

## CHAPTER 244

[Substitute House Bill No. 1525]  
DEBENTURE COMPANIES

AN ACT Relating to debenture companies; amending RCW 21.20.700, 21.20.705, 21.20.710, 21.20.725, 21.20.732, 21.20.734, and 21.20.340; adding new sections to chapter 21.20 RCW; creating a new section; and providing an effective date.

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

Sec. 1. Section 5, chapter 171, Laws of 1973 1st ex. sess. and RCW 21.20.700 are each amended to read as follows:

(1) In addition to the authority conferred in RCW 21.20.370 the director at any time during a public offering whether registered or not, or one year thereafter or at any time that any debt or equity securities which have been sold to the public pursuant to registration under this chapter (~~((21:20 RCW))~~) are still an outstanding obligation of the issuer: (~~((+))~~) (a) May investigate (~~(and examine)~~) the issuer for the purpose of ascertaining whether there have been violations of this chapter (~~((21:20 RCW, regulations thereunder))~~), rules adopted under this chapter, or any conditions imposed by the director expressed in (~~((the))~~) any permit for (~~((the))~~) a public offering or otherwise; (~~((2))~~) (b) may visit and examine the issuer for the purpose of assuring compliance with this chapter, rules adopted under this chapter, or any conditions imposed by the director whether expressed in the permit for the public offering or otherwise; (c) may require or permit any person to file a statement in writing, under oath or otherwise as the director may determine, as to all the facts and circumstances concerning the matter to be investigated; and (~~((3))~~) (d) may publish information concerning any violation of this chapter, or any rule (~~((or))~~), order (~~((hereunder))~~), or condition adopted or imposed under this chapter.

(~~((Said))~~) (2) The examination (~~((and))~~) or investigation, whether conducted within or without this state, shall include the right to reasonably examine the issuer's books, accounts, records, files, papers, feasibility reports, other pertinent information and obtain written permission from the issuer to consult with the independent accountant who audited the financial statements of the issuer. The reasonable costs of (~~((such))~~) the examination shall be paid by the issuer to the director (~~((PROVIDED, HOWEVER,))~~). The issuer shall not be liable for the costs of second or subsequent examinations during a calendar year.

Sec. 2. Section 6, chapter 171, Laws of 1973 1st ex. sess. as last amended by section 1, chapter 421, Laws of 1987 and RCW 21.20.705 are each amended to read as follows:

When used in this chapter, unless the context otherwise requires:

(1) "Debenture company" means an issuer of any note, debenture, or other debt obligation for money used or to be used as capital or operating

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

(2) "Acquiring party" means ~~((the))~~ any person ((acquiring control of a debenture company through the purchase of stock)) becoming or attempting to become a controlling person under RCW 21.20.717.

Sec. 3. Section 7, chapter 171, Laws of 1973 1st ex. sess. and RCW 21.20.710 are each amended to read as follows:

~~((No))~~ (1) Except as provided in subsection (2) of this section, a debenture company shall not offer for sale any security other than capital stock ((which)) if such sale would result in the violation of the following ((paid=in)) capital requirements:

~~((+))~~ (a) For outstanding securities other than capital stock totaling from \$1 to ((~~\$500,000 there must be at least \$50,000 paid=in capital; said paid=in capital must be in the form of cash or comparable liquid assets as defined by rules and regulations; and~~

~~(2) For outstanding securities other than capital stock totaling \$500,001 to \$750,000 there must be at least \$75,000 paid=in capital; said paid=in capital must be in the form of cash or comparable liquid assets as defined by rules and regulations; and~~

~~(3) For outstanding securities other than capital stock totaling \$750,001 to \$1,000,000 there must be at least \$100,000 paid=in capital; said paid=in capital must be in the form of cash or comparable liquid assets as defined by rules and regulations))~~ \$1,000,000, a debenture company shall have a net worth of at least \$200,000.

~~(b) In addition to the requirement((s)) set forth in ((subsections (+); (2), and (3) of this section, to the extent that))~~ (a) of this subsection:

(i) A debenture company ((has)) with outstanding securities other than capital stock totaling in excess of \$1,000,000((; the debenture company's paid=in capital, equity reserves, and undivided profits)) but not over \$100,000,000 shall ((be)) have additional net worth equal to at least ((five)) ten percent of the outstanding securities in excess of \$1,000,000((; but not over \$10,000,000, and two and one-half percent additional paid=in capital; equity reserves, and undivided profits for all securities in excess of \$10,000,000. PROVIDED, That)) but not over \$100,000,000; and

(ii) A debenture company with outstanding securities other than capital stock totalling in excess of \$100,000,000 shall have additional net worth

equal to at least five percent of the outstanding securities in excess of \$100,000,000.

