

Every association, as of June 30th and December 31st in each year, shall determine its net semiannual earnings, and shall credit to the contingent fund an amount equal to two percent of the amount by which the aggregate of loans and real estate contracts outstanding at the end of said six months' period exceeds the amount of such loans and real estate contracts outstanding at the beginning of the period or one-twentieth of one percent of the total savings accounts in the association at the end of the period, whichever is the greater, such sum so credited from earnings into the contingent fund to be in no event less than five percent of the net earnings of the association for such period. The amount so credited need not exceed fifteen percent of the net earnings during the first three years after an association opens for business. The amount required herein shall not be greater than the ~~((amount of)) insurance ((reserve allocations required by))~~ requirements of the Federal Savings and Loan Insurance Corporation for associations whose savings accounts are insured by that corporation.

NEW SECTION. Sec. 4. There is added to chapter 33.48 RCW a new section to read as follows:

Except to the extent provided otherwise in Title 33 RCW, guaranty stock associations shall be subject to those provisions in chapter 23A.08 RCW, as now or hereafter amended, relating to issuance, sale, and repurchase of shares.

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## CHAPTER 85

[Substitute Senate Bill No. 3320]

### MUTUAL SAVINGS BANKS—CONVERSION TO CAPITAL STOCK SAVINGS BANKS

AN ACT Relating to mutual savings banks; amending section 32.04.010, chapter 13, Laws of 1955 and RCW 32.04.010; amending section 32.04.020, chapter 13, Laws of 1955 and RCW 32.04.020; adding a new chapter to Title 32 RCW; and prescribing penalties.

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

NEW SECTION. Section 1. This chapter shall exclusively govern the conversion of mutual savings banks to capital stock savings banks. No mutual savings bank may convert to the capital stock form of organization without the prior written approval of the supervisor pursuant to this chapter, except that the supervisor may waive requirements of this chapter in appropriate cases.

NEW SECTION. Sec. 2. The supervisor may prescribe under this chapter such forms as the supervisor deems appropriate for use by a mutual

savings bank seeking to convert to a capital stock savings bank pursuant to this chapter.

**NEW SECTION.** Sec. 3. (1) If an applicant finds that compliance with any provision of this chapter would be in conflict with applicable federal law, the supervisor shall grant or deny a request of noncompliance with the provision. The request may be incorporated in the application for conversion; otherwise, the applicant shall file the request in accordance with the requirements of the supervisor.

(2) In making any such request, the applicant shall:

(a) Specify the provision or provisions of this chapter with respect to which the applicant desires waiver;

(b) Furnish an opinion of counsel demonstrating that applicable federal law is in conflict with the specified provision or provisions of this chapter; and

(c) Demonstrate that the requested waiver would not result in any effects that would be inequitable or detrimental to the applicant, its account holders, or other financial institutions or would be contrary to the public interest.

**NEW SECTION.** Sec. 4. As used in this chapter, the following definitions apply, unless the context otherwise requires:

(1) Except as provided in section 45 of this act, an "affiliate" of, or a person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(3) An "applicant" is a mutual savings bank which has applied to convert pursuant to this chapter.

(4) The term "associate", when used to indicate a relationship with any person, means (a) any corporation or organization (other than the applicant or a majority-owned subsidiary of the applicant) of which the person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class of equity securities, (b) any trust or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity, and (c) any relative who would be a "class A beneficiary" under RCW 83.08.005 if the person were a decedent.

(5) The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others.

(6) The term "capital stock" includes permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital.

(7) The term "charter" includes articles of incorporation, articles of re-incorporation, and certificates of incorporation, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated person.

(8) Except as provided in section 45 of this act, the term "control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(9) The term "dealer" means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(10) The term "director" means any director of a corporation, any trustee of a mutual savings bank, or any person performing similar functions with respect to any organization whether incorporated or unincorporated.

(11) The term "eligibility record date" means the record date for determining eligible account holders of a converting mutual savings bank.

(12) The term "eligible account holder" means any person holding a qualifying deposit as determined in accordance with section 35 of this act.

(13) The term "employee" does not include a director or officer.

(14) The term "equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right.

(15) The term "market maker" means a dealer who, with respect to a particular security, (a) regularly publishes bona fide, competitive bid and offer quotations in a recognized interdealer quotation system; or (b) furnishes bona fide competitive bid and offer quotations on request; and (c) is ready, willing, and able to effect transaction in reasonable quantities at his quoted prices with other brokers or dealers.

(16) The term "material", when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before purchasing an equity security of the applicant.

(17) The term "mutual savings bank" means a mutual savings bank organized and operating under Title 32 RCW.

(18) Except as provided in section 86 of this act, the term "offer", "offer to sell", or "offer of sale" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. These terms shall not include preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are or are to be in privity of contract with an applicant.

(19) The term "officer", for purposes of the purchase of stock in a conversion under this chapter or the sale of this stock, means the chairman of the board, president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, and any other person performing similar functions with respect to any organization whether incorporated or unincorporated.

(20) Except as provided in section 86 of this act, the term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof.

(21) The term "proxy" includes every form of authorization by which a person is or may be deemed to be designated to act for a stockholder in the exercise of his voting rights in the affairs of an institution. Such an authorization may take the form of failure to dissent or object.

(22) The terms "purchase" and "buy" include every contract to purchase, buy, or otherwise acquire a security or interest in a security for value.

(23) The terms "sale" and "sell" include every contract to sell or otherwise dispose of a security or interest in a security for value; but these terms do not include an exchange of securities in connection with a merger or acquisition approved by the supervisor.

(24) The term "savings account" means deposits established in a mutual savings bank and includes certificates of deposit.

(25) Except as provided in section 86 of this act, the term "security" includes any note, stock, treasury stock, bond, debenture, transferable share, investment contract, voting-trust certificate, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase any of the foregoing.

(26) The term "subscription offering" refers to the offering of shares of capital stock, through nontransferable subscription rights issued to: (a) Eligible account holders as required by section 8 of this act; (b) supplemental eligible account holders as required by section 10 of this act; (c) directors, officers, and employees, as permitted by section 27 of this act; and (d) eligible account holders and supplemental eligible account holders as permitted by section 28 of this act.

(27) A "subsidiary" of a specified person is an affiliate controlled by the person, directly or indirectly through one or more intermediaries.

(28) The term "supervisor" means the supervisor of banking.

(29) The term "supplemental eligibility record date" means the supplemental record date for determining supplemental eligible account holders of a converting savings bank required by section 10 of this act. The date shall be the last day of the calendar quarter preceding supervisor approval of the application for conversion.

(30) The term "supplemental eligible account holder" means any person holding a qualifying deposit, except officers, directors, and their associates, as of the supplemental eligibility record date.

(31) The term "underwriter" means any person who has purchased from an applicant with a view to, or offers or sells for an applicant in connection with, the distribution of any security, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking; but the term does not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers commission. The term "principal underwriter" means an underwriter in privity of contract with the applicant or other issuer of securities as to which that person is the underwriter.

Terms defined in other chapters of this title, when used in this chapter, shall have the meanings given in those definitions, to the extent those definitions are not inconsistent with the definitions contained in this chapter unless the context otherwise requires.

