

## CHAPTER 13

[House Bill No. 1702]

COMMUNITY RESIDENTIAL PROGRAMS FOR THE DEVELOPMENTALLY  
DISABLED—ADDITIONAL COMMUNITY BEDS—APPROPRIATION

AN ACT Relating to community residential programs for the developmentally disabled; making appropriations and authorizing expenditures for the operations of community residential programs for the developmentally disabled for the fiscal biennium beginning July 1, 1985, and ending June 30, 1987; creating a new section; and declaring an emergency.

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

NEW SECTION. Sec. 1. The sum of \$741,000 from the general fund—state and \$215,000 from the general fund—federal, or so much as may be necessary, is appropriated for the biennium ending June 30, 1987, to the department of social and health services to provide for the establishment and operations of 42 additional community beds and related services for developmentally disabled clients.

NEW SECTION. Sec. 2. The secretary of social and health services shall adopt rules to assure that fiscal commitments are not made by the department to persons requesting to develop new community residential services for the developmentally disabled beyond the appropriated fund level.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House February 11, 1986.

Passed the Senate February 27, 1986.

Approved by the Governor March 8, 1986.

Filed in Office of Secretary of State March 8, 1986.

## CHAPTER 14

[Engrossed Senate Bill No. 4527]

## COMMODITY SALES

AN ACT Relating to commodities and securities licensing; amending RCW 21.20.110; adding a new chapter to Title 21 RCW; prescribing penalties; and providing an effective date.

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

NEW SECTION. Sec. 1. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrator" means the person designated by the director in accordance with the provisions of RCW 21.20.460.

(2) "Board of trade" means any person or group of persons engaged in buying or selling any commodity or receiving any commodity for sale on

consignment, whether such person or group of persons is characterized as a board of trade, exchange, or other form of marketplace.

(3) "Director" means the director of the department of licensing.

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

(5) "Commodity sales representative" means, for the purposes of registration in accordance with this chapter, any person employed by or representing a commodity broker-dealer or issuer in making an offer, sale, or purchase of any commodity under any commodity contract or under commodity option.

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

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

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

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

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

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

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

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

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

(h) Any other person (other than a futures association) required to register with the commodity futures trading commission.

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

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

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

(16) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government, but does not include a contract market designated by the commodity futures trading commission or any clearinghouse thereof or a national securities exchange registered with the United States securities and exchange commission (or any employee, officer, or director of such contract market, clearinghouse, or exchange acting solely in that capacity).

(17) "Precious metal" means:

- (a) Silver, in either coin, bullion, or other form;

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

**NEW SECTION.** Sec. 2. Except as otherwise provided in sections 3 and 4 of this act, no person may sell or purchase or offer to sell or purchase any commodity under any commodity contract or under any commodity option or offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option.

**NEW SECTION.** Sec. 3. The prohibition in section 2 of this act does not apply to any transaction offered by and in which any of the following persons (or any employee, officer, or director thereof acting solely in that capacity) is the purchaser or seller:

- (1) A person registered with the commodity futures trading commission as a futures commission merchant or as a leverage transaction merchant but only as to those activities that require such registration;
- (2) A person affiliated with, and whose obligations and liabilities are guaranteed by, a person referred to in subsection (1) or (5) of this section;
- (3) A person who is a member of a contract market designated by the commodity futures trading commission (or any clearinghouse thereof);
- (4) A financial institution;
- (5) A person registered under chapter 21.20 RCW as a securities broker-dealer holding a general securities license whose activities require such registration; or
- (6) A person registered as a commodity broker-dealer or commodity sales representative in accordance with this chapter.

"Registered," for the purposes of this section, means holding a registration that has not expired, been suspended, or been revoked. The exemptions under this section shall not apply to any transaction or activity which is prohibited by the commodity exchange act or CFTC rule.

**NEW SECTION.** Sec. 4. (1) The prohibition in section 2 of this act does not apply to the following:

- (a) An account, agreement, or transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the commodity exchange act;
- (b) A commodity contract for the purchase of one or more precious metals which requires, and under which the purchaser receives, within seven calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased by such payment. However, for purposes of this paragraph, physical delivery is deemed to have occurred if, within such seven-day period, the quantity of precious metals purchased by the payment is delivered (whether in specifically segregated or fungible bulk form) into the possession of a depository (other than the seller) which is either (i) a financial institution, (ii)

a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission, (iii) a storage facility licensed or regulated by the United States or any agency thereof, or (iv) a depository designated by the director, and the depository (or other person which itself qualifies as a depository as aforesaid) issues and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser;

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

(d) A commodity contract under which the offeree or the purchaser is a person referred to in section 3 of this act, a person registered with the federal securities and exchange commission as a broker-dealer, an insurance company, an investment company as defined in the federal investment company act of 1940, or an employee pension and profit sharing or benefit plan (other than a self-employed individual retirement plan, or individual retirement account).

