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## CHAPTER 305

[Engrossed Substitute Senate Bill No. 3792]

**BANKS—SUPERVISOR OF BANKING VISITATIONS—LOANS TO OFFICERS—FOREIGN BANKS—STOCK PURCHASES—DEPOSIT RECEIPTS**

AN ACT Relating to banks and banking; amending RCW 30.04.060, 30.04.230, 30.04.405, 30.12.060, 30.42.100, and 30.42.115; and adding new sections to chapter 30.04 RCW.

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

**NEW SECTION.** Sec. 1. A new section is added to chapter 30.04 RCW to read as follows:

(1) Notwithstanding any other provision of this title, a bank, with the prior approval of the supervisor, may purchase shares of its own capital stock. However, no bank may purchase and hold at any time more than five percent of its outstanding shares. Shares purchased under this section shall not be held for a period greater than six months.

(2) When a bank purchases such shares, its capital accounts shall be reduced appropriately. The shares shall be held as authorized but unissued shares, but may be resold at any time within six months after acquisition for a price equal to or greater than the higher of the acquisition price or par value. Except as provided in this subsection, shares shall not be sold without the prior written approval of the supervisor.

**NEW SECTION.** Sec. 2. A new section is added to chapter 30.04 RCW to read as follows:

Each person making a deposit in a bank or trust company shall be given a receipt that shall show or in conjunction with the deposit slip can be used to trace the name of the bank or trust company, the name of the account, the account number, the date, and the amount deposited. If specifically requested by the depositor when making the deposit, the receipt must expressly show the name of the bank or trust company, the date, the amount deposited, plus either the name of the account or the account number or both the name of the account and the account number.

Sec. 3. Section 30.04.060, chapter 33, Laws of 1955 as last amended by section 3, chapter 157, Laws of 1983 and RCW 30.04.060 are each amended to read as follows:

The supervisor, the deputy supervisor, or a bank examiner, without previous notice, shall visit each bank and each trust company at least once

~~((in each year))~~ every eighteen months, and oftener if necessary, for the purpose of making a full investigation into the condition of such corporation, and for that purpose they are hereby empowered to administer oaths and to examine under oath any director, officer, employee, or agent of such corporation. The supervisor may make such other full or partial examinations as deemed necessary and may examine any bank holding company that owns any portion of a bank or trust company chartered by the state of Washington and obtain reports of condition for any bank holding company that owns any portion of a bank or trust company chartered by the state of Washington. The supervisor may visit and examine into the affairs of any nonpublicly held corporation in which the bank, trust company, or bank holding company has an investment or any publicly held corporation the capital stock of which is controlled by the bank, trust company, or bank holding company; may appraise and revalue such corporations' investments and securities; and shall have full access to all the books, records, papers, securities, correspondence, bank accounts, and other papers of such corporations for such purposes. The supervisor may, in his or her discretion, accept in lieu of the examinations required in this section the examinations ~~((required under the terms of the federal reserve act for banks which are, or may become, members of a federal reserve bank or the deposits of which are insured by))~~ conducted at the direction of the federal reserve board or the Federal Deposit Insurance Corporation. Any wilful false swearing in any examination is perjury in the second degree.

Sec. 4. Section 30.04.230, chapter 33, Laws of 1955 as last amended by section 9, chapter 157, Laws of 1983 and RCW 30.04.230 are each amended to read as follows:

(1) A corporation or association organized under the laws of this state or licensed to transact business in the state, other than a bank or trust company, may acquire any or all shares of stock of any bank, trust company, or national banking association. Nothing in this section shall be construed to prohibit the merger, consolidation, or reorganization of a bank or trust company in accordance with this title.

(2) Unless the terms of this section are complied with, an out-of-state bank holding company shall not acquire more than five percent of the shares of the voting stock or all or substantially all of the assets of a bank, trust company, or national banking association the principal operations of which are conducted within this state.