NEW SECTION. Sec. 5. No application for conversion may be approved by the supervisor if:

(1) The plan of conversion adopted by the applicant's board of directors is not in accordance with this chapter;

(2) The conversion would result in a reduction of the applicant's net worth below requirements established by the supervisor;

(3) The conversion may result in a taxable reorganization of the applicant under the United States Internal Revenue Code of 1954, as amended; or

(4) The converted savings bank does not meet the insurance requirements as established by the supervisor.

NEW SECTION. Sec. 6. The plan of conversion shall contain all of the provisions set forth in sections 7 through 24 of this act.

NEW SECTION. Sec. 7. The converting savings bank shall issue and sell its capital stock at a total price equal to the estimated pro forma market value of the stock in the converted savings bank, based on an independent valuation, as provided in section 60 of this act.

NEW SECTION. Sec. 8. Each eligible account holder shall receive, without payment, nontransferable subscription rights to purchase capital stock in an amount equal to the greatest of two hundred shares, one-tenth of one percent of the total offering of shares, or fifteen times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the eligible account holder and the denominator is the total amount of qualifying deposits of all eligible account holders in the converting savings bank. If the allotment made in this section results in an oversubscription, shares shall be allocated

among subscribing eligible account holders so as to permit each such account holder, to the extent possible, to purchase a number of shares sufficient to make his total allocation equal to one hundred shares. Any shares not so allocated shall be allocated among the subscribing eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion.

**NEW SECTION.** Sec. 9. Nontransferable subscription rights to purchase capital stock received by officers and directors and their associates of the converting savings bank based on their increased deposits in the converting savings bank in the one-year period preceding the eligibility record date shall be subordinated to all other subscriptions involving the exercise of nontransferable subscription rights to purchase shares pursuant to section 8 of this act.

**NEW SECTION.** Sec. 10. In plans involving an eligibility record date that is more than fifteen months prior to the date of the latest amendment to the application for conversion filed prior to the supervisor approval, a supplemental eligibility record date shall be determined whereby each supplemental eligible account holder of the converting savings bank shall receive, without payment, nontransferable subscription rights to purchase supplemental shares in an amount equal to the greatest of two hundred shares, one-tenth of one percent of the total offering of shares, or fifteen times the product (rounded down to the next whole number) obtained by multiplying the total number of shares of capital stock to be issued by a fraction of which the numerator is the amount of the qualifying deposit of the supplemental eligible account holder and the denominator is the total amount of the qualifying deposits of all supplemental eligible account holders in the converting savings bank on the supplemental eligibility record date.

(1) Subscription rights received pursuant to this section shall be subordinated to all rights received by eligible account holders to purchase shares pursuant to sections 8 and 9 of this act.

(2) Any nontransferable subscription rights to purchase shares received by an eligible account holder in accordance with section 8 of this act shall be applied in partial satisfaction of the subscription rights to be distributed pursuant to this section.

(3) In the event of an oversubscription for supplemental shares pursuant to this section, shares shall be allocated among the subscribing supplemental eligible account holders as follows:

(a) Shares shall be allocated among subscribing supplemental eligible account holders so as to permit each such supplemental account holder, to the extent possible, to purchase a number of shares sufficient to make the supplemental account holder's total allocation (including the number of shares, if any, allocated in accordance with section 8 of this act) equal to one hundred shares.

(b) Any shares not allocated in accordance with subsection (3)(a) of this section shall be allocated among the subscribing supplemental eligible account holders on such equitable basis, related to the amounts of their respective qualifying deposits, as may be provided in the plan of conversion.

NEW SECTION. Sec. 11. Any shares of the converting savings bank not sold in the subscription offering shall either be sold in a public offering through an underwriter or directly by the converting savings bank in a direct community marketing, subject to the applicant demonstrating to the supervisor the feasibility of the method of sale and to such conditions as may be provided in the plan of conversion. The conditions shall include, but not be limited to:

(1) A condition limiting purchases by each officer and director or their associates in this phase of the offering to one-tenth of one percent of the total offering of shares.

(2) A condition limiting purchases by any person and that person's associates in this phase of the offering to a number of shares or a percentage of the total offering so long as the limitation does not exceed two percent of the shares to be sold in the total offering.

(3) A condition that any direct community offering by the converting savings bank shall give a preference to natural persons residing in the counties in which the savings bank has an office. The methods by which preference shall be given shall be approved by the supervisor.

NEW SECTION. Sec. 12. The number of shares which any person together with any associate or group of persons acting in concert may subscribe for or purchase in the conversion shall not exceed five percent of the total offering of shares. For purposes of this section, the members of the converting savings bank's board of directors shall not be deemed to be associates or a group acting in concert solely as a result of their board membership.

NEW SECTION. Sec. 13. The number of shares which officers and directors of the converting savings bank and their associates may purchase in the conversion shall not exceed twenty-five percent of the total offering of shares.

NEW SECTION. Sec. 14. No officer or director, or their associates, may purchase without the prior written approval of the supervisor the capital stock of the converted savings bank except from a broker or a dealer registered with the Securities and Exchange Commission for a period of three years following the conversion. This provision shall not apply to negotiated transactions involving more than one percent of the outstanding capital stock of the converted savings bank.

As used in this section, the term "negotiated transactions" means transactions in which the securities are offered and the terms and arrangements

relating to any sale of the securities are arrived at through direct communications between the seller or any person acting on the seller's behalf and the purchaser or the purchaser's investment representative. The term "investment representative" means a professional investment adviser acting as agent for the purchaser and independent of the seller and not acting on behalf of the seller in connection with the transaction.

NEW SECTION. Sec. 15. The sales price of the shares of capital stock to be sold in the conversion shall be a uniform price determined in accordance with sections 57, 60, and 64 of this act. The applicant shall specify in its conversion application the underwriting and/or other marketing arrangements to be made to assure the sale of all shares not sold in the subscription offering.

NEW SECTION. Sec. 16. Each savings account holder of the converting savings bank shall receive, without payment, a withdrawable savings account or accounts in the converted savings bank equal in withdrawable amount to the withdrawal value of the account holder's savings account or accounts in the converting savings bank.

NEW SECTION. Sec. 17. A converting savings bank shall establish and maintain a liquidation account for the benefit of eligible account holders and supplemental eligible account holders in the event of a subsequent complete liquidation of the converted savings bank, in accordance with sections 36 through 40 of this act.

NEW SECTION. Sec. 18. The applicant shall establish an eligibility record date, which shall not be less than ninety days prior to the date of adoption of the plan by the converting savings bank's board of directors.

NEW SECTION. Sec. 19. The holders of the capital stock of the converted savings bank shall have exclusive voting rights.

NEW SECTION. Sec. 20. The plan of conversion adopted by the applicant's board of directors may be amended by the board of directors with the concurrence of the supervisor at any time prior to final approval of the supervisor and may be terminated with the concurrence of the supervisor at any time prior to issuance of the authorization certificate by the supervisor.

NEW SECTION. Sec. 21. All shares of capital stock purchased by directors and officers on original issue in the conversion either directly from the savings bank (by subscription or otherwise) or from an underwriter of the shares shall be subject to the restriction that the shares shall not be sold for a period of not less than three years following the date of purchase, except in the event of death of the director or officer.

