

guardian rather than the principal. The guardian has the same power the principal would have had if the principal were not disabled or incompetent, to revoke, suspend or terminate all or any part of the power of attorney or agency.

(2) Persons shall place reasonable reliance on any determination of disability or incompetence as provided in the instrument that specifies the time and the circumstances under which the power of attorney document becomes effective.

(3) A principal may authorize his or her attorney-in-fact to provide informed consent for health care decisions on the principal's behalf. Unless he or she is the spouse, or adult child or brother or sister of the principal, none of the following persons may act as the attorney-in-fact for the principal: Any of the principal's physicians, the physicians' employees, or the owners, administrators, or employees of the health care facility where the principal resides or receives care. This authorization is subject to the same limitations as those that apply to a guardian under RCW 11.92.040 (3)(a) through (d).

NEW SECTION. Sec. 2. A new section is added to chapter 11.94 RCW to read as follows:

The durable power of attorney provided for under this chapter shall continue in effect until revoked or terminated by the principal, by a court-appointed guardian, or by court order.

NEW SECTION. Sec. 3. A new section is added to chapter 11.94 RCW to read as follows:

(1) A durable power of attorney executed pursuant to chapter 11.94 RCW before the effective date of this section that specifically authorizes an attorney-in-fact to make decisions relating to the health care of the principal shall be deemed valid, except for the exemptions provided for in section 1(3) of this act.

(2) Nothing in this chapter affects the validity of a decision made under a durable power of attorney executed pursuant to chapter 11.94 RCW before the effective date of this section.

Passed the House March 15, 1989.

Passed the Senate April 6, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 212

[Substitute House Bill No. 1858]

LENDING INSTITUTIONS—FEDERAL SMALL BUSINESS LOAN GUARANTY PROGRAM—AUTHORIZATION TO PARTICIPATE

AN ACT Relating to the use of federal loan funds; adding a new chapter to Title 31 RCW; creating a new section; prescribing penalties; and making an appropriation.

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

NEW SECTION. Sec. 1. The legislature finds and declares that small and moderate-size companies can enhance their access to working capital and to capital for acquiring and equipping commercial and industrial facilities by using the United States small business administration national small business loan program known as the 7(a) loan guaranty program. The 7(a) loan guaranty program provides financing to small firms needing working capital and longer term financing for equipment and other fixed assets. Such loans can be made to small businesses by nondepository lenders and guaranteed by the small business administration only if the state provides for the on-going regulation and examination of such entities.

It is the intent of the legislature that the supervisor of banking license, regulate, and subject to on-going examination, nondepository lenders for the purpose of allowing such lenders to participate in the small business administration's 7(a) loan guaranty program.

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

(1) "Licensee" means a Washington corporation licensed under the terms of this chapter.

(2) "Supervisor" means the state supervisor of banking.

NEW SECTION. Sec. 3. (1) The supervisor shall administer this chapter. The supervisor may issue orders and adopt rules that, in the opinion of the supervisor, are necessary to execute, enforce, and effectuate the purposes of this chapter. Rules to enforce the provisions of this chapter shall be adopted under the administrative procedure act, chapter 34.05 RCW.

(2) Whenever the supervisor issues an order or a license under this chapter, the supervisor may impose conditions that are necessary, in the opinion of the supervisor, to carry out the purposes of this chapter.

(3) An application filed with the supervisor under this chapter shall be in such a form and contain such information as the supervisor may require.

(4) Any change of control of a licensee shall be subject to the approval of the supervisor. Such approval shall be subject to the same criteria as the criteria for approval of the original license. For purposes of this subsection, "change of control" means directly or indirectly, alone or in concert with others, to own, control, or hold the power to vote ten percent or more of the outstanding voting stock of a licensee or the power to elect or control the election of a majority of the board of directors of the licensee.

NEW SECTION. Sec. 4. (1) A licensee may participate in the 7(a) loan guaranty program of the small business administration pursuant to section 7(a) of the federal small business investment act of 1958, 15 U.S.C. Sec. 636(a), or any other government program for which the licensee is eligible and which has as its function the provision or facilitation of financing or management assistance to business firms. If a licensee participates in a

program referred to in this section, the licensee shall comply with the requirements of that program.