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

(2) The director may for good cause in the interest of the existing investors, waive ((this requirement. PROVIDED FURTHER, That)) the requirements of subsection (1) of this section. If the director waives the minimum requirements set forth in subsection (1) of this section, ((any debenture company taking advantage of this waiver shall set aside into its equity reserves and undivided profits, at least five percent of the net earnings of each year;)) the debenture company shall increase its new [net] worth or liquidity in accordance with conditions imposed by the director until such time as ((they)) the debenture company can meet the requirements of this section without waiver from the director.

Sec. 4. Section 10, chapter 171, Laws of 1973 1st ex. sess. and RCW 21.20.725 are each amended to read as follows:

(1) A debenture company shall not issue any debenture payable on demand nor pay or accrue interest beyond the maturity date of any debenture.

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

((2)) (3) Each certificate of debenture or an application for a certificate shall specify on the face of the certificate or application therefor, in twelve point bold face type or larger, that such debenture is not insured by the United States government, the state of Washington, or any agency thereof.

Sec. 5. Section 7, chapter 421, Laws of 1987 and RCW 21.20.732 are each amended to read as follows:

(1) The director may issue and serve upon a debenture company a notice of charges if in the opinion of the director any debenture company:

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

(b) Is violating or has violated ((the law)) section 8, 9, or 11 of this 1988 act, ((a)) or any rule ((or)), order, or ((any)) condition ((imposed in writing by the director in connection with the granting of any application or other request by the debenture company or any written agreement made with the director)) adopted or imposed thereunder; or

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

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or act or acts or the practice or practices and shall fix a time and place at which a hearing will be held to determine

whether an order to cease and desist should issue against the debenture company. The hearing shall be set in accordance with chapter 34.04 RCW.

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

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

Sec. 6. Section 8, chapter 421, Laws of 1987 and RCW 21.20.734 are each amended to read as follows:

Whenever the director determines that ~~((the acts))~~ any violation, act, or practice specified in RCW 21.20.732 or ~~((their))~~ its continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the debenture company or to otherwise seriously prejudice the interests of its security holders, the director may also issue a temporary order requiring the debenture company and its directors, officers, controlling persons, employees, and agents to cease and desist from the violation, act, or practice. The order shall become effective upon service on the debenture company and shall remain effective ~~((unless set aside, limited, or suspended by a court in proceedings under RCW 21.20.732))~~ pending the completion of the administrative proceedings under the notice and until such time as the director dismisses the charges specified in the notice or until the effective date of a cease and desist order issued against the debenture company under RCW 21.20.732.

NEW SECTION. Sec. 7. Nothing in RCW 21.20.700 through 21.20.750 and sections 8 through 16 of this act limits the application of other provisions of this chapter.

NEW SECTION. Sec. 8. (1) A debenture company shall not, without prior written consent of the director:

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

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

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

**NEW SECTION.** Sec. 9. (1) Except as provided in subsection (3) of this section, a debenture company shall not loan or invest in a loan or loans to any one borrower more than two and one-half percent of the debenture company's assets without prior written consent of the director.

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

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

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

**NEW SECTION.** Sec. 10. (1) Any debt due a debenture company on which interest is one year or more past due and unpaid shall be considered a bad debt and shall be charged off the books of the debenture company unless:

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

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

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

**NEW SECTION.** Sec. 11. (1) A debenture company shall not invest more than twenty percent of its assets in unsecured loans.

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

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

**NEW SECTION.** Sec. 12. Every debenture company shall notify each of its debenture holders of the maturity date of the holder's debenture by sending a notice to the holder not more than forty-five days nor less than fifteen days prior to the maturity date of the debenture at the holder's last known address.

**NEW SECTION.** Sec. 13. A debenture company shall send annually and in a timely manner either a copy of its annual financial statements or a summary of its financial statements for the most recent fiscal year to each debenture holder at the debenture holder's last known address. If a summary is sent, the debenture company shall make available to any debenture holder upon request a copy of its complete annual financial statements for its most recent fiscal year.

**NEW SECTION.** Sec. 14. The director may adopt rules to govern examinations and reports of debenture companies and to otherwise govern the administration of debenture companies under this chapter.

**NEW SECTION.** Sec. 15. Every debenture company shall make and keep such accounts and other records as shall be prescribed by the director. All records so required shall be preserved for three years unless the director prescribes otherwise for particular types of records. All the records of a debenture company are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the director, within or without this state, as the director deems necessary or appropriate in the public interest or for protection of investors.