NEW SECTION. Sec. 22. In connection with shares of capital stock subject to restriction on sale for a period of time:

(1) Each certificate for the stock shall bear a legend giving appropriate notice of the restriction;



(2) Appropriate instructions shall be issued to the transfer agent for the converted savings bank's capital stock with respect to applicable restrictions on transfer of any such restricted stock; and

(3) Any shares issued as a stock dividend, stock split, or otherwise with respect to any such restricted stock shall be subject to the same restrictions as may apply to the restricted stock.

NEW SECTION. Sec. 23. The converting savings bank shall:

(1) Promptly following the conversion register the securities issued in connection therewith pursuant to the Securities and Exchange Act of 1934 and undertake not to deregister the securities for a period of three years thereafter;

(2) Use its best efforts to encourage and assist a market maker to establish and maintain a market for the securities issued in connection with the conversion; and

(3) Use its best efforts to list those shares issued in connection with the conversion on a national or regional securities exchange or on the NASDAQ quotation system.

NEW SECTION. Sec. 24. The expenses incurred in the conversion shall be reasonable.

NEW SECTION. Sec. 25. The plan of conversion shall contain no provision which the supervisor determines to be inequitable or detrimental to the applicant, its savings account holders, or other savings banks or to be contrary to the public interest.

NEW SECTION. Sec. 26. The plan of conversion may contain any of the provisions set forth in sections 27 through 33 of this act.

NEW SECTION. Sec. 27. Directors, officers, and employees of the converting savings bank, as part of the subscription offering, may be entitled to purchase shares of capital stock, to the extent that shares are available after satisfying the subscriptions of eligible account holders and supplemental eligible account holders, subject to the following conditions:

(1) The total number of shares which may be purchased under this section shall not exceed twenty-five percent of the total number of shares to be issued in the case of a converting savings bank with total assets of less than fifty million dollars or fifteen percent in the case of a converting savings bank with total assets of five hundred million dollars or more; in the case of a converting savings bank with total assets of fifty million dollars or more but less than five hundred million dollars, the percentage shall be no more than a correspondingly appropriate number of shares based on total asset size (for example, twenty percent in the case of a converting savings bank with total assets of approximately two hundred seventy five million dollars); and

(2) The shares shall be allocated among directors, officers, and employees on an equitable basis such as by giving weight to period of service,

compensation, and position, subject to a reasonable limitation on the amount of shares which may be purchased by any person or associate thereof, or group of affiliated persons or group of persons otherwise acting in concert.

NEW SECTION. Sec. 28. Any account holder receiving rights to purchase stock in the subscription offering may also receive, without payment, nontransferable subscription rights to purchase up to one percent of the total offering of shares of capital stock, to the extent that the shares are available after satisfying the subscription under sections 8 and 10 of this act, subject to such conditions as may be provided in the plan of conversion. In the event of an oversubscription for the additional shares, the shares available shall be allocated among the subscribing eligible account holders and supplemental eligible account holders on such equitable basis, related to the amounts of their respective subscriptions, as may be provided in the plan of conversion. Where possible the subscriptions shall be allocated in such a manner that total purchases by eligible account holders and supplemental eligible account holders shall be rounded to the nearest one hundred shares.

NEW SECTION. Sec. 29. Any insignificant residue of shares of the converting savings bank not sold in the subscription offering or in a public offering referred to in section 11 of this act may be sold in such other manner as provided in the plan with supervisor approval.

NEW SECTION. Sec. 30. The number of shares which any person, or group of persons affiliated with each other or otherwise acting in concert, may subscribe for in the subscription offering may be made subject to a limit of not less than one percent of the total offering of shares.

NEW SECTION. Sec. 31. Any person exercising subscription rights to purchase capital stock may be required to purchase a minimum of up to twenty-five shares to the extent the shares are available (but the aggregate price for any minimum share purchase shall not exceed five hundred dollars).

NEW SECTION. Sec. 32. A stock option plan may be adopted by the board of directors at the meeting at which the plan of conversion is voted upon. The number of shares reserved for the stock option plans should be limited to ten percent of the number of shares sold in the conversion.

NEW SECTION. Sec. 33. The converted savings bank may issue and sell, in lieu of shares of its capital stock, units of securities consisting of capital stock or other equity securities, in which event any reference in this chapter to capital stock shall apply to the units of equity securities unless the context otherwise requires.

NEW SECTION. Sec. 34. The supervisor may approve such other equitable provisions as are necessary to avert imminent injury to the converting savings bank.

NEW SECTION. Sec. 35. (1) Unless otherwise provided in the plan of conversion, the amount of the qualifying deposit of an eligible account holder or supplemental eligible account holder shall be the total of the deposit balances in the eligible account holder's or supplemental eligible account holder's savings accounts in the converting savings bank as of the close of business on the eligibility record date or supplemental eligibility record date. However, the plan of conversion may provide that any savings accounts with total deposit balances of less than fifty dollars (or any lesser amount) shall not constitute a qualifying deposit.

(2) As used in this section, the term "savings account" includes a predecessor or successor account of a given savings account which is held only in the same right and capacity and on the same terms and conditions as the given savings account. However, the plan of conversion may provide for lesser requirements for consideration as a predecessor or successor account.

NEW SECTION. Sec. 36. Each converted savings bank shall, at the time of conversion, establish a liquidation account in an amount equal to the amount of net worth of the converting savings bank as of the latest practicable date prior to conversion. For the purposes of this section, the savings bank shall use the net worth figure no later than that set forth in its latest statement of financial condition contained in the final offering circular. The function of the liquidation account is to establish a priority on liquidation and, except as provided in section 42 of this act, the existence of the liquidation account shall not operate to restrict the use or application of any of the net worth accounts of the converted savings bank.

NEW SECTION. Sec. 37. The liquidation account shall be maintained by the converted savings bank for the benefit of eligible account holders and supplemental eligible account holders who maintain their savings accounts in the bank. Each such eligible account holder shall, with respect to each savings account, have a related inchoate interest in a portion of the liquidation account balance ("subaccount").

NEW SECTION. Sec. 38. In the event of a complete liquidation of the converted savings bank (and only in this event), each eligible account holder and supplemental eligible account holder shall be entitled to receive a liquidation distribution from the liquidation account, in the amount of the then current adjusted subaccount balances for savings accounts then held, before any liquidation distribution may be made with respect to capital stock. No merger, consolidation, purchase of bulk assets with assumption of savings accounts and other liabilities, or similar transaction, in which the converted savings bank is not the survivor, is considered to be a complete liquidation

for this purpose. In these transactions, the liquidation account shall be assumed by the surviving institution.

NEW SECTION. Sec. 39. The initial subaccount balance for a savings account held by an eligible account holder and/or supplemental eligible account holder shall be determined by multiplying the opening balance in the liquidation account by a fraction of which the numerator is the amount of qualifying deposits in the savings account on the eligibility record date and/or the supplemental eligibility record date and the denominator is the total amount of qualifying deposits of all eligible account holders and supplemental eligible account holders in the converting savings bank on these dates. For savings accounts in existence at both dates, separate subaccounts shall be determined on the basis of the qualifying deposits in these savings accounts on these record dates. The initial subaccount balances shall not be increased, and it shall be subject to downward adjustment as provided in section 40 of this act.