(2) A licensee may be incorporated under either the Washington business corporation act or the Washington nonprofit corporation act. In addition to the powers and privileges provided to a licensee by this chapter, a licensee has all the powers and privileges conferred by its incorporating statute which are not inconsistent with or limited by this chapter.

NEW SECTION. Sec. 5. After a review of information regarding the directors, officers, and controlling persons of the applicant for a license, a review of the applicant's business plan, including at least three years of detailed financial projections and other relevant information, and a review of such additional information as is considered relevant by the supervisor, the supervisor shall approve an application for a license if, and only if, the supervisor determines that:

(1) The applicant is capitalized in an amount that is not less than five hundred thousand dollars and that such sum is adequate for the applicant to transact business as a nondepository 7(a) lender and that in evaluating the capital position of the applicant the supervisor may consider and include the net worth of any corporate shareholder of the applicant corporation if the shareholder guarantees the liabilities of the applicant: **PROVIDED**, That such corporate shareholder be subject to the reporting requirements of section 8 of this act;

(2) Each director, officer, and controlling person of the applicant is of good character and sound financial standing; that the directors and officers of the applicant are competent to perform their functions with respect to the applicant; and that the directors and officers of the applicant are collectively adequate to manage the business of the applicant as a nondepository 7(a) lender;

(3) The business plan of the applicant will be honestly and efficiently conducted in accordance with the intent and purposes of this chapter; and

(4) The proposed activity possesses a reasonable prospect for success.

NEW SECTION. Sec. 6. (1) Either by itself or in concert with a director, officer, principal shareholder, or affiliate, or with another licensee, a licensee shall not hold control of a business firm to which it has made a loan under section 7(a) of the federal small business investment act of 1958, 15 U.S.C. Sec. 636(a), except that, to the extent necessary to protect the licensee's interest as creditor of the business firm, a licensee that provides financing assistance to a business firm may acquire and hold control of that business firm. Unless the supervisor approves a longer period, a licensee holding control of a business firm under this section shall divest itself of the interest which constitutes holding control as soon as practicable or within five years after acquiring that interest, whichever is sooner.

(2) For the purposes of subsection (1) of this section, "hold control" means alone or in concert with others:

(a) Ownership, directly or indirectly, of record or beneficially, of voting securities greater than:

(i) For a business firm with outstanding voting securities held by fewer than fifty shareholders, forty percent of the outstanding voting securities;

(ii) For a business firm with outstanding voting securities held by fifty or more shareholders, twenty-five percent of the outstanding voting securities;

(b) Being able to elect or control the election of a majority of the board of directors.

NEW SECTION. Sec. 7. (1) The supervisor is authorized to charge a fee for the estimated direct and indirect costs of the following:

(a) An application for a license and the investigation thereof;

(b) An application for approval to acquire control of a licensee and the investigation thereof;

(c) An application for approval for a licensee to merge with another corporation, an application for approval for a licensee to purchase all or substantially all of the business of another person, or an application for approval for a licensee to sell all or substantially all of its business or of the business of any of its offices to another licensee and the investigation thereof;

(d) An annual license;

(e) An examination by the supervisor of a licensee or a subsidiary of a licensee. Excess examiner time shall be billed at a reasonable rate established by rule.

(2) A fee for filing an application with the supervisor shall be paid at the time the application is filed with the supervisor.

(3) All such fees shall be deposited in the banking examination fund and administered consistent with the provisions of RCW 43.19.095.

NEW SECTION. Sec. 8. (1) A licensee shall keep books, accounts, and other records in such a form and manner as the supervisor may require. These records shall be kept at such a place and shall be preserved for such a length of time as the supervisor may specify.

(2) Not more than ninety days after the close of each calendar year or within a period specified by the supervisor, a licensee shall file with the supervisor a report containing the following:

(a) Financial statements, including the balance sheet, the statement of income or loss, the statement of changes in capital accounts and the statement of changes in financial position; and

(b) Other information that the supervisor may require.

(3) Each licensee shall provide for a loan loss reserve sufficient to cover projected loan losses which are not guaranteed by the United States government or any agency thereof.

NEW SECTION. Sec. 9. (1) The supervisor shall examine each licensee not less than once each year.

