

purpose of carrying passengers together with incidental baggage and freight on a regular schedule.

NEW SECTION. Sec. 5. This 1974 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House January 24, 1974.
Passed the Senate February 6, 1974.
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CHAPTER 77

[House Bill No. 1303]

SECURITIES REGULATION

AN ACT Relating to securities regulation; amending section 4, chapter 282, Laws of 1959 and RCW 21.20.040; amending section 7, chapter 282, Laws of 1959 and RCW 21.20.070; amending section 10, chapter 37, Laws of 1961 and RCW 21.20.135; amending section 23, chapter 282, Laws of 1959 as amended by section 6, chapter 37, Laws of 1961 and RCW 21.20.230; amending section 26, chapter 282, Laws of 1959 and RCW 21.20.260; amending section 32, chapter 282, Laws of 1959 as last amended by section 1, chapter 79, Laws of 1972 ex. sess. and RCW 21.20.320; amending section 3, chapter 199, Laws of 1967 and RCW 21.20.325; amending section 34, chapter 282, Laws of 1959 as last amended by section 4, chapter 17, Laws of 1965 and RCW 21.20.340; amending section 38, chapter 282, Laws of 1959 and RCW 21.20.380; amending section 39, chapter 282, Laws of 1959 and RCW 21.20.390; amending section 43, chapter 282, Laws of 1959 as amended by section 2, chapter 199, Laws of 1967 and RCW 21.20.430; adding new sections to chapter 282, Laws of 1959 and to chapter 21.20 RCW; and making an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Section 1. Section 4, chapter 282, Laws of 1959 and RCW 21.20.040 are each amended to read as follows:

It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under ((REW 21.20.320)) section 6 of this 1974 amendatory act, unless he is registered under this chapter((=)): PROVIDED, That an exemption from registration as a broker-dealer or salesman to sell or resell condominium units sold in conjunction with an investment contract, may be provided by rule or regulation of the director as to persons who are licensed pursuant to the provisions of chapter 18.85 RCW. It

is unlawful for any broker-dealer or issuer to employ a salesman unless the salesman is registered. It is unlawful for any person to transact business in this state as an investment adviser unless (1) he is so registered under this chapter, or (2) he is registered as a broker-dealer under this chapter, or (3) his only clients in this state are investment companies as defined in the Investment Company Act of 1940, of [or] insurance companies.

Sec. 2. Section 7, chapter 282, Laws of 1959 and RCW 21.20.070 are each amended to read as follows:

If no denial order is in effect and no proceeding is pending under RCW 21.20.110, registration becomes effective when the applicant has successfully passed the written examination required under this section or satisfactorily demonstrated that he is exempt from the written examination requirements of this section. The director shall require as a condition of registration that the applicant (and, in the case of a corporation or partnership, all officers, directors or partners doing securities business in this state) pass a written examination as evidence of knowledge of the securities business: PROVIDED, That not more than two officers of an issuer may be registered as a salesman for a particular original offering of the issuers securities without being required to pass such written examination: AND PROVIDED FURTHER, That no such officer may again register within five years as such salesman for this or any other issuer without passing the written examination. Such examination shall be given twice a year or at such more frequent intervals as the advisory committee shall direct.

Any applicant for registration as a salesman who has successfully passed, within the preceding five years, a salesman examination by a national securities association registered under the Securities and Exchange Act of 1934, (15 U.S.C. Sec. 78-a-78jj), and since the passage of such examination, has been employed by broker-dealers, who were at the time of said employment members of such an association, shall be exempt from the written examination requirements of this section.

Sec. 3. Section 10, chapter 37, Laws of 1961 and RCW 21.20.135 are each amended to read as follows:

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 ((either)) a duly licensed salesman for an issuer or a broker-dealer, or exempt under the provisions of section 1 of this 1974 amendatory act, or a duly licensed broker-dealer in this state or another state at the time the alleged cause of action arose.

Sec. 4. Section 23, chapter 282, Laws of 1959 as amended by section 6, chapter 37, Laws of 1961 and RCW 21.20.230 are each amended to read as follows:

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 ~~((designated part of the))~~ information ~~((specified in RCW 21:20:210))~~ 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 ~~((otherwise))~~ 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 as a participant in the distribution, (2) the confirmation of any sale made by or for the account of any such person, (3) payment pursuant to any such sale, or (4) delivery of the security pursuant to any such sale, whichever first occurs; but the director shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder.

Sec. 5. Section 26, chapter 282, Laws of 1959 and RCW 21.20.260 are each amended to read as follows:

When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered or by any registered broker-dealer or any person acting within the exemption provided in section 1 of this 1974 amendatory act. Every registration shall remain effective until revoked by the director or until terminated upon request of the registrant with the consent of the director. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction.