(3) As used in this section a "bank holding company" means a company that is a bank holding company as defined by the Bank Holding Company Act of 1956, as amended (12 U.S.C. Sec. ~~((1941))~~ 1841 et seq.). An "out-of-state bank holding company" is a bank holding company that principally conducts its operations outside this state, as measured by total deposits held or controlled by its bank subsidiaries on the date on which it became a holding company. A "domestic bank holding company" is a bank

holding company that principally conducts its operations within this state, as measured by total deposits held or controlled by its bank subsidiaries on the date on which it became a bank holding company.

(4) Any such acquisition referred to under subsection (2) of this section by an out-of-state bank holding company requires the express written approval of the supervisor of banking. Approval shall not be granted unless and until the following conditions are met:

(a) An out-of-state bank holding company desiring to make an acquisition referred to under subsection (2) of this section and the bank, trust company, national banking association, or domestic bank holding company parent thereof, if any, proposed to be acquired shall file an application in writing with the supervisor of banking ~~((and pay an investigation fee of five thousand dollars to the supervisor of banking))~~. The supervisor shall by rule establish the fee schedule to be collected from the applicant in connection with the application. The fee shall not exceed the cost of processing the application. The application shall contain such information as the supervisor of banking may prescribe by rule as necessary or appropriate for the purpose of making a determination under this section. The application and supporting information and all examination reports and information obtained by the supervisor and the supervisor's staff in conducting its investigation shall be confidential and privileged and not subject to public disclosure under chapter 42.17 RCW. The application and information may be disclosed to federal bank regulatory agencies and to officials empowered to investigate criminal charges, subject to legal process, valid search warrant, or subpoena. In any civil action in which such application or information is sought to be discovered or used as evidence, any party may, upon notice to the supervisor and other parties, petition for an in camera review. The court may permit discovery and introduction of only those portions that are relevant and otherwise unobtainable by the requesting party. The application and information shall be discoverable in any judicial action challenging the approval of an acquisition by the supervisor as arbitrary and capricious or unlawful.

(b) The supervisor of banking shall find that:

(i) The bank, trust company, or national banking association that is proposed to be acquired or the domestic bank holding company controlling such bank, trust company, or national banking association is in such a liquidity or financial condition as to be in danger of closing, failing, or insolvency. In making any such determination the supervisor shall be guided by the criteria developed by the federal regulatory agencies with respect to emergency acquisitions under the provisions of 12 U.S.C. Sec. 1828(c);

(ii) There is no state bank, trust company, or national banking association doing business in the state of Washington or domestic bank holding company with sufficient resources willing to acquire the entire bank, trust

company, or national banking association on at least as favorable terms as the out-of-state bank holding company is willing to acquire it;

(iii) The applicant out-of-state bank holding company has provided all information and documents requested by the supervisor in relation to the application; and

(iv) The applicant out-of-state bank holding company has demonstrated an acceptable record of meeting the credit needs of its entire community, including low and moderate income neighborhoods, consistent with the safe and sound operation of such institution.

(c) The supervisor shall consider:

(i) The financial institution structure of this state; and

(ii) The convenience and needs of the public of this state.

(5) Nothing in this section may be construed to prohibit, limit, restrict, or subject to further regulation the ownership by a bank of the stock of a bank service corporation or a banker's bank.

Sec. 5. Section 2, chapter 246, Laws of 1977 ex. sess. and RCW 30.04.405 are each amended to read as follows:

(1) It is unlawful for any person to acquire control of a bank until thirty days after filing with the supervisor a completed application. The application shall be under oath and contain substantially all of the following information plus any additional information that the supervisor may prescribe as necessary or appropriate in the particular instance for the protection of bank depositors, borrowers, or shareholders and the public interest:

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

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

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

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

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

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

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

(2) Notwithstanding any other provision of this section, a bank or domestic bank holding company as defined in RCW 30.04.230 need only notify the supervisor of an intent to acquire control and the date of the proposed acquisition of control at least thirty days before the date of the acquisition of control.