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

**NEW SECTION.** Sec. 5. (1) No person may engage in a trade or business or otherwise act as a commodity merchant unless the person (a) is registered or temporarily licensed with the commodity futures trading commission for each activity constituting the person as a commodity merchant and the registration or temporary license has not expired, been suspended, or been revoked; or (b) is exempt from such registration by virtue of the commodity exchange act or a CFTC rule.

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

NEW SECTION. Sec. 6. No person may directly or indirectly, in or in connection with the purchase or sale of, the offer to sell, the offer to enter into, or the entry into of, any commodity contract or commodity option subject to section 2, 3, 4(1)(b), or 4(1)(d) of this act:

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

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

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

(4) Misappropriate or convert the funds, security, or property of any other person.

NEW SECTION. Sec. 7. (1) The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of the person's employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

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

NEW SECTION. Sec. 8. (1) Sections 2, 5, and 6 of this act apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer to buy is made and accepted in this state.

(2) Sections 2, 5, and 6 of this act apply to persons who buy or offer to buy when an offer to buy is made in this state or an offer to sell is made and accepted in this state.

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

(4) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state

and has not previously been communicated to the offeror, orally or in writing, outside this state, or whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed, or at any post office in this state in the case of a mailed acceptance.

**NEW SECTION.** Sec. 9. (1) For the purpose of section 8 of this act, an offer to sell or to buy is not made in this state when the publisher circulates or there is circulated on his behalf in this state in any bona fide newspaper or other publication of general, regular, and paid circulation, which is not published in this state, an offer to sell or to buy that is reasonably calculated to solicit only persons outside this state and not to solicit persons in this state.

(2) For the purpose of section 8 of this act, an offer to sell or to buy is not made in this state when a radio or television program or other electronic communication originating outside this state is received in this state and the offer to sell or to buy is reasonably calculated to solicit only persons outside this state and not to solicit persons in this state.

**NEW SECTION.** Sec. 10. The director in the director's discretion:

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

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

(3) May publish information concerning any violation of this chapter or any rule or order under this chapter.

**NEW SECTION.** Sec. 11. (1) For purposes of any investigation or proceeding under this chapter, the director or any officer or employee designated by the director, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director finds to be relevant or material to the inquiry.

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

court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside the state.

**NEW SECTION.** Sec. 12. (1) If the director believes, whether or not based upon an investigation conducted under section 10 or 11 of this act, that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or any rule or order hereunder, the director may:

- (a) Issue a cease and desist order;
- (b) Initiate any of the actions specified in subsection (2) of this section;
- (c) Issue an order imposing a civil penalty in an amount which may not exceed ten thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings; or

(d) Take disciplinary action against a licensed person as specified in section 36 of this act.

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

- (a) A declaratory judgment;
- (b) An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this chapter or any rule or order of the director;

(c) An action for disgorgement; or

(d) An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

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

**NEW SECTION.** Sec. 13. (1) (a) Upon a proper showing by the director that a person has violated, or is about to violate, this chapter or any rule or order of the department, the superior court may grant appropriate legal or equitable remedies.

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

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

(ii) Disgorgement;

(iii) Declaratory judgment;

(iv) Restitution to investors wishing restitution; and



(v) Appointment of a receiver or conservator for the defendant or the defendant's assets.

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

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

(2) The court shall not require the director to post a bond in any official action under this chapter.

**NEW SECTION.** Sec. 14. A person who wilfully violates this chapter, or who wilfully violates a rule or order under this chapter, shall upon conviction be fined not more than twenty thousand dollars or imprisoned not more than ten years, or both. However, no person may be imprisoned for the violation of a rule or order if the person proves that he or she had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation.

**NEW SECTION.** Sec. 15. No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with a rule, order, or form adopted by the director, notwithstanding that the rule, order, or form may later be amended, or rescinded, or be determined by judicial or other authority to be invalid for any reason.

**NEW SECTION.** Sec. 16. The director shall appoint a competent person to administer this chapter, who shall be designated the administrator. The director shall delegate to the administrator such powers, subject to the authority of the director, as may be necessary to carry out this chapter. The administrator shall hold office at the pleasure of the director.

**NEW SECTION.** Sec. 17. Neither the director nor any employee of the director shall use any information which is filed with or obtained by the department which is not public information for personal gain or benefit, nor shall the director nor any employee of the director conduct any securities or commodity dealings whatsoever based upon any such information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate the information.

