21.20.327 shall file with the director or with such person as the director may by rule or order designate, in such form as the director by rule prescribes, an irrevocable consent appointing the director or the director's 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 the applicant's successor, executor or administrator which arises under this chapter 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, or notice filing pursuant to RCW 21.20.050 or 21.20.327, 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 or her, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address of the respondent or defendant 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. [1998 c 15 § 15; 1994 c 256 § 19; 1979 ex.s. c 68 § 23; 1975 1st ex.s. c 84 § 19; 1959 c 282 § 33.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

FEES

21.20.340 Fees—Disposition. Except as provided in subsection (15) of this section, the following fees shall be paid in advance under the provisions of this chapter:

(1)(a) For registration of securities by qualification, 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.

(b) For the offer of a federal covered security that (i) is an exempt security pursuant to section 3(2) of the Securities Act of 1933, and (ii) would not qualify for the exemption or a discretionary order of exemption pursuant to RCW 21.20.310(1), 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 filing fee has been paid.

(2)(a) For registration by coordination of securities issued by an investment company, other than a closed-end company, 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 one additional twelve-month period the unsold portion for which the registration fee has been paid.

(b) For each offering by an investment company, other than a closed-end company, as those terms are defined in the Investment Company Act of 1940, making a notice filing pursuant to RCW 21.20.327(1), 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-twentieth of one percent for any excess over one hundred thousand dollars which are to be offered in this state during that year. The amount offered in this state during the year may be increased by paying one-twentieth of one percent of the desired increase, based on offering price, prior to the sale of securities to be covered by the fee: PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty dollar fee renew for one additional twelve-month period the unsold portion for which the filing fee has been paid.

(3)(a) For registration by coordination of securities not covered by subsection (2) of this section, 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 addi-

tional twelve months in which the same offering is continued. The amount offered in this state during the year may be increased by paying one-fortieth of one percent of the desired increase, based on offering price, prior to the sale of securities to be covered by the fee.

(b) For each offering by a closed-end investment company, making a notice filing pursuant to RCW 21.20.327(1), 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. The amount offered in this state during the year may be increased by paying one-fortieth of one percent of the desired increase, based on offering price, prior to the sale of securities to be covered by the fee.

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

(5)(a) For filing an amended offering circular after the initial registration permit has been granted or pursuant to RCW 21.20.327(1)(b), the fee shall be ten dollars.

(b) For filing a report under RCW 21.20.270(1) or 21.20.327(1)(c), the fee shall be ten dollars.

(6)(a) 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.

(b) For a federal covered adviser filing pursuant to RCW 21.20.050, the fee shall be one hundred fifty dollars for original notification and seventy-five dollars for each annual renewal. A fee shall not be assessed in connection with converting an investment adviser registration to a notice filing when the investment adviser becomes a federal covered adviser.

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

(8) If a registration, or filing pursuant to RCW 21.20.050, of a broker-dealer, salesperson, investment adviser, federal covered adviser, or investment adviser representative is not renewed on or before the renewal deadline specified in the central registration depository (CRD) or the investment adviser registration depository (IARD), as applicable, 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 the renewal deadline specified in the CRD or the IARD, as applicable, is not a waiver of delinquency. A delinquent application for renewal will not be accepted for filing after March 1st.

(9)(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 representative 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.

(10)(a) The director may provide by rule for the filing of notice of claim of exemption under RCW 21.20.320 (1), (9), and (17) and set fees accordingly not to exceed three hundred dollars.

(b) For the filing required by RCW 21.20.327(2), the fee shall be three hundred dollars.

(11) 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.

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

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

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

(15) Upon a finding by the department of financial institutions that a fee increase is necessary to defray the costs of administering this chapter, the director may by rule adjust the fees specified in this section upward by no more than fifteen dollars.

All fees collected under this chapter shall be turned in to the state treasury and are not refundable, except as herein provided. [2018 c 185 § 1; 2016 c 61 § 10; 1998 c 15 § 16; 1995 c 46 § 5; 1994 c 256 § 20; 1988 c 244 § 17; 1986 c 90 § 2; 1981 c 272 § 7; 1979 ex.s. c 68 § 24. Prior: 1977 ex.s. c 188 § 4; 1977 ex.s. c 172 § 3; 1975 1st ex.s. c 84 § 20; 1974 ex.s. c 77 § 8; 1965 c 17 § 4; 1961 c 37 § 9; 1959 c 282 § 34.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Additional notes found at www.leg.wa.gov

MISLEADING FILINGS

21.20.350 False or misleading statements in filed documents. 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 chapter, 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. [1959 c 282 § 35.]

UNLAWFUL REPRESENTATIONS CONCERNING REGISTRATION OR EXEMPTION

21.20.360 Filing, registration, statement, exemption not conclusive as to truth or completeness—Unlawful representations. Neither the fact that an application for registration under RCW 21.20.050, a registration statement under RCW 21.20.180 or 21.20.210 has been filed, nor the fact that a person or security is effectively registered, constitutes a finding by the director that any document filed under this chapter 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 or 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. [2016 c 61 § 11; 1975 1st ex.s. c 84 § 21; 1959 c 282 § 36.]

INVESTIGATIONS AND SUBPOENAS

21.20.370 Investigations—Statement of facts relating to investigation may be permitted—Publication of information—Use of criminal history record information. (1)

The director in his or her discretion (a) may annually, or more frequently, make such public or private investigations within or without this state as the director deems necessary to determine whether any registration should be granted, denied or revoked or whether any person has violated, is violating, or is about to violate any provision of this chapter or any rule or order under this chapter, or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter, (b) may engage in the detection and identification of criminal activities subject to this chapter, (c) may require or permit any person to testify or 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 (d) may publish information concerning a proceeding, an investigation, or any violation of this chapter or any rule or order under this chapter, if the director determines it is necessary or appropriate in the public interest or for the protection of investors.

(2) The enforcement unit of the securities division of the department of financial institutions may be authorized to receive criminal history record information in connection with the investigation of criminal activities subject to this chapter. [2002 c 65 § 6; 1998 c 15 § 17; 1994 c 256 § 21; 1979 ex.s. c 68 § 25; 1973 1st ex.s. c 171 § 2; 1959 c 282 § 37.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Investigations, additional authority, scope: RCW 21.20.700.

Additional notes found at www.leg.wa.gov

21.20.377 Subpoena authority—Application—Contents—Notice—Fees. (1) The director or authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance.

The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

(a) State that an order is sought under this section;

(b) Adequately specify the documents, records, evidence, or testimony; and

(c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3). [2011 c 93 § 7.]

Finding—Intent—2011 c 93: See note following RCW 18.44.425.

21.20.380 Oaths—Subpoenas—Assisting another state—Compelling obedience—Punishment. (1) For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by the director 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.

(2) If the activities constituting an alleged violation for which the information is sought would be a violation of this chapter had the activities occurred in this state, the director may issue and apply to enforce subpoenas in this state at the request of a securities agency or administrator of another state.

(3) A subpoena issued to a financial institution under this section may, if the director finds it necessary or appropriate in the public interest or for the protection of investors, include a directive that the financial institution subpoenaed shall not disclose to third parties that are not affiliated with the financial institution, other than to the institution's legal counsel, the existence or content of the subpoena.

(4) In case of disobedience on the part of any person to comply with any subpoena lawfully issued by the director, the refusal of any witness to testify to any matters regarding which the witness may be lawfully interrogated, or the failure to comply with a nondisclosure directive under subsection (3) of this section, a court of competent jurisdiction of any county or the judge thereof, on application of the director, and after satisfactory evidence of willful disobedience, may compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such a court on a refusal to testify therein. [2002 c 65 § 7; 1995 c 46 § 6; 1994 c 256 § 22; 1979 ex.s. c 68 § 26; 1975 1st ex.s. c 84 § 22; 1974 ex.s. c 77 § 9; 1959 c 282 § 38.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Additional notes found at www.leg.wa.gov

INJUNCTIONS AND OTHER REMEDIES

21.20.390 Injunction, cease and desist order, restraining order, mandamus—Appointment of receiver or conservator for insolvent—Restitution or damages—Costs—Accounting. 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 and to take appropriate affirmative action within a reasonable period of time, as prescribed by the director, to correct conditions resulting from

the act or practice including, without limitation, a requirement to provide restitution. Reasonable notice of and opportunity for a hearing shall be given. The director may issue a summary 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 twenty 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 adopted under this chapter. The court may grant such ancillary relief, including a civil penalty, restitution, and disgorgement, as it deems appropriate. 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 bring an action for restitution or damages on behalf of the persons injured by a violation of this chapter, if the court finds that private civil action would be so burdensome or expensive as to be impractical.

(5) In any action under this section, the director may charge the costs, fees, and other expenses incurred by the director in the conduct of any administrative investigation, hearing, or court proceeding against any person found to be in violation of any provision of this section or any rule or order adopted under this section.

(6) In any action under subsection (1) of this section, the director may enter an order requiring an accounting, restitution, and disgorgement, including interest at the legal rate under RCW 4.56.110. The director may by rule or order provide for payments to investors, interest rates, periods of accrual, and other matters the director deems appropriate to implement this subsection. [2016 c 61 § 12; 2003 c 288 § 5; 1995 c 46 § 7; 1994 c 256 § 23; 1981 c 272 § 8; 1979 ex.s. c 68 § 27; 1975 1st ex.s. c 84 § 23; 1974 ex.s. c 77 § 10; 1959 c 282 § 39.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Additional notes found at www.leg.wa.gov

21.20.395 Administrative action—Hearing—Judicial review—Judgment. (1) A person who, in an administrative action by the director, is found to have knowingly or recklessly violated any provision of this chapter, or any rule or order under this chapter, may be fined, after notice and opportunity for hearing, in an amount not to exceed ten thousand dollars for each violation.

(2) A person who, in an administrative action by the director, is found to have knowingly or recklessly violated an administrative order issued under RCW 21.20.110 or

21.20.390 shall pay an administrative fine in an amount not to exceed twenty-five thousand dollars for each violation.

(3) The fines paid under subsections (1) and (2) of this section shall be deposited into the securities prosecution fund.

(4) If a petition for judicial review has not been timely filed under RCW 34.05.542(2), a certified copy of the director's order requiring payment of the fine may be filed in the office of the clerk of the superior court in any county of this state. The clerk shall treat the order of the director in the same manner as a judgment of the superior court. The director's order so filed has the same effect as a judgment of the superior court and may be recorded, enforced, or satisfied in like manner. [2003 c 288 § 6; 1998 c 15 § 18.]