(3) When a person, other than an individual or corporation, is required to file an application under this section, the supervisor may require that the information required by subsection (1)(a), (b), and (f) of this section be given with respect to each person, as defined in RCW 30.04.400(3), who has an interest in or controls a person filing an application under this subsection.

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

(5) If any tender offer, request, or invitation for tenders or other agreements to acquire control is proposed to be made by means of a registration statement under the Securities Act of 1933 (48 Stat. 74, 15 U.S.C., Sec. 77(a)), as amended, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C., Sec. 78(a)), as amended, the registration statement or application may be filed with the supervisor in lieu of the requirements of this section.

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

(7) Any person who wilfully or intentionally violates this section or any rule adopted pursuant thereto is guilty of a gross misdemeanor pursuant to chapter 9A.20 RCW. Each day's violation shall be considered a separate violation, and any person shall upon conviction be fined not more than one thousand dollars for each day the violation continues.

Sec. 6. Section 30.12.060, chapter 33, Laws of 1955 as last amended by section 5, chapter 136, Laws of 1969 and RCW 30.12.060 are each amended to read as follows:

(1) Any bank or trust company shall be permitted to make loans to any employee of such corporation, or to purchase, discount or acquire, as security or otherwise, the obligation or debt of any employee to any other person, to the same extent as if the employee were in no way connected with the corporation. Any bank or trust company shall be permitted to make loans to any officer of such corporation, or to purchase, discount or acquire,

as security or otherwise, the obligation or debt of any officer to any other person. PROVIDED, That the total value of the loans made and obligation acquired for any one officer shall not exceed such amount as shall be prescribed by the supervisor of banking pursuant to regulations adopted in accordance with the Administrative Procedure Act, chapter 34.04 RCW, as now or hereafter amended: AND PROVIDED FURTHER, That no such loan shall be made, or obligation acquired, in excess of five percent of a bank's capital and unimpaired surplus or twenty-five thousand dollars, whichever is larger, unless a resolution authorizing the same shall be adopted by a vote of a majority of the board of directors of such corporation (~~(, at a meeting of the board of directors of such corporation held within thirty days)~~) prior to the making of such loan or discount, and such vote and resolution shall be entered in the corporate minutes. In no event shall the loan or obligation acquired exceed five hundred thousand dollars in the aggregate without prior approval by a majority of the corporation's board of directors. No loan in excess of five percent of a bank's capital and unimpaired surplus or twenty-five thousand dollars, whichever is larger, shall be made by any bank or trust company to any director of such corporation nor shall the note or obligation in excess of five percent of a bank's capital and unimpaired surplus or twenty-five thousand dollars, whichever is larger, of such director be discounted by any such corporation, or by any officer or employee thereof in its behalf, unless a resolution authorizing the same shall be adopted by a vote of a majority of the entire board of directors of such corporation exclusive of the vote of such interested director, (~~(at a meeting of the board of directors of such corporation held within ninety days prior to the making of such loan or discount,))~~) and such vote and resolution shall be entered in the corporate minutes. In no event may the loan or obligation acquired exceed five hundred thousand dollars in the aggregate without prior approval by a majority of the corporation's board of directors.

Each bank or trust company shall at such times and in such form as may be required by the supervisor, report to the supervisor all outstanding loans to directors of such bank or trust company.

The amount of any endorsement or agreement of suretyship or guaranty of any such director to the corporation shall be construed to be a loan within the provisions of this section. Any modification of the terms of an existing obligation (excepting only such modifications as merely extend or renew the indebtedness) shall be construed to be a loan within the meaning of this section.

(2) "Unimpaired surplus," as used in this section, consists of the sum of the following amounts:

- (a) Fifty percent of the reserve for possible loan losses;
- (b) Subordinated notes and debentures;
- (c) Surplus;
- (d) Undivided profits; and

(c) Reserve for contingencies and other capital reserves, excluding accrued dividends on preferred stock.