**NEW SECTION.** Sec. 18. (1) All information collected, assembled, or maintained by the director under this chapter is public information and is available for the examination of the public as provided by chapter 42.17 RCW except the following:

(a) Information obtained in private investigations pursuant to section 10 or 11 of this act;

(b) Information exempt from public disclosure under chapter 42.17 RCW; and

(c) Information obtained from federal or state agencies which may not be disclosed under federal or state law.

(2) The director in the director's discretion may disclose any information made confidential under subsection (1)(a) of this section to persons identified in section 19 of this act.

(3) No provision of this chapter either creates or derogates from any privilege which exists at common law, by statute, or otherwise when any documentary or other evidence is sought under subpoena directed to the director or any employee of the director.

**NEW SECTION.** Sec. 19. (1) To encourage uniform application and interpretation of this chapter and securities and commodities regulation and enforcement in general, the director and the employees of the director may cooperate, including bearing the expense of the cooperation, with the securities agencies or administrators of another jurisdiction, Canadian provinces, or territories or such other agencies administering this chapter or similar statutes, the commodity futures trading commission, the federal securities and exchange commission, any self-regulatory organization established under the commodity exchange act or the securities exchange act of 1934, any national or international organization of commodities or securities officials or agencies, and any governmental law enforcement agency.

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

- (a) Making joint examinations or investigations;
- (b) Holding joint administrative hearings;
- (c) Filing and prosecuting joint litigation;
- (d) Sharing and exchanging information and documents;
- (e) Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes and releases; and
- (f) Issuing and enforcing subpoenas at the request of the agency administering similar statutes in another jurisdiction, the securities agency of another jurisdiction, the commodity futures trading commission or the federal securities and exchange commission if the information sought would also be subject to lawful subpoena for conduct occurring in this state.

**NEW SECTION.** Sec. 20. (1) Every applicant for registration under this chapter shall file with the administrator in such form as the administrator by rule prescribes, an irrevocable consent appointing the administrator or successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or successor executor or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service may be made by leaving a copy of the process in the office of the administrator, but it is not effective unless (a) the plaintiff, who may be the administrator in a suit, action, or proceeding instituted by the administrator, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address on file

with the administrator, and (b) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

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

NEW SECTION. Sec. 21. (1) The director shall commence an administrative proceeding under this chapter by entering either a statement of charges or a summary order. The statement of charges or summary order may be entered without notice, without opportunity for hearing, and need not be supported by findings of fact or conclusions of law, but must be in writing.

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

(3) If no hearing is requested within the twenty-day period and none is ordered by the director, the statement of charges or summary order will automatically become a final order.

(4) If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

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

- (a) Appropriate notice to all interested persons;
- (b) Opportunity for hearing by all interested persons; and
- (c) Entry of written findings of fact and conclusions of law.

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

NEW SECTION. Sec. 22. Chapter 34.04 RCW applies to an administrative proceeding carried out by the director under this chapter unless otherwise provided in this chapter.

NEW SECTION. Sec. 23. It shall not be necessary to negate any of the exemptions, or exceptions from a definition, of this chapter in any complaint, information, or indictment, or any writ or proceeding brought under

this chapter; and the burden of proof of any such exemption or exception from a definition shall be on the party claiming the same.

**NEW SECTION.** Sec. 24. An applicant for licensing as a commodity broker-dealer or commodity sales representative shall file with the administrator or the designee of the administrator an application for licensing together with a consent to service of process pursuant to section 20 of this act. The application for licensing must contain the information that the administrator determines, by rule, is necessary or appropriate to facilitate the administration of this chapter.

**NEW SECTION.** Sec. 25. (1) An applicant for licensing shall pay a registration fee as follows:

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

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

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

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

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

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

(4) If an application is denied or withdrawn or the license is terminated by revocation, cancellation, or withdrawal, the administrator shall retain the fee paid.

**NEW SECTION.** Sec. 26. (1) The administrator may, by rule or order, impose an examination requirement upon:

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

(b) Any class of applicants.

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

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

**NEW SECTION.** Sec. 27. (1) The license of a commodity broker-dealer or commodity sales representative expires on December 31 of the year for which issued or at such other time as the administrator may by rule prescribe.

(2) The license of a commodity sales representative is only effective with respect to transactions effected as an employee or representative on

behalf of the commodity broker-dealer or issuer for whom the commodity sales representative is licensed.