NEW SECTION. Sec. 40. If the deposit balance in any savings account of an eligible account holder or supplemental eligible account holder at the close of business on any annual closing date subsequent to the respective record dates is less than the lesser of (1) the deposit balance in the savings account at the close of business on any other annual closing date subsequent to the eligibility record date or (2) the amount of qualifying deposit as of the eligibility record date or the supplemental eligibility record date, the subaccount balance for the savings account shall be adjusted by reducing the subaccount balance in an amount proportionate to the reduction in the deposit balance. In the event of such a downward adjustment, the subaccount balance shall not be subsequently increased, notwithstanding any increase in the deposit balance of the related savings account. If any such savings account is closed, the related subaccount balance shall be reduced to zero.

NEW SECTION. Sec. 41. No converted savings bank may repurchase any of its capital stock from any person unless approved by the supervisor.

NEW SECTION. Sec. 42. No converted savings bank may declare or pay a cash dividend unless the declaration or payment of the dividend would be in accordance with the requirements of RCW 30.04.180 and would not have the effect of reducing the net worth of the converted savings bank below (1) the amount required for the liquidation account or (2) the amount required by the supervisor.

NEW SECTION. Sec. 43. Without the prior approval of the supervisor, no converted savings bank may, for a period of ten years after the date of its conversion, declare or pay a cash dividend on its capital stock in an amount in excess of one-half of the greater of:

- (1) The savings bank's net income for the current fiscal year; or

(2) The average of the savings bank's net income for the current fiscal year and not more than two of the immediately preceding fiscal years.

For purposes of this chapter, "net income" shall be determined by generally accepted accounting principles.

**NEW SECTION.** Sec. 44. In the offer, sale, or purchase of securities issued incident to its conversion, no savings bank, or any director, officer, attorney, agent, or employee thereof, may (1) employ any device, scheme, or artifice to defraud, or (2) obtain money or property by means of any untrue statement of a material fact or any omission 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, or (3) engage in any act, transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller.

**NEW SECTION.** Sec. 45. (1) No conversion may be approved by the supervisor unless the plan of conversion provides that the converted savings bank shall enter into an agreement with the supervisor, in form satisfactory to the supervisor, which shall provide that for a period of three years following the conversion any company significantly engaged in an unrelated business activity, either directly or through an affiliate thereof, shall not be permitted, regardless of the form of the transaction, to acquire control of the converted savings bank. Any acquisition of a converted savings bank shall also comply with RCW 30.04.400 through 30.04.410.

(2) As used in this section:

(a) The term "affiliate" means any person or company which controls, is controlled by, or is under common control with, a specified company.

(b) A person or company shall be deemed to have "control" of:

(i) A savings bank if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than twenty-five percent of the voting shares of the savings bank, or controls in any manner the election of a majority of the directors of the bank;

(ii) Any other company if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than twenty-five percent of the voting shares or rights of the other company, or controls in any manner the election or appointment of a majority of the directors or trustees of the other company, or is a general partner in or has contributed more than twenty-five percent of the capital of the other company;

(iii) A trust if the person is a trustee thereof; or

(iv) A savings bank or any other company if the supervisor determines, after reasonable notice and opportunity for hearing, that the person directly

or indirectly exercises a controlling influence over the management or policies of the savings bank or other company.

(c) A company shall be deemed to be "significantly engaged" in an unrelated business activity if its unrelated business activities would represent, on either an actual or a pro forma basis, more than fifteen percent of its consolidated net worth at the close of this preceding fiscal year or of its consolidated net earnings for such fiscal year.

(d) The term "unrelated business activity" means any business activity not authorized for a savings bank or any subsidiary thereof.

NEW SECTION. Sec. 46. To the extent permitted by applicable federal or state law, a plan of conversion may provide for a provision in the charter of the converted savings bank containing, in substance, the restriction set forth in section 45 of this act. There may also be included a restriction providing that the charter provision may be amended only by a vote of up to seventy-five percent of the votes eligible to be cast at a regular or special meeting of shareholders of the converted savings bank. If the converted savings bank elects to adopt the foregoing optional charter provision, the supervisor shall impose, as a condition to approval of the conversion, a requirement that the converted savings bank fully enforce the charter provision.

NEW SECTION. Sec. 47. A savings bank which is considering converting pursuant to this chapter and its directors, officers, and employees shall keep this consideration in the strictest confidence and shall only discuss the potential conversion as would be consistent with the need to prepare information for filing an application for conversion. Should this confidence be breached the supervisor may require remedial measures including:

(1) A public statement by the savings bank that its board of directors is currently considering converting pursuant to this chapter;

(2) Providing for an eligibility record date which shall be as of such a date prior to the adoption of the plan by the converting savings bank's board of directors as to assure the equitability of the conversion;

(3) Limitation of the subscription rights of any person violating or aiding the violation of this section to an amount deemed appropriate by the supervisor; and

(4) Any other actions the supervisor may deem appropriate and necessary to assure the fairness and equitability of the conversion.

NEW SECTION. Sec. 48. If it should become essential as a result of rumors prior to the adoption of a plan of conversion by the applicant's board of directors, a public statement limited to that purpose may be made by the applicant.

NEW SECTION. Sec. 49. Promptly after the adoption of a plan of conversion by not less than two-thirds of its board of directors, the savings bank shall:

(1) Notify its account holders of the action by publishing a statement in a newspaper having general circulation in each community in which an office of the savings bank is located and/or by mailing a letter to each of its account holders; and

(2) Have copies of the adopted plan of conversion available for inspection by its account holders at each office of the savings bank.

The savings bank may also issue a press release with respect to the action. Copies of the proposed statement, letter, and press release are not required to be filed with the supervisor but may be submitted to the supervisor for comment. Copies of the definitive statement, letter, and press release shall be filed with the supervisor as part of the application for conversion.

NEW SECTION. Sec. 50. The statement, letter, and press release of the applicant issued pursuant to section 49 of this act, unless otherwise authorized by the supervisor, shall contain only (but need not contain all of) the following:

(1) A statement that the board of directors has adopted a plan to convert the savings bank from a mutual savings bank to a capital stock savings bank;

(2) A statement that the plan of conversion is subject to approval by the supervisor of banking and by the appropriate federal regulatory authority or authorities (naming such an authority or authorities) before the plan can become effective and that account holders of the applicant will have an opportunity to file written comments including objections and materials supporting the objections with the supervisor;

(3) A statement that the plan of conversion is contingent upon obtaining favorable tax rulings from the Internal Revenue Service or an appropriate tax opinion;

(4) A statement that there is no assurance that the approval of the supervisor of banking or the approval of any appropriate federal authority or authorities will be obtained, and also no assurance that the favorable tax rulings or tax opinion will be received;

(5) The proposed record date for determining the eligible account holders entitled to receive nontransferable subscription rights to purchase capital stock of the applicant;

(6) A brief statement describing the circumstances that would require supplemental eligible account holders to receive nontransferable subscription rights to purchase capital stock of the applicant;

(7) A brief description of the plan of conversion;

(8) The par value and approximate number of shares of capital stock to be issued and sold under the plan of conversion;

(9) A brief statement as to the extent to which directors, officers, and employees will participate in the conversion;

(10) A statement that savings account holders will continue to hold accounts in the converted savings bank identical as to dollar amount, rate of return, and general terms and that their accounts will continue to be insured by the Federal Deposit Insurance Corporation;

(11) A statement that borrowers' loans will be unaffected by conversion and that the amount, rate, maturity, security, and other conditions will remain contractually fixed as they existed prior to conversion;

(12) A statement that the normal business of the savings bank in accepting savings and making loans will continue without interruption; that the converted savings bank will continue after conversion to conduct its present services to savings account holders and borrowers under current policies to be carried on in existing offices and by the present management and staff;

(13) A statement that the plan of conversion may be substantively amended or terminated by the board of directors with the concurrence of the supervisor of banking; and

(14) A statement that questions of account holders may be answered by telephoning or writing to the savings bank.