Sec. 7. Section 10, chapter 53, Laws of 1973 1st ex. sess. and RCW 30.42.100 are each amended to read as follows:

If the supervisor approves the application, he shall notify the alien bank of his approval and shall file certified copies of its charter, certificate or other authorization to do business with the secretary of state (~~and with the recording officer of the county in which the office is to be located~~). Upon such filing, the supervisor shall issue a certificate of authority stating that the alien bank is authorized to conduct business through a branch or agency in this state at the place designated in accordance with this chapter. Each such certificate shall be conspicuously displayed at all times in the place of business specified therein.

The office of the alien bank must commence business within six months after the issuance of the supervisor's certificate: PROVIDED, That the supervisor for good cause shown may extend such period for an additional time not to exceed three months.

Sec. 8. Section 6, chapter 95, Laws of 1982 and RCW 30.42.115 are each amended to read as follows:

(1) Any branch of an alien bank that received approval of its branch application pursuant to RCW 30.42.090, or that had filed its branch application pursuant to RCW 30.42.060, on or before July 27, 1978, and any approved branch of an alien bank that has designated Washington as its home state pursuant to section 5 of the International Banking Act of 1978, shall have the same power to solicit and accept deposits as a state bank chartered pursuant to Title 30 RCW, except that acceptance of initial deposits of less than one hundred thousand dollars shall be limited to deposits of the following:

(a) Any business entity, including any corporation, partnership, association, or trust, that engages in commercial activity for profit: PROVIDED, That there shall be excluded from this category any such business entity that is organized under the laws of any state or the United States, is majority-owned by United States citizens or residents, and has total assets, including assets of majority owned subsidiaries, of less than one million five hundred thousand dollars as of the date of the initial deposit;

(b) Any governmental unit, including the United States government, any state government, any foreign government and any political subdivision or agency of the foregoing;

(c) Any international organization which is composed of two or more nations;

(d) Any draft, check, or similar instrument for the transmission of funds issued by the branch;

(e) Any depositor who is not a citizen of the United States and who is not a resident of the United States at the time of the initial deposit;

(f) Any depositor who established a deposit account on or before July 1, 1982, and who has continuously maintained the deposit account since that date: PROVIDED, That this subparagraph (f) of this subsection shall be effective only until July 1, 1985;

(g) Any other person: PROVIDED, That the amount of deposits under this subparagraph (g) of this subsection may not exceed four percent of the average of the branch's deposits for the last thirty days of the most recent calendar quarter, excluding deposits in the branch of other offices, branches, agencies, or wholly owned subsidiaries of the alien bank.

(2) As used in subsection (1) of this section, "initial deposit" means the first deposit transaction between a depositor and the branch. Different deposit accounts that are held by a depositor in the same right and capacity may be added together for purposes of determining the dollar amount of that depositor's initial deposit.

(3) Approved branches of alien banks, other than those described in subsection (1) of this section, may solicit and accept deposits only from foreign governments and their agencies and instrumentalities, persons, or entities conducting business principally at their offices or establishments abroad, and such other deposits that:

(a) Are to be transmitted abroad;

(b) Consist of collateral or funds to be used for payment of obligations to the branch;

(c) Consist of the proceeds of collections abroad that are to be used to pay for exported or imported goods or for other costs of exporting or importing or that are to be periodically transferred to the depositor's account at another financial institution;

(d) Consist of the proceeds of extensions of credit by the branch; or

(e) Represent compensation to the branch for extensions of credit or services to the customer.

(4) A branch may accept deposits, subject to the limitations set forth in subsections (1) and (3) of this section, only upon the same terms and conditions (including nature and extent of such deposits, withdrawal, and the payment of interest thereon) that banks organized under the laws of this state which are members of the Federal Reserve System may accept such deposits. Any branch that is not subject to reserve requirements under regulations of the Federal Reserve Board shall maintain deposit reserves in this state, pursuant to rules adopted by the supervisor, to the same extent they must be maintained by banks organized under the laws of this state which are members of the Federal Reserve System.

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