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SENATE BILL 5017

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State of Washington

55th Legislature

1997 Regular Session

By Senator Roach; by request of Statute Law Committee

Read first time 01/13/97. Referred to Committee on Financial Institutions, Insurance & Housing.

1 AN ACT Relating to correcting or removing deficiencies, conflicts,  
2 or obsolete provisions affecting the department of financial  
3 institutions; amending RCW 21.20.740, 21.30.010, 30.04.010, 31.45.160,  
4 32.04.020, and 33.44.020; and repealing RCW 30.04.270, 30.04.290,  
5 30.04.900, 30.08.120, 30.12.050, 30.43.010, 30.43.020, 30.43.045,  
6 31.12.095, 31.12.355, 32.04.040, 32.12.060, 32.20.290, and 33.04.010.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 **Sec. 1.** RCW 21.20.740 and 1979 ex.s. c 68 s 42 are each amended to  
9 read as follows:

10 (1) Every issuer which has registered securities under Washington  
11 state securities law shall file with the director reports described in  
12 subsection (2) of this section. Such reports shall be filed with the  
13 director not more than one hundred twenty days (unless extension of  
14 time is granted by the director) after the end of the issuer's fiscal  
15 year.

16 (2) The reports required by subsection (1) of this section shall  
17 contain such information, statements and documents regarding the  
18 financial and business conditions of the issuer and the number and  
19 description of securities of the issuer held by its officers, directors

1 and controlling shareholders and shall be in such form and filed at  
2 such annual times as the director may require by rule or order. For  
3 the purposes of RCW 21.20.720, 21.20.740 and 21.20.745, a "controlling  
4 shareholder" shall mean a person who is directly or indirectly the  
5 beneficial holder of more than ten percent of the outstanding voting  
6 securities of an issuer.

7 (3)(a) The reports described in subsection (2) of this section  
8 shall include financial statements corresponding to those required  
9 under the provisions of RCW 21.20.210 and to the issuer's fiscal year  
10 setting forth in comparative form the corresponding information for the  
11 preceding year and such financial statements shall be furnished to all  
12 shareholders within one hundred twenty days (unless extension of time  
13 is granted by the director) after the end of such year, but at least  
14 twenty days prior to the date of the annual meeting of shareholders.

15 (b) Such financial statements shall be prepared as to form and  
16 content in accordance with rules (~~and regulations~~) prescribed by the  
17 director and shall be audited (except that financial statements filed  
18 prior to July 1, 1976 need be audited only as to the most recent fiscal  
19 year) by an independent certified public accountant who is not an  
20 employee, officer or member of the board of directors of the issuer or  
21 a holder of securities of the issuer. The report of such independent  
22 certified public accountant shall be based upon an audit made in  
23 accordance with generally accepted auditing standards with no  
24 limitations on its scope.

25 (4) The director may by rule or order exempt any issuer or class of  
26 issuers from this section for a period of up to one year if the  
27 director finds that the filing of any such report by a specific issuer  
28 or class of issuers is not necessary for the protection of investors  
29 and the public interest.

30 (5) For the purposes of RCW 21.20.740 and 21.20.745, "issuer" does  
31 not include issuers of:

32 (a) Securities registered by the issuer pursuant to section 12 of  
33 the securities and exchange act of 1934 as now or hereafter amended or  
34 exempted from registration under that act on a basis other than the  
35 number of shareholders and total assets.

36 (b) Securities which are held of record by less than two hundred  
37 persons or whose total assets are less than \$500,000 at the close of  
38 the issuer's fiscal year.

1 (6) Any issuer who has been required to file under RCW 21.20.740  
2 and who subsequently becomes excluded from the definition of "issuer"  
3 by virtue of RCW 21.20.740(5) must file a certification setting forth  
4 the basis on which they claim to no longer be an issuer within the  
5 meaning of this ((act)) chapter.

6 (7) The reports filed under this section shall be filed and  
7 maintained by the director for public inspection. Any person is  
8 entitled to receive copies thereof from the director upon payment of  
9 the reasonable costs of duplication.