NEW SECTION. Sec. 51. The statement, letter, and press release of the applicant issued pursuant to section 49 of this act shall not include financial statements or describe the benefits of conversion or the value of the capital stock of the savings bank upon conversion. In replying to inquiries, the savings bank should limit its answers to the matters listed in section 50 of this act.

NEW SECTION. Sec. 52. Upon determination that an application for conversion is properly executed and is not materially incomplete, the supervisor shall advise the applicant, in writing, to publish notices of the filing of the application. Promptly after receipt of the advice, the applicant shall furnish a written notice of the filing to each eligible account holder and also publish a notice of the filing in a newspaper printed in the English language and having general circulation in each community in which an office of the applicant is located, as follows:

**NOTICE OF FILING OF AN APPLICATION FOR  
APPROVAL TO CONVERT TO A  
STOCK SAVINGS BANK**

Notice is hereby given that, pursuant to chapter 32.— (sections 1 through 104 of this act) of the Revised Code of Washington

.....

(fill in name of applicant)

has filed an application with the Supervisor of Banking for approval



to convert to the stock form of organization. Copies of the application have been delivered to \_\_\_\_\_ (address) \_\_\_\_\_

Written comments, including objections to the plan of conversion and materials supporting the objections, from any account holder of the applicant or aggrieved person, will be considered by the supervisor if filed within twenty business days after the date of this notice. Failure to make written comments in objection may preclude the pursuit of any administrative or judicial remedies. Three copies of the comments should be sent to the aforementioned. The proposed plan of conversion and any comments thereon will be available for inspection by any account holder of the applicant at \_\_\_\_\_ (address) \_\_\_\_\_. A copy of the plan may also be inspected at each office of the applicant.

If a significant number of the applicant's account holders speak a language other than English and a newspaper in that language is published in the area served by the applicant, an appropriate translation of the notice shall also be published in that newspaper.

NEW SECTION. Sec. 53. Promptly after publication of the notices prescribed in section 52 of this act, the applicant shall file with the supervisor the notice and affidavit of publication from each newspaper publisher in the manner the supervisor shall require.

NEW SECTION. Sec. 54. Should the applicant desire to submit any information it deems to be of a confidential nature regarding any item or a part of any exhibit included in any application under this chapter, the information pertaining to the item or exhibit shall be separately bound and labeled "confidential", and a statement shall be submitted therewith briefly setting forth the grounds on which the information should be treated as confidential. Only general reference thereto need be made in that portion of the application which the applicant deems not to be confidential. Applications under this chapter shall be made available for inspection by the public, except for portions which are bound and labeled "confidential" and which the supervisor determines to withhold from public availability under RCW 42.17.250 through 42.17.340. The applicant shall be advised of any decision by the supervisor to make public information designated as "confidential" by the applicant. Even though sections of the application are considered "confidential" as far as public inspection thereof is concerned, to the extent the supervisor deems necessary the supervisor may comment on the confidential submissions in any public statement in connection with the supervisor's decision on the application without prior notice to the applicant.

NEW SECTION. Sec. 55. No offer to sell securities of an applicant pursuant to a plan of conversion may be made prior to approval by the supervisor of the application for conversion. No sale of these securities in the subscription offering may be made except by means of the final offering

circular for the subscription offering. No sale of unsubscribed securities may be made except by means of the final offering circular for the public offering or direct community marketing. The offering of shares in the direct community marketing may commence during the subscription offering upon the declaration of effectiveness by the supervisor of the offering circular proposed for the community offering. This section shall not apply to preliminary negotiations or agreements between an applicant and any underwriter or among underwriters who are to be in privity of contract with the applicant.

NEW SECTION. Sec. 56. Any preliminary offering circular for the subscription offering, the public offering, or the direct community marketing which has been filed with the supervisor may be distributed to eligible account holders or supplemental eligible account holders and to others in connection with the offering after the supervisor has advised the applicant in writing that the application is properly executed and is not materially incomplete under section 52 of this act. No final offering circular may be distributed until the offering circular has been declared effective by the supervisor.

NEW SECTION. Sec. 57. With respect to the capital stock of the applicant to be sold under the plan of conversion, any preliminary offering circular for the subscription offering shall set forth the estimated subscription price range. The maximum of the price range should normally be no more than fifteen percent above the average of the minimum and maximum of the price range and the minimum should normally be no more than fifteen percent below this average. The maximum price used in the price range should normally be no more than fifty dollars per share and the minimum no less than five dollars per share. The minimum par value of each share of the capital stock of a converted savings bank shall be one dollar.

NEW SECTION. Sec. 58. The supervisor shall review the price information required under section 57 of this act in determining whether to give approval to an application for conversion. No representations may be made in any manner that the price information has been approved by the supervisor or that the shares of capital stock sold pursuant to the plan of conversion have been approved or disapproved by the supervisor or that the supervisor has passed upon the accuracy or adequacy of any offering circular covering the shares.

NEW SECTION. Sec. 59. Underwriting commissions shall not exceed an amount or percentage per share acceptable to the supervisor. No underwriting commission may be allowed or paid with respect to shares of capital stock sold in the subscription offering; however, an underwriter may be reimbursed for accountable expenses in connection with the subscription offering where the public offering is so small that reasonable underwriting

commissions thereon would not be sufficient to cover total accountable expenses. The term "underwriting commissions" includes underwriting discounts.

NEW SECTION. Sec. 60. In considering the pricing information required under section 57 of this act, the supervisor shall apply the following guidelines:

- (1) The materials shall be prepared by persons independent of the applicant, experienced and expert in the area of corporate appraisal, and acceptable to the supervisor;
- (2) The materials shall contain data which are sufficient to support the conclusions reached therein;
- (3) The materials shall contain a complete and detailed description of the appraisal methodology employed; and
- (4) To the extent that the appraisal is based on a capitalization of the pro forma income of the converted savings bank, the materials shall indicate the basis for determination of the income to be derived from the proceeds of the sale of stock and demonstrate the appropriateness of the earnings multiple used, including assumptions made as to future earnings growth. To the extent that the appraisal is based on comparison of the capital stock of the applicant with outstanding capital stock of existing stock savings banks or stock savings and loan associations, the materials shall demonstrate the appropriate comparability of the form and substance of the outstanding capital stock and the appropriate comparability of the existing stock savings banks and stock savings and loan associations in terms of such factors as size, market area, competitive conditions, profit history, and expected future earnings.

NEW SECTION. Sec. 61. In addition to the information required in section 60 of this act, the applicant shall submit information demonstrating to the satisfaction of the supervisor the independence and expertise of any person preparing materials under section 60 of this act. However, a person will not be considered as lacking independence for the reason that the person will participate in effecting a sale of capital stock under the plan of conversion or will receive a fee from the applicant for services rendered in connection with the appraisal.