(2) The supervisor may with or without notice and at any time during regular business hours examine a licensee or a subsidiary of a licensee.

(3) A director, officer, or employee of a licensee or of a subsidiary of a licensee being examined by the supervisor or a person having custody of any of the books, accounts, or records of the licensee or of the subsidiary shall otherwise facilitate the examination so far as it is in his or her power to do so.

(4) If in the supervisor's opinion it is necessary in the examination of a licensee, or of a subsidiary of a licensee, the supervisor may retain any certified public accountant, attorney, appraiser, or other person to assist the supervisor. The licensee being examined shall pay the fees of a person retained by the supervisor under this subsection.

NEW SECTION. Sec. 10. If the supervisor denies an application, the supervisor shall provide the applicant with a written statement explaining the basis for the denial.

NEW SECTION. Sec. 11. (1) The supervisor shall adopt rules to enforce the intent and purposes of this chapter. Such rules shall include, but need not be limited to, the following:

- (a) Disclosure of conflicts of interest;
- (b) Prohibition of false statements made to the supervisor on any form required by the supervisor or during any examination requested by the supervisor; or
- (c) Prevention of fraud and undue influence by a licensee.

(2) A violation of any provision of this chapter or any rule of the supervisor adopted under this chapter by an agent, employee, officer, or director of the licensee shall be punishable by a fine, established by the supervisor, not to exceed one hundred dollars for each offense. Each day's continuance of the violation shall be a separate and distinct offense. Each such fine shall be credited to the bank examination fund.

NEW SECTION. Sec. 12. If, in the opinion of the supervisor, a person violates or there is reasonable cause to believe that a person is about to violate any provision of this chapter or any rule adopted under this chapter, the supervisor may bring an action in the appropriate court to enjoin the violation or to enforce compliance. Upon a proper showing, a restraining order, preliminary or permanent injunction, shall be granted, and a receiver or a conservator may be appointed for the defendant or the defendant's assets.

NEW SECTION. Sec. 13. The supervisor may deny, suspend, or revoke a license if the applicant or holder violates any provision of this chapter or any rules promulgated pursuant to this chapter.

NEW SECTION. Sec. 14. Nothing in section 7 of this act shall be construed to prevent repayment to the general fund of the twenty-five thousand dollar start-up appropriation set forth in section 15 of this act.

NEW SECTION. Sec. 15. The sum of twenty-five thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the general fund to the bank examination fund for the regulatory purposes of this act.

NEW SECTION. Sec. 16. If any provision of this act or its application to any person or circumstance is held invalid or, if in the written opinion of the small business administration, is contrary to the intent and purposes of the 7(a) loan guaranty program, the supervisor shall not enforce such provision but the remainder of the act or the application of the provision to other persons or circumstances shall not be affected.

NEW SECTION. Sec. 17. Sections 1 through 13 of this act shall constitute a new chapter in Title 31 RCW.

Passed the House March 13, 1989.

Passed the Senate April 5, 1989.

Approved by the Governor May 3, 1989.

Filed in Office of Secretary of State May 3, 1989.

CHAPTER 213

[House Bill No. 2037]

MT. ST. HELENS RECOVERY OPERATIONS—EXTENSION JUNE 30, 1995

AN ACT Relating to Mt. St. Helens recovery operations; and amending RCW 43.21A.500, 43.21C.500, 75.20.300, 79.90.160, 89.16.500, and 90.58.500.

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

Sec. 1. Section 7, chapter 7, Laws of 1982 as last amended by section 3, chapter 307, Laws of 1985 and RCW 43.21A.500 are each amended to read as follows:

Emergency recovery operations from the Mt. St. Helens eruption authorized by RCW 36.01.150, 43.01.200, and 43.01.210, other than the sediment retention structure to be built on the North Fork Toutle river by the United States army corps of engineers, may be exempted by the applicable county legislative authority from the requirements related to water and flood control under the department of ecology, for operations within such county: **PROVIDED**, That the applicable legislative authority shall promptly notify the department of ecology within five days of the emergency action taken and the emergent nature of the problem. The notification shall be made to the water resources district supervisor of the southwest region of the department of ecology.

This section shall expire on June 30, (~~1990~~) 1995.