CRIMINAL LIABILITIES

21.20.400 Penalty for violation of chapter—Limitation of actions. (1) Any person who willfully violates any provision of this chapter except RCW 21.20.350, or who willfully violates any rule or order under this chapter, or who willfully violates RCW 21.20.350 knowing the statement made to be false or misleading in any material respect, is guilty of a class B felony punishable under RCW 9A.20.021 (1)(b). However, a person may not be imprisoned for the violation of any rule or order if that person proves that he or she had no knowledge of the rule or order.

(2) Any person who knowingly alters, destroys, shreds, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding under this chapter, is guilty of a class B felony punishable under RCW 9A.20.021(1)(b) or punishable by a fine of not more than five hundred thousand dollars, or both. The fines paid under this subsection shall be deposited into the securities prosecution fund.

(3) No indictment or information may be returned under this chapter more than (a) five years after the violation, or (b) three years after the actual discovery of the violation, whichever date of limitation is later. [2016 c 61 § 13. Prior: 2003 c 288 § 3; 2003 c 53 § 163; 1979 ex.s. c 68 § 28; 1965 c 17 § 5; 1959 c 282 § 40.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

21.20.410 Attorney general, prosecuting attorney may institute criminal proceeding—Referral of evidence by director. (1) The director may refer such evidence as may be available concerning violations of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, institute the appropriate criminal proceedings under this chapter.

(2) The director may render such assistance as the prosecuting attorney requests regarding a reference. [1998 c 15 § 19; 1979 ex.s. c 68 § 29; 1959 c 282 § 41.]

21.20.420 Criminal punishment, chapter not exclusive. Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law. [1959 c 282 § 42.]

CIVIL LIABILITIES

21.20.430 Civil liabilities—Survival, limitation of actions—Waiver of chapter void—Scienter. (1) Any person, who offers or sells a security in violation of any provisions of RCW 21.20.010, 21.20.140 (1) or (2), or 21.20.180 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 (1) or (2) or 21.20.180 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 that are exempt from registration under RCW 21.20.310 is made by this state or its agencies, political subdivisions, municipal or quasi-municipal corporations, or other instrumentality of one or more of the foregoing and is in violation of RCW 21.20.010 (2), and any such issuer, member of the governing body, committee member, public officer, director, employee, or agent of such issuer acting on its behalf, or person in control of such issuer, member of the governing body, committee member, public officer, director, employee, or agent of such person acting on its behalf, materially aids in the offer or sale, such person is liable to the purchaser of the security only if the purchaser establishes scienter on the part of the defendant. The word "employee" or the word "agent," as such words are used in this subsection, do not include a bond counsel or an underwriter. Under no circumstances whatsoever shall this subsection be applied to require purchasers to establish scienter on the part of bond counsels or underwriters. The provisions of this subsection are retroactive and apply to any action commenced but not final before July 27, 1985. In addition, the provisions of this subsection apply to any action commenced on or after July 27, 1985. [1998 c 15 § 20; 1986 c 304 § 1; 1985 c 171 § 1; 1981 c 272 § 9; 1979 ex.s. c 68 § 30; 1977 ex.s. c 172 § 4; 1975 1st ex.s. c 84 § 24; 1974 ex.s. c 77 § 11; 1967 c 199 § 2; 1959 c 282 § 43.]

Additional notes found at www.leg.wa.gov

DISCONTINUANCE OF VIOLATIONS

21.20.435 Assurance of discontinuance of violations—Acceptance—Filing. In the enforcement of this chapter, the director may accept an assurance of discontinuance of violations of the provisions of this chapter from any person deemed by the director to be in violation hereof. Any such assurance shall be in writing, may state that the person giving such assurance does not admit to any violation of this chapter, and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his or her principal place of business, or in Thurston county. Proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of this chapter. [1979 ex.s. c 68 § 31; 1974 ex.s. c 77 § 13.]

Additional notes found at www.leg.wa.gov

JUDICIAL REVIEW OF ORDERS

21.20.440 Judicial review of order—Modification of order by director on additional evidence. Any person

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aggrieved by a final order of the director may obtain a review of the order in the county in which that person 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 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 or her findings by reason of the additional evidence so taken; and the director 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 section does not, unless specifically ordered by the court, operate as a stay of the director's order. [1979 ex.s. c 68 § 32; 1959 c 282 § 44.]

ADMINISTRATION OF CHAPTER

21.20.450 Administration of chapter—Rules and forms, publication—Cooperation with other state and federal authorities. (1) The administration of the provisions of this chapter shall be under the department of financial institutions. The director may from time to time make, amend, and repeal such rules, forms, and orders as are necessary to carry out the provisions of this chapter, including rules defining any term, whether or not such term is used in the Washington securities law. The director may classify securities, persons, and matters within the director's jurisdiction, and prescribe different requirements for different classes. No rule, form, or order 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 with the purposes fairly intended by the policy and provisions of this chapter. 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.

(2) To encourage uniform interpretation and administration of this chapter and effective securities regulation and enforcement, the director may cooperate with the securities agencies or administrators of one or more states, Canadian provinces or territories, or another country, the securities and

exchange commission, the commodity futures trading commission, the securities investor protection corporation, any self-regulatory organization, any national or international organization of securities officials or agencies, and any governmental law enforcement or regulatory agency.

(3) The cooperation authorized by subsection (2) of this section includes:

(a) Establishing a central depository for licensing or registration under this chapter and for documents or records required or allowed to be maintained under this chapter;

(b) Making a joint license or registration examination or investigation;

(c) Holding a joint administrative hearing;

(d) Filing and prosecuting a joint civil or administrative hearing;

(e) Sharing and exchanging personnel;

(f) Sharing and exchanging information and documents; and

(g) Formulating under chapter 34.05 RCW, rules or proposed rules on matters such as statements of policy, guidelines, and interpretative opinions and releases. [1994 c 256 § 24; 1993 c 472 § 15; 1979 ex.s. c 68 § 33; 1979 c 158 § 86; 1975 1st ex.s. c 84 § 25; 1959 c 282 § 45.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Additional notes found at www.leg.wa.gov

21.20.460 Administrator of securities—Appointment, qualifications, term, etc. The director shall appoint a competent person to administer this chapter 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 chapter. The administrator shall hold office at the pleasure of the director. [1959 c 282 § 46.]

21.20.470 Compensation, travel expenses of administrator and employees. The administrator, and any person employed by the administrator, shall be paid, in addition to regular compensation, travel expenses incurred by each of them in the performance of their duties under this chapter in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1979 ex.s. c 68 § 34; 1975-'76 2nd ex.s. c 34 § 64; 1959 c 282 § 47.]

Additional notes found at www.leg.wa.gov

21.20.480 Unlawful use or disclosure of filed information. It is unlawful for the director or any of the director's 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 the director's 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 chapter. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the director or any of the director's officers or employees. [1979 ex.s. c 68 § 35; 1959 c 282 § 48.]

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21.20.490 No liability under chapter for act in good faith. No provision of this chapter 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. [1959 c 282 § 49.]

21.20.500 Administrative hearings public—Exception. Every hearing in an administrative proceeding shall be public unless the director in his or her discretion grants a request joined in by all the respondents that the hearing be conducted privately. [1979 ex.s. c 68 § 36; 1959 c 282 § 50.]

21.20.510 Document filed when received—Register—Inspection of register, information, etc. A document is filed with the director when it is received by the director or by a person as the director designates by rule or order. The director or the director's designee shall keep a register of all applications for registration and registration statements which are or have ever been effective under this chapter and all denial, suspension, or revocation orders which have ever been entered under this chapter. 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. [1994 c 256 § 25; 1959 c 282 § 51.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.520 Copies of entries, documents to be furnished—Copies as prima facie evidence. Upon request and at such reasonable charges as the director prescribes, the director shall furnish to any person photostatic or other copies (certified under his or her 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 chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified. [2011 c 336 § 596; 1979 ex.s. c 68 § 37; 1959 c 282 § 52.]

21.20.530 Interpretative opinions by director. The director in his or her discretion may honor requests from interested persons for interpretative opinions. [1979 ex.s. c 68 § 38; 1959 c 282 § 53.]

PROOF OF EXEMPTION

21.20.540 Exemptions, exceptions, and preemptions—Burden of proof. In any proceeding under this chapter, the burden of proving an exemption, an exception from a definition, or a preemption of a provision of this chapter is upon the person claiming it. [1998 c 15 § 21; 1959 c 282 § 54.]

ADDITIONAL PROVISIONS

21.20.700 Investigations and examinations—Additional authority—Scope. (1) In addition to the authority conferred in RCW 21.20.370 the director at any time during a public offering whether registered or not, or one year thereafter or at any time that any debt or equity securities which

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have been sold to the public pursuant to registration under this chapter are still an outstanding obligation of the issuer: (a) May investigate the issuer for the purpose of ascertaining whether there have been violations of this chapter, rules adopted under this chapter, or any conditions imposed by the director expressed in any permit for a public offering or otherwise; (b) may visit and examine the issuer for the purpose of assuring compliance with this chapter, rules adopted under this chapter, or any conditions imposed by the director whether expressed in the permit for the public offering or otherwise; (c) 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 (d) may publish information concerning any violation of this chapter, or any rule, order, or condition adopted or imposed under this chapter.

(2) The examination or investigation, whether conducted within or without this state, shall include the right to reasonably examine the issuer's books, accounts, records, files, papers, feasibility reports, other pertinent information and obtain written permission from the issuer to consult with the independent accountant who audited the financial statements of the issuer. The reasonable costs of the examination shall be paid by the issuer to the director. The issuer shall not be liable for the costs of second or subsequent examinations during a calendar year. [1988 c 244 § 1; 1973 1st ex.s. c 171 § 5.]

Investigations: RCW 21.20.370.

Additional notes found at www.leg.wa.gov

21.20.702 Suitability of recommendation—Reasonable grounds required. (1) In recommending to a customer the purchase, sale, or exchange of a security, a broker-dealer, salesperson, investment adviser, or investment adviser representative must have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer as to his or her other security holdings and as to his or her financial situation and needs.