Sec. 6. Section 32, chapter 282, Laws of 1959 as last amended by section 1, chapter 79, Laws of 1972 ex. sess. and RCW 21.20.320 are each amended to read as follows:

Except as hereinafter in this section expressly provided, ~~((RCW 21:20:040 through 21:20:300, inclusive))~~ sections 1, 2, 3, 4, and 5 of this 1974 amendatory act, RCW 21.20.050, 21.20.060,

21.20.080, 21.20.090, 21.20.100, 21.20.110, 21.20.120, 21.20.130, 21.20.140, 21.20.150, 21.20.160, 21.20.170, 21.20.180, 21.20.190, 21.20.200, 21.20.210, 21.20.220, 21.20.240, 21.20.250, 21.20.270, 21.20.280, 21.20.290 and 21.20.300, shall not apply to any of the following transactions:

(1) Any isolated transaction, or sales not involving a public offering, whether effected through a broker-dealer or not.

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

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

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

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

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

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

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

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

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

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption 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 section 1 of this 1974 amendatory act, acting either as principal or agent, of securities previously sold and distributed to the public: PROVIDED, That:

(a) Such securities are sold at prices reasonably related to the current market price thereof at the time of sale, and, if such

broker-dealer is acting as agent, the commission collected by such broker-dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics:

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

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

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

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

Sec. 7. Section 3, chapter 199, Laws of 1967 and RCW 21.20.325 are each amended to read as follows:

The director or administrator may by order deny ~~((or))~~, revoke, or condition any exemption specified in subsections (9) or

(11) of RCW 21.20.310 or in ((REW 24-20-320)) section 6 of this 1974 amendatory act 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 ((or)) , 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 fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the director 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 sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

Sec. 8. Section 34, chapter 282, Laws of 1959 as last amended by section 4, chapter 17, Laws of 1965 and RCW 21.20.340 are each amended to read as follows:

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

(1) For registration of all securities other than investment trusts and securities registered by coordination the fee shall be fifty dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-twentieth of one percent for any excess over one hundred thousand dollars.

(2) For registration of securities issued by a face-amount certificate company or redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940, the fee shall be fifty dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-twentieth of one percent for any excess over one hundred thousand dollars which are to be offered in this state during that year: PROVIDED, HOWEVER, That an issuer may upon the payment of a twenty-

five dollar fee renew for an additional twelve month period the unsold portion for which the registration fee has been paid.

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

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

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

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

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

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

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

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

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

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

Sec. 9. Section 38, chapter 282, Laws of 1959 and RCW 21.20.380 are each amended to read as follows:

For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers,

correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

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

~~((2))~~ In case of disobedience on the part of any person to comply with any subpoena lawfully issued by the director, or on the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, the superior court of any county or the judge thereof, on application of the director, and after satisfactory evidence of wilful 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.

No person is excused from attending and testifying or from producing any document or record before the director or in obedience to the subpoena of the director or any officer designated by him, or in any proceeding instituted by the director, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 10. Section 39, chapter 282, Laws of 1959 and RCW 21.20.390 are each amended to read as follows:

Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, he may in his discretion:

(1) Issue an order directing the person to cease and desist from continuing the act or practice: PROVIDED, That reasonable notice of and opportunity for a hearing shall be given: PROVIDED, FURTHER, That the director may issue a temporary order pending the hearing which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom notice is

addressed does not request a hearing within fifteen days after the receipt of notice; or

(2) The director may without issuing a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The director may not be required to post a bond.

Sec. 11. Section 43, chapter 282, Laws of 1959 as amended by section 2, chapter 199, Laws of 1967 and RCW 21.20.430 are each amended to read as follows:

(1) Any person, who offers or sells a security in violation of any provisions of RCW 21.20.140 through ~~((21-20-230))~~ 21.20.220 and section 4 of this 1974 amendatory act, or offers or sells a security by means of fraud or misrepresentation is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at six percent per annum from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1) above, every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of such a seller who materially aids in the sale, and every broker-dealer ~~((or))~~ salesman or person exempt under the provisions of section 1 of this 1974 amendatory act who materially aids in the sale is also liable jointly and severally with and to the same extent as the seller, unless the nonseller who is so liable sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(3) Any tender specified in this section may be made at any time before entry of judgment. Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant. No person may sue under this section more than three years after the contract of sale. No person may sue under

this section (a) if the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at six percent per annum from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within thirty days of its receipt, or (b) if the buyer received such an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within thirty days of its receipt.

(4) No person who has made or engaged in the performance of any contract in violation of any provision of this 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.

NEW SECTION. Sec. 12. There is added to chapter 282, Laws of 1959 and to chapter 21.20 RCW a new section to read as follows:

The director may in his discretion mail notice to the registrant in any pending registration in which no action has been taken for nine months immediately prior to the mailing of such notice, advising such registrant that the pending registration will be terminated thirty days from the date of mailing unless on or before said termination date the registrant 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.

NEW SECTION. Sec. 13. There is added to chapter 282, Laws of 1959 and to chapter 21.20 RCW a new section to read as follows:

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 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.

NEW SECTION. Sec. 14. This 1974 amendatory act shall take effect on July 1, 1974.

Passed the House January 29, 1974.
Passed the Senate February 6, 1974.
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