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

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

NEW SECTION. Sec. 29. If the administrator determines, by rule, that one or more classifications of licenses as a commodity broker-dealer or commodity sales representative which are subject to limitations and conditions on the nature of the activities which may be conducted by those persons are consistent with the public interest and the protection of investors, the administrator may authorize the licensing of persons subject to specific limitations and conditions.

NEW SECTION. Sec. 30. For so long as a commodity broker-dealer or commodity sales representative is licensed under this chapter, it shall file an annual report, together with the annual fee specified in section 25(2) of this act, with the administrator or the administrator's designee at a time and including that information that the administrator determines, by rule or order, is necessary or appropriate.

NEW SECTION. Sec. 31. (1) (a) The administrator may, by rule, require a licensed commodity broker-dealer to maintain: (i) Minimum net capital; and (ii) a prescribed ratio between net capital and aggregate indebtedness. The minimum net capital and net capital-to-aggregate indebtedness ratio may vary with type or class of commodity broker-dealer.

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

(2) The administrator may, by rule, require the furnishing of fidelity bonds from commodity broker-dealers.

NEW SECTION. Sec. 32. A licensed commodity broker-dealer shall file financial and other reports that the administrator determines, by rule, are necessary or appropriate.

**NEW SECTION.** Sec. 33. (1) A licensed commodity broker-dealer or commodity sales representative shall make and maintain records that the administrator determines, by rule, are necessary or appropriate.

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

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

**NEW SECTION.** Sec. 34. If the information contained in any document filed with the administrator or the administrator's designee pursuant to section 24 or 32 of this act, except for those documents which the administrator, by rule or order, may exclude from this requirement, is or becomes inaccurate or incomplete in any material respect, the licensed person shall promptly file a correcting amendment, unless notification of the correction has been given under section 27(3) of this act.

**NEW SECTION.** Sec. 35. (1) The administrator, without prior notice, may examine the records and require copies of the records which a licensed commodity broker-dealer or commodity sales representative is required to make and maintain under section 33 of this act, within or without this state, in a manner reasonable under the circumstances. Commodity broker-dealers and commodity sales representatives must make their records available to the administrator in a readable form.

(2) The administrator may copy records or require a licensed person to copy records and provide the copies to the administrator in a manner reasonable under the circumstances.

(3) The administrator may impose reasonable fees for conducting an examination pursuant to this section.

**NEW SECTION.** Sec. 36. (1) The administrator may, by order, deny, suspend, or revoke any license, limit the activities which an applicant or licensed person may perform in this state, conserve any applicant or licensed person, or bar any applicant or licensed person from association with a licensed commodity broker-dealer, if the administrator finds that (a) the order is in the public interest and (b) that the applicant or licensed person or, in the case of a commodity broker-dealer any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the commodity broker-dealer:

(i) Has filed an application for licensing with the administrator or the designee of the administrator which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

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

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

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

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

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

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

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

(C) A United States postal service fraud order;

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

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

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

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

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

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

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

An order entered under this subsection shall be governed by subsection (2) of this section and sections 21 and 22 of this act.

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

(2) If the public interest or the protection of investors so requires, the administrator may, by order, summarily suspend a license or postpone the effective date of a license. Upon the entry of the order, the administrator shall promptly notify the applicant or licensed person, as well as the commodity broker-dealer with whom the person is or will be associated if the applicant or licensed person is a commodity sales representative, that an order has been entered and of the reasons therefore and that within twenty days after the receipt of a written request the matter will be set down for hearing. The provisions of sections 21 and 22 of this act apply with respect to all subsequent proceedings.

(3) If the administrator finds that any applicant or licensed person is no longer in existence or has ceased to do business as a commodity broker-dealer or commodity sales representative or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the administrator may, by order, cancel the application or license.

NEW SECTION. Sec. 37. The director may refer such evidence as may be available concerning violations of this chapter or of any rule or order under this chapter to the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, institute the appropriate criminal proceedings under this chapter.

NEW SECTION. Sec. 38. Nothing in this chapter limits the power of the state to punish a person for conduct which constitutes a crime by statute or at common law.

NEW SECTION. Sec. 39. The administration of this chapter shall be under the director of the department of licensing.

NEW SECTION. Sec. 40. In addition to specific authority granted elsewhere in this chapter, the director may make, amend, and rescind rules, forms, and orders as are necessary to carry out this chapter. Such rules or



forms shall include but need not be limited to rules defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with this chapter. The director may classify commodities, commodity contracts, and commodity options, persons, and matters within the director's jurisdiction. No rule or form may be made unless the director finds that the action is necessary or appropriate in the public interest or for the protection of the investors and consistent with the purposes intended by the policy and provisions of this chapter. The director may, by rule, establish a schedule of reasonable fees to carry out the purposes of this chapter, such fees to cover the estimated costs of enforcing this chapter.