(2) Before the execution of a transaction recommended to a noninstitutional customer, other than transactions with customers where investments are limited to money market mutual funds, a broker-dealer, salesperson, investment adviser, or investment adviser representative shall make reasonable efforts to obtain information concerning:

- (a) The customer's financial status;
- (b) The customer's tax status;
- (c) The customer's investment objectives; and

(d) Such other information used or considered to be reasonable by the broker-dealer, salesperson, investment adviser, or investment adviser representative in making recommendations to the customer. [1994 c 256 § 26; 1993 c 470 § 2.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.705 Debenture companies—Definitions. When used in this chapter, unless the context otherwise requires:

(1) "Debenture company" means an issuer of any note, debenture, or other debt obligation for money used or to be used as capital or operating funds of the issuer, which is offered or sold in this state, and which issuer is engaged or proposes to engage in the business of investing, reinvesting,

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owning, holding, or trading in: (a) Notes, or other debt obligations, whether or not secured by real or personal property; (b) vendors' interests in real estate contracts; (c) real or personal property to be leased to third parties; or (d) real or personal property. The term "debenture company" does not include an issuer by reason of any of its securities which are exempt from registration under RCW 21.20.310 or offered or sold in transactions exempt from registration under RCW 21.20.320 (1) or (8); and

(2) "Acquiring party" means any person becoming or attempting to become a controlling person under RCW 21.20.717. [1988 c 244 § 2; 1987 c 421 § 1; 1979 c 140 § 1; 1973 1st ex.s. c 171 § 6.]

Additional notes found at www.leg.wa.gov

21.20.710 Debenture companies—Capital requirements. (1) Except as provided in subsection (2) of this section, a debenture company shall not offer for sale any security other than capital stock if such sale would result in the violation of the following capital requirements:

(a) For outstanding securities other than capital stock totaling from \$1 to \$1,000,000, a debenture company shall have a net worth of at least \$200,000.

(b) In addition to the requirement set forth in (a) of this subsection:

(i) A debenture company with outstanding securities other than capital stock totaling in excess of \$1,000,000 but not over \$100,000,000 shall have additional net worth equal to at least ten percent of the outstanding securities in excess of \$1,000,000 but not over \$100,000,000; and

(ii) A debenture company with outstanding securities other than capital stock totaling in excess of \$100,000,000 shall have additional net worth equal to at least five percent of the outstanding securities in excess of \$100,000,000.

(c) Every debenture company shall hold at least one-half the amount of its required net worth in cash or comparable liquid assets as defined by rule, or shall demonstrate comparable liquidity to the satisfaction of the director.

(2) The director may for good cause in the interest of the existing investors, waive the requirements of subsection (1) of this section. If the director waives the minimum requirements set forth in subsection (1) of this section, the debenture company shall increase its net worth or liquidity in accordance with conditions imposed by the director until such time as the debenture company can meet the requirements of this section without waiver from the director. [2016 c 61 § 14; 1988 c 244 § 3; 1973 1st ex.s. c 171 § 7.]

Additional notes found at www.leg.wa.gov

21.20.715 Debenture companies—Maturity date requirements. Any debenture company offering debt securities to the public shall provide that at least fifty percent of the amount of those securities sold have maturity dates of two years or more. [1987 c 421 § 2; 1973 1st ex.s. c 171 § 8.]

Additional notes found at www.leg.wa.gov

21.20.717 Debenture companies—Controlling person—Exceptions. (1) For purposes of the provisions of this chapter relating to debenture companies a person shall be deemed a controlling person if:

(a) Such person directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote twenty-five percent or more of any class of voting securities of a debenture company;

(b) Such person controls in any manner the election of a majority of the directors or trustees of a debenture company; or

(c) The director determines, after notice and opportunity for hearing, that such person, directly or indirectly, exercises a controlling influence over the management or policies of a debenture company.

(2) The director may except, by order, for good cause shown, any person from subsection (1) of this section if the director finds the exception to be in the public interest and that the exception does not threaten the protection of investors. [1987 c 421 § 3.]

Additional notes found at www.leg.wa.gov

21.20.720 Debenture companies—Prohibited activities by directors, officers, or controlling persons. (1) A director, officer, or controlling person of a debenture company shall not:

(a) Have any interest, direct or indirect, in the gains or profits of the debenture company, except to receive dividends upon the amounts contributed by him or her, the same as any other investor or shareholder and under the same regulations and conditions: PROVIDED, That nothing in this subsection shall be construed to prohibit salaries as may be approved by the debenture company's board of directors;

(b) Become a member of the board of directors or a controlling shareholder of another debenture company or a bank, trust company, or national banking association, of which board enough other directors or officers of the debenture company are members so as to constitute with him or her a majority of the board of directors.

(2) A director, an officer, or controlling person shall not:

(a) For himself or herself or as agent or partner of another, directly or indirectly use any of the funds held by the debenture company, except to make such current and necessary payments as are authorized by the board of directors;

(b) Receive directly or indirectly and retain for his or her own use any commission on or benefit from any loan made by the debenture company, or any pay or emolument for services rendered to any borrower from the debenture company in connection with such loan;

(c) Become an indorser, surety, or guarantor, or in any manner an obligor, for any loan made from the debenture company and except when approval has been given by the director of financial institutions or the director's administrator of securities upon recommendation by the company's board of directors.

(d) For himself or herself or as agent or partner of another, directly or indirectly borrow any of the funds held by the debenture company, or become the owner of real or personal property upon which the debenture company holds a mortgage, deed of trust, or property contract. A loan to or a purchase by a corporation in which he or she is a stockholder to the amount of fifteen percent of the total outstanding stock, or in which he or she and other directors, officers, or controlling persons of the debenture company hold stock to the amount of twenty-five percent of the total outstanding stock,

shall be deemed a loan to or a purchase by such director or officer within the meaning of this section, except when the loan to or purchase by such corporation occurred without his or her knowledge or against his or her protest. [1993 c 472 § 16; 1987 c 421 § 4; 1979 ex.s. c 68 § 41; 1979 c 158 § 87; 1973 1st ex.s. c 171 § 9.]

Additional notes found at www.leg.wa.gov

21.20.725 Debenture companies—Debentures payable on demand—Interest—Certificates of debenture. (1) A debenture company shall not issue any debenture payable on demand nor pay or accrue interest beyond the maturity date of any debenture.

(2) Debenture companies shall not issue certificates of debentures in passbook form, or in any other form which suggests to the holder that such moneys may be withdrawn on demand.

(3) Each certificate of debenture or an application for a certificate shall specify on the face of the certificate or application therefor, in twelve point bold face type or larger, that such debenture is not insured by the United States government, the state of Washington, or any agency thereof. [1988 c 244 § 4; 1973 1st ex.s. c 171 § 10.]

Additional notes found at www.leg.wa.gov

21.20.727 Debenture companies—Acquisition of control—Requirements—Violation—Penalty. (1) It is unlawful for any person to acquire control of a debenture company until thirty days after filing with the director a copy of the notice of change of control on the form specified by the director. The notice or application shall be under oath and contain substantially all of the following information plus any additional information that the director may prescribe as necessary or appropriate in the particular instance for the protection of investors, borrowers, or shareholders and the public interest:

(a) The identity and business experience of each person by whom or on whose behalf acquisition is to be made;

(b) The financial and managerial resources and future prospects of each person involved in the acquisition;

(c) The terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(d) The source and amount of the funds or other consideration used or to be used in making the acquisition, and a description of the transaction and the names of the parties if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition;

(e) Any plan or proposal which any person making the acquisition may have to liquidate the debenture company, to sell its assets, to merge it with any other company, or to make any other major change in its business or corporate structure or management;

(f) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on its behalf, who makes solicitations or recommendations to shareholders for the purpose of assisting in the acquisition and a brief description of the terms of the employment, retainer, or arrangement for compensation; and

(g) Copies of all invitations for tenders or advertisements making a tender offer to shareholders for the purchase of their stock to be used in connection with the proposed acquisition.

(2) When a person, other than an individual or corporation, is required to file an application under this section, the director may require that the information required by subsection (1)(a), (b), and (f) of this section be given with respect to each person who has an interest in or controls a person filing an application under this subsection.

(3) When a corporation is required to file an application under this section, the director may require that the information required by subsection (1)(a), (b), and (f) of this section be given for the company, each officer and director of the company, and each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the company.

(4) If any tender offer, request, or invitation for tenders or other agreements to acquire control is proposed to be made by means of a registration statement under the Securities Act of 1933, as amended, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, as amended, the registration statement or application may be filed with the director in lieu of the requirements of this section.

(5) Any acquiring party shall also deliver a copy of any notice or application required by this section to the debenture company proposed to be acquired within two days after the notice or application is filed with the director.

(6) Any acquisition of control in violation of this section shall be ineffective and void.

(7) Any person who willfully or intentionally violates this section or any rule adopted pursuant thereto is guilty of a gross misdemeanor and shall be punished pursuant to chapter 9A.20 RCW. Each day's violation shall be considered a separate violation. [2016 c 61 § 15; 1987 c 421 § 5.]

Additional notes found at www.leg.wa.gov

21.20.730 Debenture companies—Acquisition of control—Grounds for disapproval. The director may disapprove the acquisition of a debenture company within thirty days after the filing of a complete application under RCW 21.20.727 or an extended period not exceeding an additional fifteen days if:

(1) The poor financial condition of any acquiring party might jeopardize the financial stability of the debenture company or might prejudice the interests of the investors, borrowers, or shareholders;

(2) The plan or proposal of the acquiring party to liquidate the debenture company, to sell its assets, to merge it with any person, or to make any other major change in its business or corporate structure or management is not fair and reasonable to the debenture company's investors, borrowers, or stockholders or is not in the public interest;

(3) The business experience and integrity of any acquiring party who would control the operation of the debenture company indicates that approval would not be in the interest of the debenture company's investors, borrowers, or shareholders;

(4) The information provided by the application is insufficient for the director to make a determination or there has been insufficient time to verify the information provided and

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conduct an examination of the qualification of the acquiring party; or

(5) The acquisition would not be in the public interest. [1987 c 421 § 6.]

Additional notes found at www.leg.wa.gov

21.20.732 Debenture companies—Notice of charges—Hearing—Cease and desist orders. (1) The director may issue and serve upon a debenture company a notice of charges if in the opinion of the director any debenture company:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting the business of the debenture company;

(b) Is violating or has violated RCW 21.20.815, 21.20.820, or 21.20.830, or any rule, order, or condition adopted or imposed thereunder; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or act or acts or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the debenture company. The hearing shall be set in accordance with chapter 34.05 RCW.

Unless the debenture company appears at the hearing by a duly authorized representative, it shall be considered to have consented to the issuance of the cease and desist order. If the debenture company is deemed to have consented or if upon the record made at the hearing the director finds that any violation, act, or practice specified in the notice of charges has been established, the director may issue and serve upon the debenture company an order to cease and desist from the violation, act, or practice. The order may require the debenture company and its directors, officers, controlling persons, employees, and agents to cease and desist from the violation, act, or practice and may require the debenture company to take affirmative action to correct the conditions resulting from the violation, act, or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the debenture company concerned except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein unless it is stayed, modified, terminated, or set aside by action of the director or a reviewing court. [1988 c 244 § 5; 1987 c 421 § 7.]