NEW SECTION. Sec. 62. Promptly after the supervisor has declared the offering circular for the subscription offering effective, the applicant shall distribute order forms for the purchase of shares of capital stock in the subscription offering to all eligible account holders, supplemental eligible account holders (if applicable), and other persons who may subscribe for the shares under the plan of conversion.

NEW SECTION. Sec. 63. Each order form distributed pursuant to section 62 of this act shall be accompanied or preceded by the final offering

circular for the subscription offering and a set of detailed instructions explaining how to properly complete the order forms.

NEW SECTION. Sec. 64. The maximum subscription price stated on each order form distributed pursuant to section 62 of this act shall be the amount to be paid when the order form is returned. The maximum subscription price and the actual subscription price shall be within the subscription price range stated in the supervisor's approval and the offering circular. If either the maximum subscription price or the actual subscription price is not within this subscription price range, the applicant shall obtain an amendment to the supervisor's approval. If appropriate, the supervisor shall condition the giving of amended approval by requiring a resolicitation of order forms. If the actual public offering price is less than the maximum subscription price stated on the order form, the actual subscription price shall be correspondingly reduced and the difference shall be refunded to those who have paid the maximum subscription price.

NEW SECTION. Sec. 65. Each order form distributed pursuant to section 62 of this act shall be prepared so as to indicate to the person receiving it, in as simple, clear, and intelligible a manner as possible, the actions which are required or available to the person with respect to the form and the capital stock offered for purchase thereby. Specifically, each order form shall:

(1) Indicate the maximum number of shares that may be purchased pursuant to the subscription offering;

(2) Indicate the period of time within which the subscription rights must be exercised, which period of time shall not be less than twenty days following the date of the mailing of the order form;

(3) State the maximum subscription price per share of capital stock;

(4) Indicate any requirements as to the minimum number of shares of capital stock which may be purchased;

(5) Provide a specifically designated blank space or spaces for indicating the number of shares of capital stock which the eligible account holder or other person wishes to purchase;

(6) Indicate that payment may be made by cash if delivered in person or by check or by withdrawal from an account holder's savings account. If payment is to be made by withdrawal, a box to check should be provided;

(7) Provide specifically designated blank spaces for dating and signing the order form;

(8) Contain an acknowledgment by the account holder or other person signing the order form that the person has received the final offering circular for the subscription offering prior to signing; and

(9) Indicate the consequences of failing to properly complete and return the order form, including a statement that the subscription rights are non-transferable and will become void at the end of the subscription period. The order form may, and the set of instructions shall, indicate the place or

places to which the order forms are to be returned and when the applicant will consider order forms received, such as by date and time of actual receipt in the applicant's offices or by date and time of postmark.

NEW SECTION. Sec. 66. The order form distributed pursuant to section 62 of this act may provide that it may not be modified without the applicant's consent after its receipt by the applicant. If payment is to be made by withdrawal from a savings account the applicant may, but need not, cause the withdrawal to be made upon receipt of the order form. If the withdrawal is made at any time prior to the closing date of the public offering, the applicant shall pay interest to the account holder on the account withdrawn as if the amount had remained in the account from which it was withdrawn until the closing date.

NEW SECTION. Sec. 67. The sale of all shares of capital stock of the converting savings bank to be made under the plan of conversion, including any sale in a public offering or direct community marketing, shall be completed as promptly as possible and within forty-five calendar days after the last day of the subscription period, unless extended by the supervisor.

NEW SECTION. Sec. 68. An applicant that desires to convert in accordance with this chapter shall file copies of an application for approval in the form and number prescribed by the supervisor.

NEW SECTION. Sec. 69. Any application for approval that is improperly executed, or that does not contain copies of a plan of conversion, amendments to the charter of the applicant in the form of new articles of incorporation, and preliminary offering circulars for the subscription offering and for the public offering or direct community marketing shall not be accepted for filing and shall be returned to the applicant. Any application for approval containing a materially incomplete plan of conversion or offering circular may be returned by the supervisor to the applicant.

NEW SECTION. Sec. 70. Upon the filing of the articles of incorporation of a converted savings bank with the secretary of state in accordance with section 96 of this act, the corporate existence of the mutual savings bank converting to a stock savings bank pursuant to this chapter shall not terminate but the converted savings bank shall be deemed to be a continuation of the entity of the mutual savings bank so converted having the same rights and obligations as it had prior to the conversion.

NEW SECTION. Sec. 71. The form of the application shall comply with the requirements of the supervisor.

NEW SECTION. Sec. 72. Except as provided in section 73 of this act, the filing of any application or amendment thereto under this chapter shall constitute a representation of the applicant by its duly authorized representative, the applicant's principal executive officer, the applicant's principal financial officer, and the applicant's principal accounting officer, and each

member of the applicant's board of directors (whether or not the director has signed the application or any amendment thereto) severally that (1) he or she has read the application or amendment, (2) in the opinion of each such person he or she has made such examination and investigation as is necessary to enable him or her to express an informed opinion that the application or amendment complies to the best of his or her knowledge and belief with the applicable requirements of this chapter, and (3) each such person holds this informed opinion.

NEW SECTION. Sec. 73. The representations specified in section 72 of this act shall not be deemed to have been made by any director of the applicant who did not sign the application or any amendment thereto, if, and only to the extent that, the director files with the supervisor within ten business days after the filing of the application or amendment a statement describing those portions of the filing as to which he or she does not so represent.

NEW SECTION. Sec. 74. Every application shall furnish information in accordance with this chapter and with the requirements and forms prescribed by the supervisor.

NEW SECTION. Sec. 75. In addition to the information expressly required to be included in any application under this chapter, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

NEW SECTION. Sec. 76. Information required need be given only insofar as it is known or reasonably available to the applicant. If any required information is unknown and not reasonably available to the applicant, either because the obtaining thereof would involve unreasonable effort or expense or because it rests peculiarly within the knowledge of another person not affiliated with the applicant, the information may be omitted, subject to the following conditions:

(1) The applicant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

(2) The applicant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to the person for the information.

NEW SECTION. Sec. 77. The information required in an offering circular shall not be set forth in such fashion as to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading.

NEW SECTION. Sec. 78. The form and contents of any filing made under this chapter need conform only to the applicable requirements and

forms prescribed by the supervisor then in effect, and contain the information, including financial statements, required at the time the filing is made, notwithstanding subsequent changes, except as otherwise provided in any such amendment or in section 79 of this act.

NEW SECTION. Sec. 79. Whenever the supervisor prohibits by order or otherwise the use of any filing under this chapter, the form and contents of any filing used thereafter shall conform to the requirements of the order.

NEW SECTION. Sec. 80. (1) If any accountant, attorney, investment banker, appraiser, or other persons whose professions give authority to a statement made in any application under this chapter is named as having prepared, reviewed, passed upon, or certified any part thereof, or any report or valuation for use in connection therewith, the written consent of the person shall be filed with the application. If any portion of a report of an expert is quoted or summarized as such in any filing under this chapter, the written consent of the expert shall expressly state that the expert consents to this quotation or summarization.

(2) All written consents filed pursuant to this section shall be dated and signed manually. A list of the consents shall be filed with the application. Where the consent of the expert is contained in the expert's report, a reference shall be made in the list to the report containing the consent.

NEW SECTION. Sec. 81. If any person who has not signed an application is named in the offering circular as about to become a director, the written consent of this person shall be filed with the supervisor in the form the supervisor prescribes.