10 (8) Filing of reports pursuant to this section shall not constitute  
11 an approval thereof by the director or a finding by the director that  
12 the report is true, complete and not misleading. It shall be unlawful  
13 to make, or cause to be made, to any prospective purchaser, seller,  
14 customer or client, any representation inconsistent with this  
15 subsection.

16 **Sec. 2.** RCW 21.30.010 and 1994 c 92 s 5 are each amended to read  
17 as follows:

18 Unless the context clearly requires otherwise, the definitions in  
19 this section apply throughout this chapter.

20 (1) "Administrator" means the person designated by the director in  
21 accordance with the provisions of RCW ((21.20.460)) 21.30.390.

22 (2) "Board of trade" means any person or group of persons engaged  
23 in buying or selling any commodity or receiving any commodity for sale  
24 on consignment, whether such person or group of persons is  
25 characterized as a board of trade, exchange, or other form of  
26 marketplace.

27 (3) "Director" means the director of financial institutions.

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

32 (5) "Commodity sales representative" means, for the purposes of  
33 registration in accordance with this chapter, any person authorized to  
34 act and acting for a commodity broker-dealer in effecting or attempting  
35 to effect a transaction in a commodity contract or commodity option.

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

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

4 (8) "CFTC rule" means any rule, regulation, or order of the  
5 commodity futures trading commission in effect on October 1, 1986, and  
6 all subsequent amendments, additions, or other revisions thereto,  
7 unless the administrator, within ten days following the effective date  
8 of any such amendment, addition, or revision, disallows the application  
9 thereof by rule or order.

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

24 (10) "Commodity contract" means any account, agreement, or contract  
25 for the purchase or sale, primarily for speculation or investment  
26 purposes and not for use or consumption by the offeree or purchaser, of  
27 one or more commodities, whether for immediate or subsequent delivery  
28 or whether delivery is intended by the parties, and whether  
29 characterized as a cash contract, deferred shipment or deferred  
30 delivery contract, forward contract, futures contract, installment or  
31 margin contract, leverage contract, or otherwise. Any commodity  
32 contract offered or sold shall, in the absence of evidence to the  
33 contrary, be presumed to be offered or sold for speculation or  
34 investment purposes. A commodity contract shall not include any  
35 contract or agreement which requires, and under which the purchaser  
36 receives, within twenty-eight calendar days from the payment in good  
37 funds of any portion of the purchase price, physical delivery of the  
38 total amount of each commodity to be purchased under the contract or  
39 agreement.

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

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

- 10 (a) Futures commission merchant;
- 11 (b) Commodity pool operator;
- 12 (c) Commodity trading advisor;
- 13 (d) Introducing broker;
- 14 (e) Leverage transaction merchant;
- 15 (f) An associated person of any of the foregoing;
- 16 (g) Floor broker; and
- 17 (h) Any other person (other than a futures association) required to  
18 register with the commodity futures trading commission.

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

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

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

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

37 (17) "Precious metal" means:

- 38 (a) Silver, in either coin, bullion, or other form;
- 39 (b) Gold, in either coin, bullion, or other form;

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

3 **Sec. 3.** RCW 30.04.010 and 1996 c 2 s 2 are each amended to read as  
4 follows:

5 ~~((Certain terms used in this title shall have the meanings ascribed~~  
6 ~~in this section.)) Unless the context clearly requires otherwise, the  
7 definitions in this section apply throughout this title.~~

8 (1) "Banking" shall include the soliciting, receiving or accepting  
9 of money or its equivalent on deposit as a regular business.

10 (2) "Bank," unless a different meaning appears from the context,  
11 means any corporation organized under the laws of this state engaged in  
12 banking, other than a trust company, savings association, or a mutual  
13 savings bank.

14 (3) "Branch" means any established office of deposit, domestic or  
15 otherwise, maintained by any bank or trust company other than its head  
16 office. "Branch" does not mean a machine permitting customers to leave  
17 funds in storage or communicate with bank employees who are not located  
18 at the site of the machine, unless employees of the bank at the site of  
19 the machine take deposits on a regular basis. An office or facility of  
20 an entity other than the bank shall not be deemed to be established by  
21 the bank, regardless of any affiliation, accommodation arrangement, or  
22 other relationship between the other entity and the bank.