Additional notes found at www.leg.wa.gov

21.20.734 Debenture companies—Temporary cease and desist orders. Whenever the director determines that any violation, act, or practice specified in RCW 21.20.732 or its continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the debenture company or to otherwise seriously prejudice the interests of its security holders, the director may also issue a temporary order requiring the debenture company and its directors, officers, controlling persons, employees, and agents to cease and desist from the violation, act, or practice. The order shall become

effective upon service on the debenture company and shall remain effective pending the completion of the administrative proceedings under the notice and until such time as the director dismisses the charges specified in the notice or until the effective date of a cease and desist order issued against the debenture company under RCW 21.20.732. [1988 c 244 § 6; 1987 c 421 § 8.]

Additional notes found at www.leg.wa.gov

21.20.740 Reports—Requirements. (1) Every issuer which has registered securities under Washington state securities law shall file with the director reports described in subsection (2) of this section. Such reports shall be filed with the director not more than one hundred twenty days (unless extension of time is granted by the director) after the end of the issuer's fiscal year.

(2) The reports required by subsection (1) of this section shall contain such information, statements and documents regarding the financial and business conditions of the issuer and the number and description of securities of the issuer held by its officers, directors and controlling shareholders and shall be in such form and filed at such annual times as the director may require by rule or order. For the purposes of RCW 21.20.720, 21.20.740 and 21.20.745, a "controlling shareholder" shall mean a person who is directly or indirectly the beneficial holder of more than ten percent of the outstanding voting securities of an issuer.

(3)(a) The reports described in subsection (2) of this section shall include financial statements corresponding to those required under the provisions of RCW 21.20.210 and to the issuer's fiscal year setting forth in comparative form the corresponding information for the preceding year and such financial statements shall be furnished to all shareholders within one hundred twenty days (unless extension of time is granted by the director) after the end of such year, but at least twenty days prior to the date of the annual meeting of shareholders.

(b) Such financial statements shall be prepared as to form and content in accordance with rules prescribed by the director and shall be audited (except that financial statements filed prior to July 1, 1976 need be audited only as to the most recent fiscal year) by an independent certified public accountant who is not an employee, officer or member of the board of directors of the issuer or a holder of securities of the issuer. The report of such independent certified public accountant shall be based upon an audit made in accordance with generally accepted auditing standards with no limitations on its scope.

(4) The director may by rule or order exempt any issuer or class of issuers from this section for a period of up to one year if the director finds that the filing of any such report by a specific issuer or class of issuers is not necessary for the protection of investors and the public interest.

(5) For the purposes of RCW 21.20.740 and 21.20.745, "issuer" does not include issuers of:

(a) Securities registered by the issuer pursuant to section 12 of the securities and exchange act of 1934 as now or hereafter amended or exempted from registration under that act on a basis other than the number of shareholders and total assets.

(b) Securities which are held of record by less than two hundred persons or whose total assets are less than \$500,000 at the close of the issuer's fiscal year.

(6) Any issuer who has been required to file under RCW 21.20.740 and who subsequently becomes excluded from the definition of "issuer" by virtue of RCW 21.20.740(5) must file a certification setting forth the basis on which they claim to no longer be an issuer within the meaning of this chapter.

(7) The reports filed under this section shall be filed and maintained by the director for public inspection. Any person is entitled to receive copies thereof from the director upon payment of the reasonable costs of duplication.

(8) Filing of reports pursuant to this section shall not constitute an approval thereof by the director or a finding by the director that the report is true, complete and not misleading. It shall be unlawful to make, or cause to be made, to any prospective purchaser, seller, customer or client, any representation inconsistent with this subsection. [1997 c 101 § 1; 1979 ex.s. c 68 § 42; 1973 1st ex.s. c 171 § 11.]

Additional notes found at www.leg.wa.gov

21.20.745 Reports—Violations of reporting requirements—Penalties—Contribution. (1) It is unlawful for any person, including the officers and directors of any issuer, to fail to file a report required by RCW 21.20.740 or to file any such report which contains an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading unless such person did not know, and in the exercise of reasonable care could not have known, of the failure, untruth or omission. In addition to any other penalties or remedies provided by chapter 21.20 RCW, each officer and director of an issuer which violates this subsection shall be personally liable for damages as provided in subsection (2) of this section if such officer or director:

(a) Had actual notice of the issuer's duty to file reports;
 (b) Knew, or in the exercise of reasonable care could have known of the violation; and
 (c) Could have prevented the violation.

(2) Any issuer and other person who violate subsection (1) of this section shall be liable jointly and severally for the damages occasioned by such violation, together with reasonable attorney fees and costs to any person who, during the continuation of the violation and without actual notice of the violation, purchases or sells any securities of the issuer within six months following the date the violation commenced.

(3) No suit or action may be commenced under subsection (2) of this section more than one year after the purchase or sale.

(4) Any person held liable under this section shall be entitled to contribution from those jointly and severally liable with that person. [1979 ex.s. c 68 § 43; 1973 1st ex.s. c 171 § 12.]

Additional notes found at www.leg.wa.gov

21.20.750 Reports—Suspension of sale of securities until reporting requirements complied with. In case of a violation of RCW 21.20.740 and 21.20.745, the director may suspend sale or trading by or through a broker-dealer of the securities of the issuer until the failure to file a report or state-

ment or the inaccuracy or omissions in any report or statement are remedied as determined by the director. [1973 1st ex.s. c 171 § 13.]

Additional notes found at www.leg.wa.gov

21.20.805 Effective date—Construction—1973 1st ex.s. c 171. This 1973 amendatory act shall take effect on January 1, 1975: PROVIDED HOWEVER, That debenture companies registered pursuant to chapter 21.20 RCW as of January 1, 1974, and for which there are no stop orders outstanding shall have until January 1, 1975, to comply with the requirements of section 7 of this 1973 amendatory act. [1973 1st ex.s. c 171 § 14.]

21.20.810 Application of chapter not limited. Nothing in RCW 21.20.700 through 21.20.750 and 21.20.815 through 21.20.855 limits the application of other provisions of this chapter. [1988 c 244 § 7.]

Additional notes found at www.leg.wa.gov

21.20.815 Debenture companies—Equity investments. (1) A debenture company shall not, without prior written consent of the director:

(a) Make equity investments in a single project or subsidiary of more than ten percent of its assets or of more than its net worth, whichever is greater; or

(b) Make equity investments, including investments in subsidiaries, other than investments in income-producing real property, which in the aggregate exceed twenty percent of its assets.

(2) For the purposes of this section, an equity investment does not include any acquisition of real property in satisfaction, or on account, of debts previously contracted in the regular course of the debenture company's business, or in satisfaction of judgments, vendors' interests in real property contracts, or liens if the real property has not been held by the debenture company for more than three years from the date it was acquired and any additional time permitted by the director. [1988 c 244 § 8.]

Additional notes found at www.leg.wa.gov

21.20.820 Debenture companies—Loans to any one borrower—Limitations. (1) Except as provided in subsection (3) of this section, a debenture company shall not loan or invest in a loan or loans to any one borrower more than two and one-half percent of the debenture company's assets without prior written consent of the director.

(2) For the purpose of this section, loans made to affiliates of the borrower are deemed to have been made to the borrower.

(3)(a) If good cause is shown, the director may waive in whole or in part the limitation in subsection (1) of this section.

(b) A loan or obligation shall not be subject to the limitation in subsection (1) of this section to the extent that the loan is secured or covered by guarantee, or by commitment or agreement to take over or to purchase the loan, made by any federal reserve bank or by the United States or any department, bureau, board, commission, or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States. [1988 c 244 § 9.]

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Additional notes found at www.leg.wa.gov

21.20.825 Debenture companies—Bad debts. (1) Any debt due a debenture company on which interest is one year or more past due and unpaid shall be considered a bad debt and shall be charged off the books of the debenture company unless:

(a) Such debt is well-secured and in the course of collection by legal process or probate proceedings; or

(b) Such debt is represented or secured by bonds having a determinable market value currently quoted on a national securities exchange, provided that in such case, such bonds shall be carried on the books of the debenture company at such value as the director may from time to time direct, but in no event may such carrying value exceed the market value thereof.

(2) A final judgment held by a debenture company shall not be considered an asset of the debenture company after two years from the date of its entry excluding any time for appeal unless extended by the director in writing for a specified period. [1988 c 244 § 10.]

Additional notes found at www.leg.wa.gov

21.20.830 Debenture companies—Investments in unsecured loans. (1) A debenture company shall not invest more than twenty percent of its assets in unsecured loans.

(2)(a) Except as provided in (b) of this subsection, a loan shall be deemed unsecured if the ascertained market value of the collateral securing the loan does not exceed one hundred twenty-five percent of the loan and all senior indebtedness.

(b) A loan shall not be deemed unsecured to the extent that the loan is guaranteed or insured by the federal housing administration, the administrator of veterans' affairs, the farmers home administration, or an insurer authorized to do business in this state, or any other guarantor or insurer approved by the director. [1988 c 244 § 11.]

Additional notes found at www.leg.wa.gov

21.20.835 Debenture companies—Debenture holders—Notice of maturity date of debenture. Every debenture company shall notify each of its debenture holders of the maturity date of the holder's debenture by sending a notice to the holder not more than forty-five days nor less than fifteen days prior to the maturity date of the debenture at the holder's last known address. [1988 c 244 § 12.]

Additional notes found at www.leg.wa.gov

21.20.840 Debenture companies—Annual financial statement. A debenture company shall send annually and in a timely manner either a copy of its annual financial statements or a summary of its financial statements for the most recent fiscal year to each debenture holder at the debenture holder's last known address. If a summary is sent, the debenture company shall make available to any debenture holder upon request a copy of its complete annual financial statements for its most recent fiscal year. [1988 c 244 § 13.]

Additional notes found at www.leg.wa.gov

21.20.845 Debenture companies—Rules. The director may adopt rules to govern examinations and reports of debenture companies and to otherwise govern the administra-

tion of debenture companies under this chapter. [1988 c 244 § 14.]

Additional notes found at www.leg.wa.gov

21.20.850 Debenture companies—Record maintenance and preservation—Examination. Every debenture company shall make and keep such accounts and other records as 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 debenture company 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 without this state, as the director deems necessary or appropriate in the public interest or for protection of investors. [1988 c 244 § 15.]

Additional notes found at www.leg.wa.gov

21.20.855 Examination reports and information—Exempt from public disclosure—Use in civil actions. (1) Examination reports and information obtained by the director or the director's representatives in conducting examinations pursuant to RCW 21.20.700 shall not be subject to public disclosure under chapter 42.56 RCW.

(2) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the director. [2005 c 274 § 238; 1988 c 244 § 16.]

Additional notes found at www.leg.wa.gov

21.20.860 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 61.]