NEW SECTION. Sec. 82. The date on which any documents are actually received by the office of the supervisor of banking shall be the date of filing thereof.

NEW SECTION. Sec. 83. (1) The staff of the supervisor shall be available for conferences with prospective applicants or their representatives in advance of filing an application to convert. These conferences may be held for the purpose of discussing generally the problems confronting an applicant in effecting conversion or to resolve specific problems of an unusual nature.

(2) Prefiling review of an application may be refused by the staff of the supervisor if the review would delay the examination and processing of material which has already been filed or would favor certain applicants at the expense of others. In any conference under this section, the staff of the supervisor shall not undertake to prepare material for filing but shall limit itself to indicating the kind of information required, leaving the actual drafting to the applicant and its representatives.

NEW SECTION. Sec. 84. From the supervisor's refusal to approve an application for conversion, the applicant may, within thirty days from the date of the mailing by the supervisor of notice of refusal to approve, appeal

to a board of appeal composed of the governor or the governor's designee, the attorney general, and the supervisor of banking by filing in the office of the supervisor a notice that it appeals to this board from the supervisor's refusal. The procedure upon the appeal shall be such as the board may prescribe, and its determination shall be certified, filed, and recorded in the same manner as the supervisor's, and shall be final.

NEW SECTION. Sec. 85. The applicant shall file such postconversion reports concerning its conversion as the supervisor may require.

NEW SECTION. Sec. 86. For purposes of sections 87 through 94 of this act, the following definitions shall apply:

(1) The term "offer" includes every offer to buy or acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security for value.

(2) The term "person" means an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, and any unincorporated organization or similar company.

(3) Without limitation on the generality of its meaning, the term "security" includes nontransferable subscription rights issued to a plan of conversion.

NEW SECTION. Sec. 87. Prior to completion of a conversion, no person may transfer or enter into any agreement or understanding to transfer the legal or beneficial ownership of conversion subscription rights, or the underlying securities, to the account of another.

NEW SECTION. Sec. 88. Prior to completion of a conversion, no person may make any offer, or announcement of an offer or intent to make an offer, for any security of a converting savings bank issued or to be issued in connection with the conversion.

NEW SECTION. Sec. 89. No person for a period of three years following the date of the conversion may directly or indirectly offer to acquire or acquire the beneficial ownership of more than ten percent of any class of an equity security of any savings bank converted in accordance with this chapter without the prior written approval of the supervisor of banking.

NEW SECTION. Sec. 90. Sections 87 and 88 of this act shall not apply to a transfer, agreement or understanding to transfer, offer, or announcement of an offer or intent to make an offer which (1) pertains only to securities to be purchased pursuant to sections 11, 29, or 34 of this act; and (2) has prior written approval of the supervisor.

NEW SECTION. Sec. 91. Sections 88 and 89 of this act shall not apply to any offer with a view toward public resale made exclusively to the savings bank or underwriters or selling group acting on its behalf.

NEW SECTION. Sec. 92. Unless made applicable by the supervisor by prior advice in writing, the prohibition contained in section 89 of this act



shall not apply to any offer or announcement of an offer which if consummated would result in acquisition by a person, together with all other acquisitions by the person of the same class of securities during the preceding twelve-month period, of not more than one percent of the same class of securities.

NEW SECTION. Sec. 93. The supervisor shall not approve an application involving an offer for, an announcement thereof, or an acquisition of any security of a converted savings bank submitted under section 89 of this act if the supervisor finds that the offer frustrates the purposes of this chapter, is manipulative or deceptive, subverts the fairness of the conversion, is likely to result in injury to the savings bank, is not consistent with savings banking under Title 32 RCW, or is otherwise violative of law or regulation.

NEW SECTION. Sec. 94. For wilful violation or assistance of such a violation of any provision of sections 87 through 93 of this act, any person who (1) has any connection with the management of a converting or converted savings bank, including any director, officer, employee, attorney, or agent, or (2) controls more than ten percent of the outstanding shares of any class of equity security or voting rights thereto of a converting or converted savings bank shall be subject to a civil penalty of not more than five hundred dollars (which penalty shall be cumulative to any other remedies) for each day that the violation continues, which penalty the supervisor may recover by suit or otherwise for the supervisor's own use. The supervisor in his discretion may, at any time before collection of the penalty (whether before or after the bringing of any action or other legal proceedings, the obtaining of any judgment or other recovery, or the issuance or levy of any execution or other legal process thereof), compromise or remit in whole or in part the penalty.

NEW SECTION. Sec. 95. The name of a mutual savings bank converted to a stock savings bank under this chapter shall contain the words "savings bank."

NEW SECTION. Sec. 96. (1) An application for conversion under this chapter shall include amendments to the charter of the converting savings bank. The charter of the converted savings bank, as amended, shall be known after the conversion as the articles of incorporation of the converted savings bank. The articles of incorporation may limit or permit the preemptive rights of a shareholder to acquire unissued shares of the converted savings bank and may thereafter by amendment limit, deny, or grant to shareholders of any class of stock the preemptive right to acquire additional shares of the converted savings bank whether then or thereafter authorized. The articles of incorporation shall contain such other provisions not inconsistent with this chapter as the board of directors of the converting savings bank shall determine and as shall be approved by the supervisor.

(2) When all of the stock of a converting savings bank has been subscribed for in accordance with the plan and any amendments thereto, the board of trustees shall thereupon issue the stock and shall cause to be filed with the supervisor of banking, in quadruplicate, a certificate subscribed and acknowledged by the persons who are to be directors of the converted savings bank, stating:

(a) That all of the stock of the converted mutual savings bank has been issued;

(b) That the attached articles of incorporation have been executed by all of the persons who are to be directors of the converted mutual savings bank;

(c) The place where the bank is to be located and its business transacted, naming the city or town and county, which city or town shall be the same as that where the principal place of business of the mutual savings bank has theretofore been located;

(d) The name, occupation, residence, and post office address of each signer of the certificate;

(e) The amount of the assets of the mutual savings bank, the amount of its liabilities, and the amount of its guaranty fund and nondivided profits as of the first day of the current calendar month; and

(f) A declaration that each signer will accept the responsibilities and faithfully discharge the duties of a director of the converted savings bank and is free from all the disqualifications specified in the laws applicable to converted mutual savings banks.

(3) Upon the filing of the certificate in quadruplicate, the supervisor of banking shall, within thirty days thereafter, if satisfied that the corporation has complied with all the provisions of this chapter, issue in quadruplicate an authorization certificate stating that the corporation has complied with all the requirements of law, and that it has authority to transact at the place designated in its articles of incorporation the business of a converted mutual savings bank. One of the supervisor's quadruplicate certificates of authorization shall be attached to each of the quadruplicate articles of incorporation, and one set of these shall be filed and retained by the supervisor of banking, one set shall be filed in the office of the county auditor of the county in which the bank is located, one set shall be filed in the office of the secretary of state, and one set shall be transmitted to the bank for its files. Upon the receipt from the corporation of the same fees as are required for filing and recording other incorporation certificates or articles the county auditor and secretary of state shall record the same; whereupon the conversion of the mutual savings bank shall be deemed complete, and the signers of the articles of incorporation and their successors shall be a corporation having the powers and being subject to the duties and obligations prescribed by the laws of this state applicable to converted mutual savings banks, and the time of existence of the corporation shall be perpetual, unless terminated pursuant to law.