**NEW SECTION.** Sec. 16. (1) Examination reports and information obtained by the director or the director's representatives in conducting examinations pursuant to RCW 21.20.700 shall not be subject to public disclosure under chapter 42.17 RCW.

(2) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and

otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the director.

Sec. 17. Section 24, chapter 68, Laws of 1979 ex. sess. as last amended by section 2, chapter 90, Laws of 1986 and RCW 21.20.340 are each amended to read as follows:

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

(1) For registration of all securities other than investment trusts and securities registered by coordination the fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-twentieth of one percent for any excess over one hundred thousand dollars which are to be offered during that year: PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty dollar fee renew for one additional twelve-month period only the unsold portion for which the registration fee has been paid.

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

(3) For registration by coordination, other than investment trusts, the initial filing fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-fortieth of one percent for any excess over one hundred thousand dollars for the first twelve-month period plus one hundred dollars for each additional twelve months in which the same offering is continued.

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

(5) For filing an amended offering circular after the initial registration permit has been granted the fee shall be ten dollars.

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

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

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

(9) If a registration of a broker-dealer, salesperson, investment adviser, or investment adviser salesperson is not renewed on or before December 31st of each year the renewal is delinquent. The director by rule or order may set and assess a fee for delinquency not to exceed two hundred dollars. Acceptance by the director of an application for renewal after December 31st is not a waiver of delinquency. A delinquent application for renewal will not be accepted for filing after March 1st.

(10) (a) For the transfer of a broker-dealer license to a successor, the fee shall be fifty dollars.

(b) For the transfer of a salesperson license from a broker-dealer or issuer to another broker-dealer or issuer, the transfer fee shall be twenty-five dollars.

(c) For the transfer of an investment adviser salesperson license from an investment adviser to another investment adviser, the transfer fee shall be twenty-five dollars.

(d) For the transfer of an investment adviser license to a successor, the fee shall be fifty dollars.

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

(12) For filing of notification of claim of exemption from registration pursuant to RCW 21.20.310(11), as now or hereafter amended, the fee shall be fifty dollars for each filing.

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

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

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

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

**NEW SECTION.** Sec. 18. 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. 19. Sections 7 through 16 of this act are added to chapter 21.20 RCW and shall be codified within the subchapter "ADDITIONAL PROVISIONS".

**NEW SECTION.** Sec. 20. Sections 1 through 16 of this act shall take effect July 1, 1988.



**NEW SECTION.** Sec. 21. The director of licensing may take whatever action is necessary to implement this act on its effective date. This act applies to any person, individual, corporation, partnership, or association whether or not in existence on or prior to July 1, 1988. The director of licensing may adopt transition rules in order to allow debenture companies in existence prior to July 1, 1988, a reasonable amount of time to comply with the requirements of this act. Transition rules shall require compliance with this act not later than January 1, 1990.

Passed the House February 13, 1988.

Passed the Senate March 5, 1988.

Approved by the Governor March 24, 1988.

Filed in Office of Secretary of State March 24, 1988.

## CHAPTER 245

[Senate Bill No. 6271]

### HOME HEALTH, HOSPICE, AND HOME CARE SERVICES

AN ACT Relating to care provided in the home; amending RCW 70.126.010, 48.21.220, 48.21A.090, and 48.44.320; adding a new chapter to Title 70 RCW; adding a new section to chapter 70.126 RCW; creating a new section; repealing RCW 70.126.040 and 70.126.050; prescribing penalties; making an appropriation; providing an effective date; and providing an expiration date.

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

**NEW SECTION.** Sec. 1. The legislature finds that the availability of home health, hospice, and home care services has improved the quality of life for Washington's citizens. However, the delivery of these services bring risks because the in-home location of services makes their actual delivery virtually invisible. Also, the complexity of products, services, and delivery systems in today's health care delivery system challenges even informed and healthy individuals. The fact that these services are delivered to the state's most vulnerable population, the ill or disabled who are frequently also elderly, adds to these risks.

It is the intent of the legislature to protect the citizens of Washington state by licensing home health, hospice, and home care agencies. This legislation is not intended to unreasonably restrict entry into the in-home service marketplace. Standards established are intended to be the minimum necessary to ensure safe and competent care, and should be demonstrably related to patient safety and welfare.

## PART I

### GENERAL PROVISIONS

**NEW SECTION.** Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Branch office" means a location or site from which a home health, hospice, or home care agency provides services within a portion of the total