23 (4) The term "trust business" shall include the business of doing  
24 any or all of the things specified in RCW 30.08.150 (2), (3), (4), (5),  
25 (6), (7), (8), (9), (10) and (11).

26 (5) "Trust company," unless a different meaning appears from the  
27 context, means any corporation organized under the laws of this state  
28 engaged in trust business.

29 (6) "Person" unless a different meaning appears from the context,  
30 shall include a firm, association, partnership or corporation, or the  
31 plural thereof, whether resident, nonresident, citizen or not.

32 (7) "Director" means the director of financial institutions.

33 (8) "Foreign bank" and "foreign banker" shall include:

34 ~~((1))~~ (a) Every corporation not organized under the laws of the  
35 territory or state of Washington doing a banking business, except a  
36 national bank;

1       (~~(2)~~)   **(b)** Every unincorporated company, partnership or  
2 association of two or more individuals organized under the laws of  
3 another state or country, doing a banking business;

4       (~~(3)~~)   **(c)** Every other unincorporated company, partnership or  
5 association of two or more individuals, doing a banking business, if  
6 the members thereof owning a majority interest therein or entitled to  
7 more than one-half of the net assets thereof are not residents of this  
8 state;

9       (~~(4)~~)   **(d)** Every nonresident of this state doing a banking  
10 business in his or her own name and right only.

11       **Sec. 4.** RCW 31.45.160 and 1994 c 92 s 288 are each amended to read  
12 as follows:

13       Whenever the director has taken possession of the property and  
14 business of a licensee, the director may petition the superior court  
15 for the appointment of a receiver to liquidate the affairs of the  
16 licensee. During the time that the director retains possession of the  
17 property and business of a licensee, the director has the same powers  
18 and authority with reference to the licensee as is vested in the  
19 director (~~(with respect to industrial loan companies)~~) under chapter  
20 31.04 RCW, and the licensee has the same rights to hearings and  
21 judicial review as are granted (~~(to industrial loan companies)~~) under  
22 chapter 31.04 RCW.

23       **Sec. 5.** RCW 32.04.020 and 1996 c 2 s 20 are each amended to read  
24 as follows:

25       Unless the context clearly requires otherwise, the definitions in  
26 this section apply throughout this title.

27       (1) The use of the term "savings bank" (~~(in this title)~~) refers to  
28 mutual savings banks and converted mutual savings banks only.

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

34       (3) The use of the term "director" (~~(in this title)~~) refers to the  
35 director of financial institutions.

36       (4) The use of the word "branch" (~~(in this title)~~) refers to an  
37 established office or facility other than the principal office, at

1 which employees of the savings bank take deposits. The term "branch"  
2 (~~in this title~~) does not refer to a machine permitting customers to  
3 leave funds in storage or communicate with savings bank employees who  
4 are not located at the site of that machine, unless employees of the  
5 savings bank at the site of that machine take deposits on a regular  
6 basis. An office of an entity other than the savings bank is not  
7 established by the savings bank, regardless of any affiliation,  
8 accommodation arrangement, or other relationship between the other  
9 entity and the savings bank.

10 **Sec. 6.** RCW 33.44.020 and 1994 c 92 s 467 are each amended to read  
11 as follows:

12 Any association organized under the laws of this state, or under  
13 the laws of the United States, may, if it has obtained the approval,  
14 required by law or regulation, of any federal agencies, including the  
15 federal home loan bank board and the federal savings and loan insurance  
16 corporation, be converted into a savings bank or commercial bank in the  
17 following manner:

18 (1) The board of directors of such association shall pass a  
19 resolution declaring its intention to convert the association into a  
20 savings bank or commercial bank and shall apply to the director of  
21 financial institutions for leave to submit to the members of the  
22 association the question whether the association shall be converted  
23 into a savings bank or a commercial bank. A duplicate of the  
24 application to the director of financial institutions shall be filed  
25 with the director of financial institutions, except that no such filing  
26 shall be required in the case of an association organized under the  
27 laws of the United States. The application shall include a proposal  
28 which sets forth the method by and extent to which membership or  
29 stockholder interests, as the case may be, in the association are to be  
30 converted into membership or stockholder interests, as the case may be,  
31 in the savings bank or commercial bank, and the proposal shall allow  
32 for any member or stockholder to withdraw the value of his or her  
33 interest at any time within sixty days of the completion of the  
34 conversion. The proposal shall be subject to the approval of the  
35 director of financial institutions and shall conform to all applicable  
36 regulations of the federal home loan bank board, the federal savings  
37 and loan insurance corporation, the federal deposit insurance  
38 corporation, or other federal regulatory agency.



1 (2) Thereupon the director of financial institutions shall make the  
2 same investigation and determine the same questions as would be  
3 required by law to make and determine in case of the submission to the  
4 director of financial institutions of a certificate of incorporation of  
5 a proposed new savings bank or commercial bank, and the director of  
6 financial institutions shall also determine whether by the proposed  
7 conversion the business needs and conveniences of the members of the  
8 association would be served with facility and safety, except that no  
9 such conference shall be pertinent to such investigation or  
10 determination in the case of an association organized under the laws of  
11 the United States. After the director of financial institutions  
12 determines whether it is expedient and desirable to permit the proposed  
13 conversion, the director of financial institutions shall, within sixty  
14 days after the filing of the application, endorse thereon over the  
15 official signature of the director of financial institutions the word  
16 "granted" or the word "refused", with the date of such endorsement and  
17 shall immediately notify the secretary of such association of his or  
18 her decision. If an application to convert to a mutual savings bank is  
19 granted, the director of financial institutions shall require the  
20 applicants to enter into such an agreement or undertaking with the  
21 director of financial institutions as trustee for the depositors with  
22 the mutual savings bank to make such contributions in cash to the  
23 expense fund of the mutual savings bank as in the director of financial  
24 institutions judgment will be necessary then and from time to time  
25 thereafter to pay the operating expenses of the mutual savings bank if  
26 its earnings should not be sufficient to pay the same in addition to  
27 the payment of such dividends as may be declared and credited to  
28 depositors from its earnings.

29 If the application is denied by the director of financial  
30 institutions, the association, acting by a two-thirds majority of its  
31 board of directors, may, within thirty days after receiving the notice  
32 of the denial, appeal to the superior court in the manner prescribed in  
33 ((RCW 34.05.570)) chapter 34.05 RCW.

34 (3) If the application is granted by the director of financial  
35 institutions or by the court, as the case may be, the board of  
36 directors of the association shall, within sixty days thereafter,  
37 submit the question of the proposed conversion to the members of the  
38 association at a special meeting called for that purpose. Notice of  
39 the meeting shall state the time, place and purpose of the meeting, and

1 that the only question to be voted upon will be, "shall the (naming the  
2 association) be converted into a savings bank or commercial bank under  
3 the laws of the state of Washington?" The vote on the question shall  
4 be by ballot. Any member may vote by proxy or may transmit the  
5 member's ballot by mail if the bylaws provide a method for so doing.  
6 If two-thirds or more in number of the members voting on the question  
7 vote affirmatively, then the board of directors shall have power, and  
8 it shall be its duty, to proceed to convert such association into a  
9 savings bank or commercial bank; otherwise, the proposed conversion  
10 shall be abandoned and shall not be again submitted to the members  
11 within three years from the date of the meeting.

12 (4) If authority for the proposed conversion has been approved by  
13 the members as required by this section, the directors shall, within  
14 thirty days thereafter, subscribe and acknowledge and file with the  
15 director of financial institutions in triplicate a certificate of  
16 reincorporation, stating:

17 (a) The name by which the converted corporation is to be known.

18 (b) The place where the bank is to be located and its business  
19 transacted, naming the city or town and county, which city or town  
20 shall be the same as that where the principal place of business of the  
21 corporation has theretofore been located.