**NEW SECTION.** Sec. 41. Nothing in this chapter shall impair, derogate from, or otherwise affect the authority or powers of the administrator under the securities act of Washington, chapter 21.20 RCW, or the application of any provision thereof to any person or transaction subject thereto.

**NEW SECTION.** Sec. 42. This chapter may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodities and to maximize coordination with federal and other states' law and the administration and enforcement thereof.

**NEW SECTION.** Sec. 43. 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. 44. Sections 1 through 42 of this act shall constitute a new chapter in Title 21 RCW.

Sec. 45. Section 11, chapter 282, Laws of 1959 as last amended by section 7, chapter 68, Laws of 1979 ex. sess. and RCW 21.20.110 are each amended to read as follows:

The director may by order deny, suspend, or revoke registration of any broker-dealer, salesperson, investment adviser salesperson, or investment adviser if the director finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(1) Has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false, or misleading with respect to any material fact;

(2) Has wilfully violated or wilfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act, or any provision of chapter 21.— RCW (sections 1 through 42 of this 1986 act) or any rule or order thereunder;

(3) Has been convicted, within the past five years, of any misdemeanor involving a security, or a commodity contract or commodity option as defined in section 1 of this 1986 act, or any aspect of the securities or investment commodities business, or any felony involving moral turpitude;

(4) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or investment commodities business;

(5) Is the subject of an order of the director denying, suspending, or revoking registration as a broker-dealer, salesperson, investment adviser, or investment adviser salesperson;

(6) Is the subject of an order entered within the past five years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesperson, or a commodity broker-dealer or sales representative, or the substantial equivalent of those terms as defined in this chapter(~~;~~ or is the subject of an order of the federal securities and exchange commission suspending or expelling him or her from a national securities exchange or national securities association registered under the securities exchange act of 1934) or by the commodity futures trading commission denying or revoking registration as a commodity merchant as defined in section 1 of this 1986 act, or is the subject of an order of suspension or expulsion from membership in or association with a self-regulatory organization registered under the securities exchange act of 1934 or the federal commodity exchange act, or is the subject of a United States post office fraud order; but (a) the director may not institute a revocation or suspension proceeding under this clause more than one year from the date of the order relied on, and (b) the director may not enter any order under this clause on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

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

(8) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature; but the director may not enter an order against a broker-dealer or investment adviser under this clause without a finding of insolvency as to the broker-dealer or investment adviser; ((or))

(9) Has not complied with a condition imposed by the director under RCW 21.20.100, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(10) Has failed to supervise reasonably his or her salespersons if he or she is a broker-dealer or his or her investment adviser salesperson if he or she is an investment adviser.

The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

NEW SECTION. Sec. 46. This act shall take effect on October 1, 1986.

Passed the Senate February 16, 1986.

Passed the House March 1, 1986.

Approved by the Governor March 8, 1986.

Filed in Office of Secretary of State March 8, 1986.

## CHAPTER 15

[Senate Bill No. 4512]

### IDENTICARDS

AN ACT Relating to the expiration of identicards; and amending RCW 46.20.117.

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

Sec. 1. Section 4, chapter 155, Laws of 1969 ex. sess. as last amended by section 3, chapter 1, Laws of 1985 1st ex. sess. and RCW 46.20.117 are each amended to read as follows:

(1) The department shall issue "identicards," containing a picture, to individuals for a fee of four dollars. However, the fee shall be the actual cost of production to recipients of continuing public assistance grants under Title 74 RCW who are referred in writing to the department by the secretary of social and health services. The fee shall be deposited in the highway safety fund. To be eligible, each applicant shall produce evidence as required by the rules adopted by the director that positively proves identity. The "identocard" shall be distinctly designed so that it will not be confused with the official driver's license. The identocard shall ~~((be valid for five years))~~ expire on the fifth anniversary of the applicant's birthdate after issuance.

(2) The department may cancel an "identocard" upon a showing by its records or other evidence that the holder of such "identocard" has committed a violation relating to "identicards" defined in RCW 46.20.336.

Passed the Senate February 15, 1986.

Passed the House March 1, 1986.

Approved by the Governor March 8, 1986.

Filed in Office of Secretary of State March 8, 1986.

## CHAPTER 16

[House Bill No. 1599]

### SNOWMOBILES—REGISTRATION—ADVISORY COMMITTEE

AN ACT Relating to snowmobiles; and amending RCW 46.10.030, 46.10.040, and 46.10.220.

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