SMALL SECURITIES OFFERINGS

21.20.880 Small securities offerings—Exemptions—Annual reports—Disqualification provisions—Rules. (1) Any offer or sale of a security is exempt from RCW 21.20.040 through 21.20.300 and 21.20.327, except as expressly provided, if:

(a) The issuer first files the offering with the director and the director declares the offering exempt;

(b) The offering is conducted in accordance with an applicable exemption from registration under the securities act of 1933;

(c) The issuer is an entity doing business in the state of Washington;

(d) The issuer files with the director an escrow agreement providing that all offering proceeds will be released to the issuer only when the aggregate capital raised from all investors equals or exceeds the minimum target offering, as determined by the director;

(e) The aggregate purchase price of all securities sold by an issuer pursuant to the exemption provided by this section does not exceed one million dollars during any twelve-month period;

(f) The aggregate amount sold to any investor, other than an "accredited investor" as that term is defined under the securities act of 1933, by one or more issuers during the twelve-month period preceding the date of the sale does not exceed:

(i) The greater of two thousand dollars or five percent of the annual income or net worth of the investor, as applicable, if either the annual income or the net worth of the investor is less than one hundred thousand dollars; or

(ii) Ten percent of the annual income or net worth of the investor, as applicable, up to one hundred thousand dollars, if either the annual income or net worth of the investor is one hundred thousand dollars or more;

(g) The investor acknowledges by manual or electronic signature the following statement conspicuously presented at the time of sale on a page separate from other information relating to the offering: "I acknowledge that I am investing in a high-risk, speculative business venture, that I may lose all of my investment, and that I can afford the loss of my investment";

(h) The issuer reasonably believes that all purchasers are purchasing for investment and not for sale in connection with a distribution of the security; and

(i) The issuer and investor provide any other information reasonably requested by the director.

(2) Attempted compliance with the exemption provided by this section does not act as an exclusive election. The issuer may claim any other applicable exemption.

(3) For as long as securities issued under the exemption provided by this section are outstanding, the issuer shall provide an annual report to the issuer's shareholders and the director no later than one hundred twenty days after the end of the fiscal year covered by the report. An issuer may provide the report to its shareholders by posting a copy of the report on the issuer's web site. The report must contain the following information:

(a) Executive officer and director compensation, including specifically the cash compensation earned by the executive officers and directors since the previous report and on an annual basis, and any bonuses or other compensation, including stock options or other rights to receive equity securities of the issuer or any affiliate of the issuer, received by them; and

(b) A brief analysis by management of the issuer of the business operations and financial condition of the issuer.

(4) Securities issued under the exemption provided by this section may not be transferred by the purchaser during a

one-year period beginning on the date of purchase, unless the securities are transferred:

- (a) To the issuer of the securities;
- (b) To an accredited investor;
- (c) As part of a registered offering; or
- (d) To a member of the family of the purchaser or the equivalent, or in connection with the death or divorce or other similar circumstances, in the discretion of the director.

(5) The director shall adopt disqualification provisions under which this exemption shall not be available to any person or its predecessors, affiliates, officers, directors, underwriters, or other related persons. The provisions shall be substantially similar to the disqualification provisions adopted by the securities and exchange commission pursuant to the requirements of section 401(b)(2) of the Jobs act of 2012 or, if none, as adopted in Rule 506 of Regulation D. Notwithstanding the foregoing, this exemption shall become available on June 12, 2014.

(6) Any type of equity or convertible debt security may be offered under the exemption provided under this section.

(7) Subject to RCW 21.20.450, the director may adopt, amend, or repeal rules to implement this section, including the establishment of filing and transaction fees sufficient to cover the costs of administering this section. [2017 c 113 § 1; 2014 c 144 § 3.]

Short title—2014 c 144: "This act may be known and cited as the Washington jobs act of 2014." [2014 c 144 § 1.]

Findings—Intent—2014 c 144: "The legislature finds that start-up companies play a critical role in creating new jobs and revenues. Crowdfunding, or raising money through small contributions from a large number of investors, allows smaller enterprises to access the capital they need to get new businesses off the ground. The legislature further finds that the costs of state securities registration often outweigh the benefits to Washington start-ups seeking to make small securities offerings and that the use of crowdfunding for business financing in Washington is significantly restricted by state securities laws. Helping new businesses access equity crowdfunding within certain boundaries will democratize venture capital and facilitate investment by Washington residents in Washington start-ups while protecting consumers and investors. For these reasons, the legislature intends to provide Washington businesses and investors the opportunity to benefit from equity crowdfunding." [2014 c 144 § 2.]

STATUTORY POLICY

21.20.900 Construction to secure uniformity. This chapter 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 chapter with the related federal regulation. [1959 c 282 § 61.]

REPEAL AND SAVING PROVISIONS

21.20.910 Saving—Civil, criminal proceedings. 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 chapter, 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 chapter. [1959 c 282 § 63.]

***Reviser's note:** The "effective date of this chapter" is midnight June 10, 1959, see preface 1959 session laws.

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21.20.915 Saving—Prior effective registrations. 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 chapter. They are considered to have been filed, entered, or imposed under this chapter. All dealers who are duly registered as brokers and all salespersons 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 chapter shall be deemed to be duly registered under and subject to the provisions of this chapter, such registration to expire on the 30th day of June of the year in which this chapter becomes effective and to be subject to renewal as provided in this chapter. [1979 ex.s. c 68 § 44; 1959 c 282 § 64.]

***Reviser's note:** The "effective date of this chapter" is midnight June 10, 1959, see preface 1959 session laws.

21.20.920 Application of prior law. Prior law applies in respect to any offer or sale made within one year after the *effective date of this chapter pursuant to an offering begun in good faith before its effective date on the basis of an exemption available under prior law. [1959 c 282 § 65.]

***Reviser's note:** The "effective date of this chapter" is midnight June 10, 1959, see preface 1959 session laws.

21.20.925 Judicial review of prior administrative orders. Judicial review of all administrative orders as to which review proceedings have not been instituted by the *effective date of this chapter are governed by RCW 21.20.440 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 chapter. [1959 c 282 § 66.]

***Reviser's note:** The "effective date of this chapter" is midnight June 10, 1959, see preface 1959 session laws.

21.20.930 Solicitation permits under insurance laws not limited. Nothing in this chapter shall in any way limit the provisions of RCW 48.06.030. [1959 c 282 § 67.]

21.20.935 Repealer. The following acts and parts of acts are hereby repealed:

(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. [1959 c 282 § 68.]

SHORT TITLE

21.20.940 Short title. This chapter shall be known as "The Securities Act of Washington." [1959 c 282 § 69.]

[Title 21 RCW—page 29]

Chapter 21.30 RCW
COMMODITY TRANSACTIONS

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Reviser's note: Powers, duties, and functions of the department of licensing relating to chapter 21.30 RCW were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

Agricultural commodities: Chapter 22.09 RCW.

21.30.005 Intent. The legislature intends that this chapter, and any rules, regulations, or orders promulgated pursuant hereto, apply to transactions in commodities which constitute commodity contracts or commodity options as defined in this chapter, unless the context clearly requires otherwise. [1987 c 243 § 1.]

21.30.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrator" means the person designated by the director in accordance with the provisions of RCW 21.30.390.

(2) "Board of trade" means any person or group of persons engaged in buying or selling any commodity or receiving any commodity for sale on consignment, whether such person or group of persons is characterized as a board of trade, exchange, or other form of marketplace.

(3) "Director" means the director of financial institutions.

(4) "Commodity broker-dealer" means, for the purposes of registration in accordance with this chapter, any person engaged in the business of making offers, sales, or purchases of commodities under commodity contracts or under commodity options.

(5) "Commodity sales representative" means, for the purposes of registration in accordance with this chapter, any person authorized to act and acting for a commodity broker-dealer in effecting or attempting to effect a transaction in a commodity contract or commodity option.

(6) "Commodity exchange act" means the act of congress known as the commodity exchange act, as amended, codified at 7 U.S.C. Sec. 1 et seq.

(7) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the commodity exchange act.

(8) "CFTC rule" means any rule, regulation, or order of the commodity futures trading commission in effect on October 1, 1986, and all subsequent amendments, additions, or other revisions thereto, unless the administrator, within ten days following the effective date of any such amendment, addition, or revision, disallows the application thereof by rule or order.

(9) "Commodity" means, except as otherwise specified by the director by rule or order, any agricultural, grain, or livestock product or by-product, any metal or mineral (including a precious metal set forth in subsection (17) of this section), any gem or gemstone (whether characterized as precious, semiprecious, or otherwise), any fuel (whether liquid, gaseous, or otherwise), any foreign currency, and all other goods, articles, products, or items of any kind. However, the term commodity does not include (a) a numismatic coin whose fair market value is at least fifteen percent higher than the value of the metal it contains, (b) real property or any timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of such real property, or (c) any work of art offered or sold by art dealers, at public auction, or offered or sold through a private sale by the owner thereof.

(10) "Commodity contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any com-

modity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes. A commodity contract shall not include any contract or agreement which requires, and under which the purchaser receives, within twenty-eight calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(11) "Commodity option" means any account, agreement, or contract giving a party thereto the right to purchase or sell one or more commodities and/or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise, but does not include a commodity option traded on a national securities exchange registered with the United States securities and exchange commission.

(12) "Commodity merchant" means any of the following, as defined or described in the commodity exchange act or by CFTC rule:

- (a) Futures commission merchant;
- (b) Commodity pool operator;
- (c) Commodity trading advisor;
- (d) Introducing broker;
- (e) Leverage transaction merchant;
- (f) An associated person of any of the foregoing;
- (g) Floor broker; and
- (h) Any other person (other than a futures association)

required to register with the commodity futures trading commission.

(13) "Financial institution" means a bank, savings institution, or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

(14) "Offer" or "offer to sell" includes every offer, every attempt to offer to dispose of, or solicitation of an offer to buy, to purchase, or to acquire, for value.

(15) "Sale" or "sell" includes every sale, contract of sale, contract to sell, or disposition, for value.

(16) "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 organization, a government, or a political subdivision of a government, but does not include a contract market designated by the commodity futures trading commission or any clearinghouse thereof or a national securities exchange registered with the United States securities and exchange commission (or any employee, officer, or director of such contract market, clearinghouse, or exchange acting solely in that capacity).

(17) "Precious metal" means:

- (a) Silver, in either coin, bullion, or other form;
- (b) Gold, in either coin, bullion, or other form;
- (c) Platinum, in either coin, bullion, or other form; and
- (d) Such other items as the director may specify by rule

or order. [1997 c 101 § 2; 1994 c 92 § 5; 1987 c 243 § 2; 1986 c 14 § 1.]