22 (c) The name, occupation, residence and post office address of each  
23 signer of the certificate.

24 (d) The amount of the assets of the corporation, the amount of its  
25 liabilities and the amount of its contingent, reserve, expense, and  
26 guaranty fund, as applicable, as of the first day of the then calendar  
27 month.

28 (e) A declaration that each signer will accept the responsibilities  
29 and faithfully discharge the duties of a trustee or director of the  
30 bank, and is free from all the disqualifications specified in the laws  
31 applicable to savings banks or commercial banks.

32 (f) Such other items as the director of financial institutions may  
33 require.

34 (5) Upon the filing of the certificate in triplicate, the director  
35 of financial institutions shall, within thirty days thereafter, if  
36 satisfied that all the provisions of this chapter have been complied  
37 with, issue in triplicate an authorization certificate stating that the  
38 corporation has complied with all the requirements of law, and that it  
39 has authority to transact at the place designated in its certificate of

1 incorporation the business of a savings bank or commercial bank. One  
2 of the director of financial institutions certificates of authorization  
3 shall be attached to each of the certificates of reincorporation, and  
4 one set of these shall be filed and retained by the director of  
5 financial institutions, one set shall be filed in the office of the  
6 secretary of state, and one set shall be transmitted to the bank for  
7 its files. Upon the receipt from the corporation of the same fees as  
8 are required for filing and recording other incorporation certificates  
9 or articles, the secretary of state shall file the certificates and  
10 record the same; whereupon the conversion of the association shall be  
11 deemed complete, and the signers of said reincorporation certificate  
12 and their successors shall thereupon become and be a corporation having  
13 the powers and being subject to the duties and obligations prescribed  
14 by the laws of this state applicable to savings banks or commercial  
15 banks, as the case may be. The time of existence of the corporation  
16 shall be perpetual unless provided otherwise in the articles of  
17 incorporation of the association or unless sooner terminated pursuant  
18 to law.

19 NEW SECTION. **Sec. 7.** The following acts or parts of acts are each  
20 repealed:

- 21 (1) RCW 30.04.270 and 1994 c 92 s 26 & 1955 c 33 s 30.04.270;
- 22 (2) RCW 30.04.290 and 1994 c 92 s 27, 1973 1st ex.s. c 53 s 36,  
23 1961 c 20 s 1, & 1955 c 33 s 30.04.290;
- 24 (3) RCW 30.04.900 and 1994 c 92 s 41, 1987 c 498 s 2, & 1986 c 279  
25 s 54;
- 26 (4) RCW 30.08.120 and 1994 c 92 s 57 & 1955 c 33 s 30.08.120;
- 27 (5) RCW 30.12.050 and 1994 c 92 s 68, 1986 c 279 s 34, & 1955 c 33  
28 s 30.12.050;
- 29 (6) RCW 30.43.010 and 1994 c 92 s 104, 1986 c 279 s 45, 1979 c 137  
30 s 1, & 1974 ex.s. c 166 s 1;
- 31 (7) RCW 30.43.020 and 1994 c 92 s 105, 1981 c 83 s 1, & 1974 ex.s.  
32 c 166 s 2;
- 33 (8) RCW 30.43.045 and 1994 c 92 s 106 & 1981 c 83 s 2;
- 34 (9) RCW 31.12.095 and 1994 c 92 s 183 & 1984 c 31 s 11;
- 35 (10) RCW 31.12.355 and 1994 c 92 s 192 & 1984 c 31 s 37;
- 36 (11) RCW 32.04.040 and 1994 c 92 s 295, 1985 c 469 s 16, & 1955 c  
37 13 s 32.04.040;
- 38 (12) RCW 32.12.060 and 1994 c 92 s 326 & 1955 c 13 s 32.12.060;

1           (13) RCW 32.20.290 and 1994 c 92 s 338, 1967 c 145 s 8, & 1955 c 13  
2 s 32.20.290; and  
3           (14) RCW 33.04.010 and 1994 c 92 s 415, 1982 c 3 s 3, & 1945 c 235  
4 s 119-A.

--- **END** ---