NEW SECTION. Sec. 97. Amendments to the articles of incorporation of the converted savings bank shall be made in accordance with the procedures specified in RCW 30.08.088 and 30.08.090, provided that the amendments are also approved by the supervisor.

NEW SECTION. Sec. 98. Every converted savings bank shall be managed by not less than five directors, except that a bank having a capital of fifty thousand dollars or less may have only three directors. Directors shall be elected by the stockholders and hold office for one year and until their successors are elected and have qualified. In the first instance the directors shall be those named in the articles of incorporation and afterwards, those elected at the annual meeting of the stockholders to be held at least once each year on a day to be specified by the converted savings bank's bylaws but not later than May 15th of each year. If for any cause an election is not held at that time, it may be held at an adjourned meeting or at a subsequent meeting called for that purpose in the manner prescribed by the corporation's bylaws. The directors shall meet at least once each month and whenever required by the supervisor. A majority of the board of directors shall constitute a quorum for the transaction of business. At all stockholders' meetings, each share shall be entitled to one vote, unless the articles of incorporation provide otherwise. Any stockholder may vote in person or by written proxy.

Immediately upon election, each director shall take, subscribe, swear to, and file with the supervisor an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of the corporation and will not knowingly violate or willingly permit to be violated any provision of law applicable to the corporation. Vacancies on the board of directors shall be filled by the board.

NEW SECTION. Sec. 99. A mutual savings bank or bank converted under this chapter may merge with, consolidate with, convert into, acquire the assets of, or sell its assets to any other financial institution chartered under Titles 30, 32, or 33 RCW or under the National Bank Act, as amended, or the National Housing Act, as amended, or to a holding company thereof, subject to (1) the approval of the supervisor of banking if the surviving institution is one chartered under Title 30 or 32 RCW, or (2) approval of the supervisor of savings and loans if the surviving institution is one chartered under Title 33 RCW, or (3) if the surviving institution is to be a national bank, the comptroller of currency under 12 U.S.C. Sec. 35, 12 U.S.C. Sec. 215, 12 U.S.C. Sec. 215a, and 12 U.S.C. Sec. 1828c, or (4) if the surviving institution is to be a federal savings and loan association, the Federal Home Loan Bank Board under 12 U.S.C. Sec. 1464 (d)(11), or (5) if the surviving institution is to be a bank holding company, the Federal Reserve Board under 12 U.S.C. Sec. 1842 (a) and (d).

In the case of a liquidation, acquisition, merger, consolidation, or conversion of a converted savings bank, chapters 30.44 and 30.49 RCW shall apply.

NEW SECTION. Sec. 100. (1) It is the intention of the legislature to grant, by this chapter, authority to permit conversions by mutual savings banks to capital stock form, and the rights, powers, restrictions, limitations, and requirements of Title 32 RCW shall apply to a converted mutual savings bank except that, in the event of conflict between the provisions of this chapter and other provisions of Title 32 RCW, the other provisions shall be construed in favor of the accomplishment of the purposes of this chapter.

(2) References in the Revised Code of Washington to mutual savings banks shall refer also to stock savings banks converted from mutual form under this chapter. References in the Revised Code of Washington to the board of trustees of a mutual savings bank shall refer also to the board of directors of a stock savings bank converted from mutual form under this chapter. The provisions of Title 30 RCW shall not apply to a converted mutual savings bank except insofar as the provisions would apply to a mutual savings bank.

NEW SECTION. Sec. 101. A savings bank converted under this chapter may pay interest on deposits at such rates as its board of directors shall from time to time determine.

NEW SECTION. Sec. 102. The guaranty fund of a mutual savings bank converted under this chapter shall become surplus of the converted savings bank, but shall not be available after conversion for purposes other than those purposes for which a guaranty fund may be used by a mutual savings bank under Title 32 RCW. No contribution need be made to the guaranty fund by the converted savings bank after conversion.

NEW SECTION. Sec. 103. The "funds" of a converted savings bank, as the term is used in Title 32 RCW, shall mean deposits, sums credited to the liquidation account, capital stock, the principal balance of any outstanding capital notes, capital debentures, undivided profits and income derived from the foregoing.

NEW SECTION. Sec. 104. After the effective date of this act, no converted savings bank may make any loan or discount on the security of its own capital stock, nor be the purchaser or holder of any such shares, unless the security or purchase is necessary to prevent loss upon a debt previously contracted in good faith, in which case the stocks so purchased or acquired shall be sold at public or private sale, or otherwise disposed of, within six months from the time of its purchase or acquisition.

Sec. 105. Section 32.04.010, chapter 13, Laws of 1955 and RCW 32-.04.010 are each amended to read as follows:

This title shall not be construed as amending or repealing any other law of the state authorizing the incorporation of banks or regulating the same,

but shall be deemed to be additional legislation for the sole purpose of authorizing the incorporation and operation of mutual savings banks and mutual savings banks converted under chapter 32.— RCW (sections 1 through 104 of this 1981 act) to stock form, as herein prescribed. Savings banks incorporated on the stock plan, other than converted mutual savings banks, and other stock banks having savings departments as authorized by RCW 30.20.060, or by any other law of the state heretofore or hereafter enacted, shall not be in any manner affected by the provisions of this title, or any amendment thereto.

Sec. 106. Section 32.04.020, chapter 13, Laws of 1955 and RCW 32.04.020 are each amended to read as follows:

The use of the term "savings bank" in this title refers to mutual savings banks and converted mutual savings banks only.

The use of the words "mutual savings" as part of a name under which business of any kind is or may be transacted by any person, firm, or corporation, except such as were organized and in actual operation on June 9, 1915, or as may be thereafter organized and operated under the requirements of this title is hereby prohibited.

The use of the term "supervisor" in this title refers to the supervisor of banking.

NEW SECTION. Sec. 107. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 108. Sections 1 through 104 of this act shall constitute a new chapter in Title 32 RCW.

Passed the Senate March 30, 1981.

Passed the House April 15, 1981.

Approved by the Governor May 8, 1981.

Filed in Office of Secretary of State May 8, 1981.

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## CHAPTER 86

[Senate Bill No. 3327]

### MUTUAL SAVINGS BANKS—EXPENSES—BORROWING, INVESTMENT, LENDING POWERS

AN ACT Relating to mutual savings banks; amending section 32.04.060, chapter 13, Laws of 1955 as amended by section 1, chapter 171, Laws of 1977 ex. sess. and RCW 32.04.060; amending section 32.08.140, chapter 13, Laws of 1955 as last amended by section 1, chapter 104, Laws of 1977 ex. sess. and RCW 32.08.140; amending section 32.08.150, chapter 13, Laws of 1955 as last amended by section 1, chapter 51, Laws of 1979 and RCW 32.08.150; amending section 32.20.280, chapter 13, Laws of 1955 as last amended by section 6, chapter 31, Laws of 1973 1st ex. sess. and RCW 32.20.280; amending section 15, chapter 55, Laws of 1969 and RCW 32.20.285; amending section 16, chapter 176, Laws of 1963 and RCW 32.20.380; amending section 18, chapter 176, Laws of 1963 as last amended by section 6, chapter 104, Laws of 1977 ex. sess. and RCW 32.20.400;