21.30.020 Transactions involving commodity contract or option—Prohibition—Exceptions. Except as otherwise provided in RCW 21.30.030 and 21.30.040, no person

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may sell or purchase or offer to sell or purchase any commodity under any commodity contract or under any commodity option or offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option. [1986 c 14 § 2.]

21.30.030 Transactions conducted by certain persons exempt from prohibition under RCW 21.30.020. The prohibition in RCW 21.30.020 does not apply to any transaction offered by and in which any of the following persons (or any employee, officer, or director thereof acting solely in that capacity) is the purchaser or seller:

(1) A person registered with the commodity futures trading commission as a futures commission merchant or as a leverage transaction merchant but only as to those activities that require such registration;

(2) A person affiliated with, and whose obligations and liabilities are guaranteed by, a person referred to in subsection (1) or (5) of this section;

(3) A person who is a member of a contract market designated by the commodity futures trading commission (or any clearinghouse thereof);

(4) A financial institution;

(5) A person registered under chapter 21.20 RCW as a securities broker-dealer holding a general securities license whose activities require such registration;

(6) A person registered as a commodity broker-dealer or commodity sales representative in accordance with this chapter; or

(7) Any person who meets all of the following conditions:

(a) Prior to engaging in any transaction which would otherwise be prohibited under RCW 21.30.020, the person:

(i) Files a claim of exemption on a form prescribed by the director; and

(ii) Files a consent to service of process pursuant to RCW 21.30.190;

(b) The person files a renewal of a claim for exemption not less than every two years on a form prescribed by the director;

(c) The person engages only in those commodity transactions in which the purchaser pays, and the seller receives, one hundred percent of the purchase price in cash or cash equivalent within ten days of the contract of sale;

(d) The person receives no more than twenty-five percent of the total dollar amount of its gross sales of commodities in any fiscal year from commodity contracts or commodity options;

(e) The person's gross profit on all transactions in commodity contracts or commodity options does not exceed five hundred thousand dollars in the fiscal year immediately preceding any year for which the person claims the exemption contained in this subsection, or one million dollars in the two fiscal years immediately preceding any year for which the person claims the exemption;

(f) The person maintains standard property and casualty insurance in an amount sufficient to cover the value of commodities stored for customers.

"Registered," for the purposes of this section, means holding a registration that has not expired, been suspended, or been revoked. The exemptions under this section shall not

apply to any transaction or activity which is prohibited by the commodity exchange act or CFTC rule. [1987 c 243 § 3; 1986 c 14 § 3.]

21.30.040 Transactions and contracts exempt from prohibition under RCW 21.30.020—Rules. (1) The prohibition in RCW 21.30.020 does not apply to the following:

(a) An account, agreement, or transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the commodity exchange act;

(b) A commodity contract for the purchase of one or more precious metals in which, within seven calendar days from the payment in good funds of any portion of the purchase price, the quantity of precious metals purchased by the payment is delivered (whether in specifically segregated or fungible bulk form) into the possession of a depository (other than the seller) which is either (i) a financial institution, (ii) a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission, (iii) a storage facility licensed or regulated by the United States or any agency thereof, or (iv) a depository designated by the director, and the depository (or other person which itself qualifies as a depository as aforesaid) issues and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser;

(c) A commodity contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject thereto, or any by-products thereof; or

(d) A commodity contract under which the offeree or the purchaser is a person referred to in RCW 21.30.030, a person registered with the federal securities and exchange commission as a broker-dealer, an insurance company, an investment company as defined in the federal investment company act of 1940, or an employee pension and profit sharing or benefit plan (other than a self-employed individual retirement plan, or individual retirement account).

(2) The director may issue rules or orders prescribing the terms and conditions of all transactions and contracts covered by this chapter which are not within the exclusive jurisdiction of the commodity futures trading commission as granted by the commodity exchange act, exempting any person or transaction from any provision of this chapter conditionally or unconditionally and otherwise implementing this chapter for the protection of purchasers and sellers of commodities. [1987 c 243 § 4; 1986 c 14 § 4.]

21.30.050 Commodity merchants—Place for trading commodity contract or option—Requirements. (1) No person may engage in a trade or business or otherwise act as a commodity merchant unless the person (a) is registered or temporarily licensed with the commodity futures trading commission for each activity constituting the person as a

commodity merchant and the registration or temporary license has not expired, been suspended, or been revoked; or (b) is exempt from such registration by virtue of the commodity exchange act or a CFTC rule.

(2) No board of trade may trade, or provide a place for the trading of, any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the commodity futures trading commission unless the board of trade has been so designated for the commodity contract or commodity option and the designation has not been vacated, suspended, or revoked. [1986 c 14 § 5.]

21.30.060 Prohibited practices. No person may directly or indirectly, in or in connection with the purchase or sale of, the offer to sell, the offer to enter into, or the entry into of, any commodity contract or commodity option subject to RCW 21.30.020, 21.30.030, 21.30.040(1)(b), or 21.30.040(1)(d):

(1) Cheat or defraud, or attempt to cheat or defraud, any other person or employ any device, scheme, or artifice to defraud any other person;

(2) Make any false report, enter any false record, or make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

(3) Engage in any transaction, act, practice, or course of business, including, without limitation, any form of advertising or solicitation, that operates or would operate as a fraud or deceit upon any person; or

(4) Misappropriate or convert the funds, security, or property of any other person. [1986 c 14 § 6.]

21.30.070 Responsibility for acts or omissions—Liability—Burden of proof. (1) The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of the person's employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

(2) Every person who directly or indirectly controls another person liable under any provision of this chapter, every partner, officer, or director of such other person, every person occupying a similar status or performing similar functions, every employee of such other person who materially aids in the violation is also liable jointly and severally with and to the same extent as such other person, unless the person who is also liable by virtue of this provision sustains the burden of proof that he or she did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. [1986 c 14 § 7.]

21.30.080 Offers to sell or buy in this state—Application of RCW 21.30.020, 21.30.050, and 21.30.060. (1) RCW 21.30.020, 21.30.050, and 21.30.060 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer to buy is made and accepted in this state.

(2) RCW 21.30.020, 21.30.050, and 21.30.060 apply to persons who buy or offer to buy when an offer to buy is made in this state or an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received at the place to which it is directed, or at any post office in this state in the case of a mailed offer.

(4) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state and has not previously been communicated to the offeror, orally or in writing, outside this state, or whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed, or at any post office in this state in the case of a mailed acceptance. [1986 c 14 § 8.]

21.30.090 When publications or electronic communications not deemed offers to sell or buy in this state. (1) For the purpose of RCW 21.30.080, an offer to sell or to buy is not made in this state when the publisher circulates or there is circulated on his or her behalf in this state in any bona fide newspaper or other publication of general, regular, and paid circulation, which is not published in this state, an offer to sell or to buy that is reasonably calculated to solicit only persons outside this state and not to solicit persons in this state.

(2) For the purpose of RCW 21.30.080, an offer to sell or to buy is not made in this state when a radio or television program or other electronic communication originating outside this state is received in this state and the offer to sell or to buy is reasonably calculated to solicit only persons outside this state and not to solicit persons in this state. [2011 c 336 § 597; 1986 c 14 § 9.]

21.30.100 Investigations—Statements—Publication of information. The director in the director's discretion:

(1) May make such public or private investigations, within or without the state, as the director finds necessary or appropriate to determine whether any person has violated, or is about to violate, any provision of this chapter or any rule or order of the director or to aid in enforcement of this chapter;

(2) May require or permit any person to file a statement in writing, under oath or otherwise as the director may determine; and

(3) May publish information concerning any violation of this chapter or any rule or order under this chapter. [1986 c 14 § 10.]

21.30.107 Subpoena authority—Application—Contents—Notice—Fees. (1) The director or authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

(a) State that an order is sought under this section;

(b) Adequately specify the documents, records, evidence, or testimony; and

(c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3). [2011 c 93 § 8.]

Finding—Intent—2011 c 93: See note following RCW 18.44.425.

21.30.110 Investigations—Evidence—Subpoenas—Court orders of compliance. (1) For purposes of any investigation or proceeding under this chapter, the director or any officer or employee designated by the director, 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 finds to be relevant or material to the inquiry.

(2) If a person does not give testimony or produce the documents required by the director or a designated employee pursuant to a lawfully issued administrative subpoena, the director or designated employee may apply for a court order compelling compliance with the subpoena or the giving of the required testimony. The request for an order of compliance may be addressed to either: (a) The superior court of Thurston county or the superior court where service may be obtained on the person refusing to testify or produce, if the person is within this state; or (b) the appropriate court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside the state. [1986 c 14 § 11.]

21.30.120 Violations—Director's authority—Court actions—Penalties. (1) If the director believes, whether or not based upon an investigation conducted under RCW 21.30.100 or 21.30.110, that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or any rule or order hereunder, the director may:

(a) Issue a cease and desist order;

(b) Initiate any of the actions specified in subsection (2) of this section;

(c) Issue an order imposing a civil penalty in an amount which may not exceed ten thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings; or

(d) Take disciplinary action against a licensed person as specified in RCW 21.30.350.

(2) The director may institute any of the following actions in the appropriate courts of the state, or in the appropriate courts of another state, in addition to any legal or equitable remedies otherwise available:

- (a) A declaratory judgment;
- (b) An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this chapter or any rule or order of the director;
- (c) An action for disgorgement; or
- (d) An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

(3) In any action under subsection (2) of this section if the director prevails, the director shall be entitled to costs and to reasonable attorneys' fees to be fixed by the court. [1986 c 14 § 12.]

21.30.130 Violations—Court-ordered remedies—Penalties—Bond by director not required. (1)(a) Upon a proper showing by the director that a person has violated, or is about to violate, this chapter or any rule or order of the department, the superior court may grant appropriate legal or equitable remedies.

(b) Upon showing of violation of this chapter or a rule or order of the director or administrator, the court, in addition to legal and equitable remedies otherwise available, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:

- (i) Imposition of a civil penalty in an amount which may not exceed ten thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings;
- (ii) Disgorgement;
- (iii) Declaratory judgment;
- (iv) Restitution to investors wishing restitution; and
- (v) Appointment of a receiver or conservator for the defendant or the defendant's assets.

(c) Appropriate remedies when the defendant is shown only about to violate this chapter or a rule or order of the department shall be limited to:

- (i) A temporary restraining order;
- (ii) A temporary or permanent injunction; or
- (iii) A writ of prohibition or mandamus.

(2) The court shall not require the director to post a bond in any official action under this chapter. [1986 c 14 § 13.]

21.30.140 Willful violations—Penalty—Limitation on actions. A person who willfully violates this chapter, or who willfully violates a rule or order under this chapter, is guilty of a class B felony and shall upon conviction be fined not more than twenty thousand dollars or imprisoned not more than ten years, or both. However, no person may be imprisoned for the violation of a rule or order if the person proves that he or she had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation. [2003 c 53 § 164; 1986 c 14 § 14.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

21.30.150 No liability under chapter for act in good faith. No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with a rule, order, or form adopted by the director, notwithstanding that the rule, order, or form may later be amended, or rescinded, or be determined by judicial or other authority to be invalid for any reason. [1986 c 14 § 15.]

21.30.160 Unlawful use or disclosure of information. Neither the director nor any employee of the director shall use any information which is filed with or obtained by the department which is not public information for personal gain or benefit, nor shall the director nor any employee of the director conduct any securities or commodity dealings whatsoever based upon any such information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate the information. [1986 c 14 § 17.]

21.30.170 Information—Availability to public—Exceptions. (1) All information collected, assembled, or maintained by the director under this chapter is public information and is available for the examination of the public as provided by chapter 42.56 RCW except the following:

- (a) Information obtained in private investigations pursuant to RCW 21.30.100 or 21.30.110;
 - (b) Information exempt from public disclosure under chapter 42.56 RCW; and
 - (c) Information obtained from federal or state agencies which may not be disclosed under federal or state law.
- (2) The director in the director's discretion may disclose any information made confidential under subsection (1)(a) of this section to persons identified in RCW 21.30.180.
- (3) No provision of this chapter either creates or derogates from any privilege which exists at common law, by statute, or otherwise when any documentary or other evidence is sought under subpoena directed to the director or any employee of the director. [2005 c 274 § 239; 1986 c 14 § 18.]

21.30.180 Cooperation with other agencies or organizations. (1) To encourage uniform application and interpretation of this chapter and securities and commodities regulation and enforcement in general, the director and the employees of the director may cooperate, including bearing the expense of the cooperation, with the securities agencies or administrators of another jurisdiction, Canadian provinces, or territories or such other agencies administering this chapter or similar statutes, the commodity futures trading commission, the federal securities and exchange commission, any self-regulatory organization established under the commodity exchange act or the securities exchange act of 1934, any national or international organization of commodities or securities officials or agencies, and any governmental law enforcement agency.

(2) The cooperation authorized by subsection (1) of this section shall include, but need not be limited to, the following:

- (a) Making joint examinations or investigations;
- (b) Holding joint administrative hearings;
- (c) Filing and prosecuting joint litigation;
- (d) Sharing and exchanging information and documents;

(e) Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes and releases; and

(f) Issuing and enforcing subpoenas at the request of the agency administering similar statutes in another jurisdiction, the securities agency of another jurisdiction, the commodity futures trading commission or the federal securities and exchange commission if the information sought would also be subject to lawful subpoena for conduct occurring in this state. [1986 c 14 § 19.]

21.30.190 Consent for service of process—Service, how made. (1) Every applicant for registration under this chapter or person filing a claim of exemption under RCW 21.30.030(7) shall file with the administrator in such form as the administrator by rule prescribes, an irrevocable consent appointing the administrator or successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or successor executor or administrator which arises under this chapter 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. Service may be made by leaving a copy of the process in the office of the administrator, but it is not effective unless (a) the plaintiff, who may be the administrator in a suit, action, or proceeding instituted by the administrator, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address on file with the administrator, and (b) the plaintiff's affidavit of compliance with this subsection 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.

(2) If a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order of the director, the engaging in the conduct shall constitute the appointment of the administrator as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor, or personal representative, which arises out of that conduct and which is brought under this chapter or any rule or order of the director with the same force and validity as if served personally. [1987 c 243 § 5; 1986 c 14 § 20.]

21.30.200 Administrative proceedings—Summary order—Notice—Hearing—Final order. (1) The director shall commence an administrative proceeding under this chapter by entering either a statement of charges or a summary order. The statement of charges or summary order may be entered without notice, without opportunity for hearing, and need not be supported by findings of fact or conclusions of law, but must be in writing.

(2) Upon entry of the statement of charges or summary order, the director shall promptly inform all interested parties that they have twenty business days from receipt of notice of the statement of charges or the summary order to file a written request for a hearing on the matter with the director and that the hearing will be scheduled to commence within thirty business days after receipt of the written request.

(3) If no hearing is requested within the twenty-day period and none is ordered by the director, the statement of

charges or summary order will automatically become a final order.

(4) 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.

(5) No final order or order after hearing may be returned without:

(a) Appropriate notice to all interested persons;

(b) Opportunity for hearing by all interested persons; and

(c) Entry of written findings of fact and conclusions of law.

(6) Every hearing in an administrative proceeding under this chapter shall be public unless the director grants a request joined in by all the respondents that the hearing be conducted privately. [1986 c 14 § 21.]

21.30.210 Application of chapter 34.05 RCW, the administrative procedure act. Chapter 34.05 RCW applies to an administrative proceeding carried out by the director under this chapter unless otherwise provided in this chapter. [1986 c 14 § 22.]

21.30.220 Pleading exemptions or exceptions—Burden of proof. It shall not be necessary to negate any of the exemptions, or exceptions from a definition, of this chapter in any complaint, information, or indictment, or any writ or proceeding brought under this chapter; and the burden of proof of any such exemption or exception from a definition shall be on the party claiming the same. [1986 c 14 § 23.]

21.30.230 Application for licensing. An applicant for licensing as a commodity broker-dealer or commodity sales representative shall file with the administrator or the designee of the administrator an application for licensing together with a consent to service of process pursuant to RCW 21.30.190. The application for licensing must contain the information that the administrator determines, by rule, is necessary or appropriate to facilitate the administration of this chapter. [1986 c 14 § 24.]

21.30.240 Fees. (1) An applicant for licensing shall pay a registration fee as follows:

(a) For a commodity broker-dealer, two hundred dollars; and for each branch office, one hundred dollars; and

(b) For a commodity sales representative, fifty dollars.

(2) Except in any year in which a licensing fee is paid, an applicant shall pay an annual fee as follows:

(a) For a commodity broker-dealer, one hundred dollars; and for each branch office in this state, fifty dollars; and

(b) For a commodity sales representative, thirty-five dollars.

(3) For purposes of this section, a branch office means each office of a commodity broker-dealer in this state, other than the principal office in this state of the commodity broker-dealer, from which three or more commodity sales representatives transact business.

(4) If an application is denied or withdrawn or the license is terminated by revocation, cancellation, or withdrawal, the administrator shall retain the fee paid. [1986 c 14 § 25.]

21.30.250 Examinations—Waiver. (1) The administrator may, by rule or order, impose an examination requirement upon:

(a) An applicant applying for licensing under this chapter; and

(b) Any class of applicants.

(2) Any examination required may be administered by the administrator or a designee of the administrator. Examinations may be oral, written, or both and may differ for each class of applicants.

(3) The administrator may, by order, waive any examination requirement imposed pursuant to subsection (1) of this section as to any applicant if the administrator determines that the examination is not necessary in the public interest and for the protection of investors. [1986 c 14 § 26.]

21.30.260 Expiration of licenses—Authority under commodity sales representative license—Notification of changes.

(1) The license of a commodity broker-dealer or commodity sales representative expires on December 31 of the year for which issued or at such other time as the administrator may by rule prescribe.

(2) The license of a commodity sales representative is only effective with respect to transactions effected as an employee or representative on behalf of the commodity broker-dealer or issuer for whom the commodity sales representative is licensed.

(3) When a commodity sales representative begins or terminates association with a commodity broker-dealer or issuer, or begins or terminates activities which make that person a commodity sales representative, the commodity sales representative and the former commodity broker-dealer or issuer on whose behalf the commodity sales representative was acting shall notify promptly the administrator or the administrator's designee. [1986 c 14 § 27.]

21.30.270 Multiple licenses, when permitted. No person may at any one time act as a commodity sales representative for more than one commodity broker-dealer or one issuer, except (1) where the commodity broker-dealers for whom the commodity sales representative will act are affiliated by direct or indirect common control, a commodity sales representative may represent each of those organizations or (2) where the administrator, by rule or order, authorizes multiple licenses as consistent with the public interest and protection of investors. [1986 c 14 § 28.]

21.30.280 Classification of licenses—Limitations and conditions of licenses. If the administrator determines, by rule, that one or more classifications of licenses as a commodity broker-dealer or commodity sales representative which are subject to limitations and conditions on the nature of the activities which may be conducted by those persons are consistent with the public interest and the protection of investors, the administrator may authorize the licensing of persons subject to specific limitations and conditions. [1986 c 14 § 29.]

21.30.290 Annual report and fee. For so long as a commodity broker-dealer or commodity sales representative is licensed under this chapter, it shall file an annual report,

together with the annual fee specified in RCW 21.30.240(2), with the administrator or the administrator's designee at a time and including that information that the administrator determines, by rule or order, is necessary or appropriate. [1986 c 14 § 30.]

21.30.300 Minimum net capital and fidelity bond requirements. (1)(a) The administrator may, by rule, require a licensed commodity broker-dealer to maintain: (i) Minimum net capital; and (ii) a prescribed ratio between net capital and aggregate indebtedness. The minimum net capital and net capital-to-aggregate indebtedness ratio may vary with type or class of commodity broker-dealer.

(b) If a licensed commodity broker-dealer believes, or has reasonable cause to believe, that any requirement imposed on it under this subsection is not being met, it shall promptly notify the administrator of its current financial condition.

(2) The administrator may, by rule, require the furnishing of fidelity bonds from commodity broker-dealers. [1986 c 14 § 31.]

21.30.310 Financial and other reports. A licensed commodity broker-dealer shall file financial and other reports that the administrator determines, by rule, are necessary or appropriate. [1986 c 14 § 32.]

21.30.320 Records. (1) A licensed commodity broker-dealer or commodity sales representative shall make and maintain records that the administrator determines, by rule, are necessary or appropriate.

(2) Required records may be maintained in computer or microform format or any other form of data storage provided that the records are readily accessible to the administrator.

(3) Required records must be preserved for five years unless the administrator, by rule, specifies either a longer or shorter period for a particular type or class of records. [1986 c 14 § 33.]

21.30.330 Correcting amendments of information in application or financial and other reports—Exception. If the information contained in any document filed with the administrator or the administrator's designee pursuant to RCW 21.30.230 or 21.30.310, except for those documents which the administrator, by rule or order, may exclude from this requirement, is or becomes inaccurate or incomplete in any material respect, the licensed person shall promptly file a correcting amendment, unless notification of the correction has been given under RCW 21.30.260(3). [1986 c 14 § 34.]

21.30.340 Examination of records—Copies—Fees. (1) The administrator, without prior notice, may examine the records and require copies of the records which a licensed commodity broker-dealer or commodity sales representative is required to make and maintain under RCW 21.30.320, within or without this state, in a manner reasonable under the circumstances. Commodity broker-dealers and commodity sales representatives must make their records available to the administrator in a readable form.

(2) The administrator may copy records or require a licensed person to copy records and provide the copies to the

administrator in a manner reasonable under the circumstances.

(3) The administrator may impose reasonable fees for conducting an examination pursuant to this section. [1986 c 14 § 35.]

21.30.350 Denial, suspension, revocation, or limitation of license—Grounds. (1) The administrator may, by order, deny, suspend, or revoke any license or an exemption granted under RCW 21.30.030(7), limit the activities which an applicant or licensed person may perform in this state, conserve any applicant or licensed person, or bar any applicant or licensed person from association with a licensed commodity broker-dealer, if the administrator finds that (a) the order is in the public interest and (b) that the applicant or licensed person or, in the case of a commodity broker-dealer any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the commodity broker-dealer:

(i) Has filed an application for licensing with the administrator or the designee of the administrator 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 light of the circumstances under which it was made, false or misleading with respect to any material fact;

(ii)(A) Has violated or failed to comply with a provision of this chapter, a predecessor act, or a rule or order under this chapter or a predecessor act, (B) is the subject of an adjudication or determination within the last five years by a securities agency or administrator or court of competent jurisdiction that the person has wilfully violated the federal securities act of 1933, the securities exchange act of 1934, the investment advisers act of 1940, the investment company act of 1940, or the commodity exchange act, or the securities law of any other state (but only if the acts constituting the violation of that state's law would constitute a violation of this chapter had the acts taken place in this state);

(iii) Has, within the last ten years, pled guilty or nolo contendere to, or been convicted of any crime indicating a lack of fitness to engage in the investment commodities business;

(iv) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in, or continuing, any conduct or practice indicating a lack of fitness to engage in the investment commodities business;

(v) Is the subject of an order of the administrator denying, suspending, or revoking the person's license as a commodity or securities broker-dealer, securities salesperson or commodity sales representative, or investment adviser or investment adviser salesperson;

(vi) Is the subject of any of the following orders which are currently effective and which were issued within the last five years:

(A) An order by a securities agency or administrator of another state, Canadian province or territory, or the federal securities and exchange commission, entered after notice and opportunity for hearing, denying, suspending, or revoking the person's license as a commodities or securities broker-dealer,

sales representative, or investment adviser, or the substantial equivalent of those terms;

(B) A suspension or expulsion from membership in or association with a self-regulatory organization registered under the securities exchange act of 1934 or the commodity exchange act;

(C) A United States postal service fraud order;

(D) A cease and desist order entered after notice and opportunity for hearing by the administrator or the securities agency or administrator of any other state, Canadian province or territory, the securities and exchange commission, or the commodity futures trading commission;

(E) An order entered by the commodity futures trading commission denying, suspending, or revoking registration under the commodity exchange act;

(vii) Has engaged in any unethical or dishonest conduct or practice in the investment commodities or securities business;

(viii) Is insolvent, either in the sense that liabilities exceed assets, or in the sense that obligations cannot be met as they mature;

(ix) Is not qualified on the basis of such factors as training, experience, and knowledge of the investment commodities business;

(x) Has failed reasonably to supervise sales representatives or employees; or

(xi) Has failed to pay the proper filing fee within thirty days after being notified by the administrator of the deficiency. However, the administrator shall vacate any order under (xi) of this subsection when the deficiency has been corrected.

An order entered under this subsection shall be governed by subsection (2) of this section and RCW 21.30.200 and 21.30.210.

The administrator shall not institute a suspension or revocation proceeding on the basis of a fact or transaction disclosed in the license application unless the proceeding is instituted within the next ninety days following issuance of the license.

(2) If the public interest or the protection of investors so requires, the administrator may, by order, summarily suspend a license or postpone the effective date of a license. Upon the entry of the order, the administrator shall promptly notify the applicant or licensed person, as well as the commodity broker-dealer with whom the person is or will be associated if the applicant or licensed person is a commodity sales representative, that an order has been entered and of the reasons therefore and that within twenty days after the receipt of a written request the matter will be set down for hearing. The provisions of RCW 21.30.200 and 21.30.210 apply with respect to all subsequent proceedings.

(3) If the administrator finds that any applicant or licensed person is no longer in existence or has ceased to do business as a commodity broker-dealer or commodity sales representative 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 administrator may, by order, cancel the application or license. [1987 c 243 § 6; 1986 c 14 § 36.]

21.30.360 Violations—Prosecuting attorney may bring criminal proceedings. The director may refer such evidence as may be available concerning violations of this chapter or of any rule or order under this chapter to the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, institute the appropriate criminal proceedings under this chapter. [1986 c 14 § 37.]

21.30.370 Penalties in chapter nonexclusive. Nothing in this chapter limits the power of the state to punish a person for conduct which constitutes a crime by statute or at common law. [1986 c 14 § 38.]

21.30.380 Administration of chapter under director of financial institutions. The administration of this chapter shall be under the director of the department of financial institutions. [1994 c 92 § 6; 1986 c 14 § 39.]

21.30.390 Administrator—Appointment—Delegation of duties—Term. The director shall appoint a competent person to administer this chapter, who shall be designated the administrator. The director shall delegate to the administrator such powers, subject to the authority of the director, as may be necessary to carry out this chapter. The administrator shall hold office at the pleasure of the director. [1986 c 14 § 16.]

21.30.400 Director's powers and duties—Rules, forms, and orders—Fees. In addition to specific authority granted elsewhere in this chapter, the director may make, amend, and rescind rules, forms, and orders as are necessary to carry out this chapter. Such rules or forms shall include but need not be limited to rules defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with this chapter. The director may classify commodities, commodity contracts, and commodity options, persons, and matters within the director's jurisdiction. 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 the investors and consistent with the purposes intended by the policy and provisions of this chapter. The director may, by rule, establish a schedule of reasonable fees to carry out the purposes of this chapter, such fees to cover the estimated costs of enforcing this chapter. [1986 c 14 § 40.]

21.30.800 Securities laws not affected. Nothing in this chapter shall impair, derogate from, or otherwise affect the authority or powers of the administrator under the securities act of Washington, chapter 21.20 RCW, or the application of any provision thereof to any person or transaction subject thereto. [1986 c 14 § 41.]

21.30.810 Construction and purpose. This chapter may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodities and to maximize coordination with federal and other states' law and the administration and enforcement thereof. [1986 c 14 § 42.]

21.30.901 Effective date—1986 c 14. This act shall take effect on October 1, 1986. [1986 c 14 § 46.]

Chapter 21.35 RCW UNIFORM TRANSFER ON DEATH SECURITY REGISTRATION ACT

Sections

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21.35.902	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

21.35.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner, referred to as a "beneficiary."

(2) "Devisee" means any person designated in a will to receive a disposition of real or personal property.

(3) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(4) "Person" means an individual, a corporation, an organization, or other legal entity.

(5) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(6) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(7) "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(10) "Security account" means (a) a reinvestment account associated with a security; a securities account with a broker; a cash balance in a brokerage account; or cash, cash

equivalents, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; (b) an agency account including, without limitation, an investment management account, investment advisory account, or custody account, with a trust company or a trust division of a bank with trust powers, including the securities in the account; a cash balance in the account; and cash, cash equivalents, interest, earnings, or dividends earned or declared on a security in the account, whether or not credited to the account before the owner's death; or (c) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States. [2005 c 97 § 14; 2003 c 118 § 1; 1993 c 287 § 1.]

21.35.010 Security registered in beneficiary form—Ownership. Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form shall hold the security as joint tenants with right of survivorship either as separate property or as community property, and not as tenants in common. [1993 c 287 § 2.]

21.35.015 Registering a security in beneficiary form—Authorization. A registering entity may register a security in beneficiary form if the form is authorized by this chapter or a substantially identical statute of another state if the state is: (1) The state of organization of the issuer or registering entity, (2) the location of the registering entity's principal office, (3) the location of the office of its transfer agent or its office making the registration, or (4) the location of the owner's listed address at the time of registration. A registration governed by the law of a jurisdiction in which this or substantially identical legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law. [1993 c 287 § 3.]

21.35.020 Registering a security in beneficiary form—Designation of beneficiary. A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of a sole owner or at the death of the last to die of multiple owners. [1993 c 287 § 4.]

21.35.025 Registering a security in beneficiary form—Words of designation. Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD," or by the words "pay on death" or the abbreviation "POD," after the name of the registered owner or owners and before the name of a beneficiary. [1993 c 287 § 5.]

21.35.030 Designation of a TOD or POD beneficiary—Effect on ownership—Cancellation or change. The designation of a TOD or POD beneficiary on a registration in beneficiary form has no effect on ownership of the security until the owner's death, or on community property rights and obligations of owners. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners, without the consent of the beneficiary. [1993 c 287 § 6.]

21.35.035 Death of owner or owners—Ownership passes to beneficiaries. On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners. [1993 c 287 § 7.]

21.35.040 Registering entity—Protection. (1) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this chapter.

(2) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this chapter.

(3) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in accordance with RCW 21.35.035 and does so in good faith reliance (a) on the registration, (b) on this chapter, and (c) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this chapter do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this chapter.

(4) The protection provided by this chapter to a registering entity does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds. [1993 c 287 § 8.]

21.35.045 Transfer on death—Contract—Rights of creditors. (1) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract

regarding the registration between the owner and the registering entity and this chapter and is not testamentary.

(2) This chapter does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state. [1993 c 287 § 9.]

21.35.050 Registering entity—Terms and conditions—Forms authorized. (1) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (a) for registrations in beneficiary form, and (b) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, and designating beneficiaries. Other rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form may be contained in a registering entity's terms and conditions.

(2) The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

(a) Sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr.

(b) Multiple owners-sole beneficiary: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr.

(c) Multiple owners-multiple beneficiaries: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. Peter Q. Brown. [1993 c 287 § 10.]

21.35.900 Short title—Statutory construction. (1) This chapter shall be known as and may be cited as the uniform TOD security registration act.

(2) This chapter shall be liberally construed and applied to promote its underlying purposes and policy and to make uniform the laws with respect to the subject of this chapter among states enacting it.

(3) Unless displaced by the particular provisions of this chapter, the principles of law and equity supplement the provisions of this chapter. [1993 c 287 § 11.]

21.35.901 Application. This chapter applies to registrations of securities in beneficiary form made before or after July 25, 1993, by decedents dying on or after July 25, 1993. [1993 c 287 § 12.]

21.35.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute,

rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 62.]