
HOUSE BILL 2487

State of Washington

57th Legislature

2002 Regular Session

By Representatives McIntire, Benson and Cooper; by request of
Department of Financial Institutions

Read first time 01/18/2002. Referred to Committee on Financial
Institutions & Insurance.

1 AN ACT Relating to regulating securities; amending RCW 21.20.005,
2 21.20.020, 21.20.040, 21.20.110, 21.20.310, 21.20.370, and 21.20.380;
3 and adding a new section to chapter 21.20 RCW.

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

5 **Sec. 1.** RCW 21.20.005 and 1998 c 15 s 1 are each amended to read
6 as follows:

7 The definitions set forth in this section shall apply throughout
8 this chapter, unless the context otherwise requires:

9 (1) "Director" means the director of financial institutions of this
10 state.

11 (2) "Salesperson" means any individual other than a broker-dealer
12 who represents a broker-dealer or issuer in effecting or attempting to
13 effect sales of securities. "Salesperson" does not include an
14 individual who represents an issuer in (a) effecting a transaction in
15 a security exempted by RCW 21.20.310 (1), (2), (3), (4), (9), (10),
16 (11), (12), or (13), (b) effecting transactions exempted by RCW
17 21.20.320 unless otherwise expressly required by the terms of the
18 exemption, or (c) effecting transactions with existing employees,
19 partners, or directors of the issuer if no commission or other

1 remuneration is paid or given directly or indirectly for soliciting any
2 person in this state.

3 (3) "Broker-dealer" means any person engaged in the business of
4 effecting transactions in securities for the account of others or for
5 that person's own account. "Broker-dealer" does not include (a) a
6 salesperson, issuer, bank, savings institution, or trust company, (b)
7 a person who has no place of business in this state if the person
8 effects transactions in this state exclusively with or through the
9 issuers of the securities involved in the transactions, other broker-
10 dealers, or banks, savings institutions, trust companies, insurance
11 companies, investment companies as defined in the investment company
12 act of 1940, pension or profit-sharing trusts, or other financial
13 institutions or institutional buyers, whether acting for themselves or
14 as trustees, or (c) a person who has no place of business in this state
15 if during any period of twelve consecutive months that person does not
16 direct more than fifteen offers to sell or to buy into or make more
17 than five sales in this state in any manner to persons other than those
18 specified in (b) of this subsection.

19 (4) "Guaranteed" means guaranteed as to payment of principal,
20 interest, or dividends.

21 (5) "Full business day" means all calendar days, excluding
22 therefrom Saturdays, Sundays, and all legal holidays, as defined by
23 statute.

24 (6) "Investment adviser" means any person who, for compensation,
25 engages in the business of advising others, either directly or through
26 publications or writings, as to the value of securities or as to the
27 advisability of investing in, purchasing, or selling securities, or
28 who, for compensation and as a part of a regular business, issues or
29 promulgates analyses or reports concerning securities. "Investment
30 adviser" also includes financial planners and other persons who, as an
31 integral component of other financially related services, (a) provide
32 the foregoing investment advisory services to others for compensation
33 as part of a business or (b) hold themselves out as providing the
34 foregoing investment advisory services to others for compensation.
35 Investment adviser shall also include any person who holds himself out
36 as a financial planner.

37 "Investment adviser" does not include (a) a bank, savings
38 institution, or trust company, (b) a lawyer, accountant, certified
39 public accountant licensed under chapter 18.04 RCW, engineer, or

1 teacher whose performance of these services is solely incidental to the
2 practice of his or her profession, (c) a broker-dealer or its
3 salesperson whose performance of these services is solely incidental to
4 the conduct of its business as a broker-dealer and who receives no
5 special compensation for them, (d) a publisher of any bona fide
6 newspaper, news magazine, news column, newsletter, or business or
7 financial publication or service, whether communicated in hard copy
8 form, by electronic means, or otherwise, that does not consist of the
9 rendering of advice on the basis of the specific investment situation
10 of each client, (e) a radio or television station, (f) a person whose
11 advice, analyses, or reports relate only to securities exempted by RCW
12 21.20.310(1), (g) an investment adviser representative, or (h) such
13 other persons not within the intent of this paragraph as the director
14 may by rule or order designate.

15 (7) "Issuer" means any person who issues or proposes to issue any
16 security, except that with respect to certificates of deposit, voting
17 trust certificates, or collateral-trust certificates, or with respect
18 to certificates of interest or shares in an unincorporated investment
19 trust not having a board of directors (or persons performing similar
20 functions) or of the fixed, restricted management, or unit type; the
21 term "issuer" means the person or persons performing the acts and
22 assuming the duties of depositor or manager pursuant to the provisions
23 of the trust or other agreement or instrument under which the security
24 is issued.

25 (8) "Nonissuer" means not directly or indirectly for the benefit of
26 the issuer.

27 (9) "Person" means an individual, a corporation, a partnership, a
28 limited liability company, a limited liability partnership, an
29 association, a joint-stock company, a trust where the interest of the
30 beneficiaries are evidenced by a security, an unincorporated
31 organization, a government, or a political subdivision of a government.

32 (10) "Sale" or "sell" includes every contract of sale of, contract
33 to sell, or disposition of, a security or interest in a security for
34 value. "Offer" or "offer to sell" includes every attempt or offer to
35 dispose of, or solicitation of an offer to buy, a security or interest
36 in a security for value.

37 Any security given or delivered with, or as a bonus on account of,
38 any purchase of securities or any other thing is considered to
39 constitute part of the subject of the purchase and to have been offered

1 and sold for value. A purported gift of assessable stock is considered
2 to involve an offer and sale. Every sale or offer of a warrant or
3 right to purchase or subscribe to another security of the same or
4 another issuer, as well as every sale or offer of a security which
5 gives the holder a present or future right or privilege to convert into
6 another security of the same or another issuer, is considered to
7 include an offer of the other security.

8 (11) "Securities Act of 1933," "Securities Exchange Act of 1934,"
9 "Public Utility Holding Company Act of 1935," "Investment Company Act
10 of 1940," and "Investment Advisers Act of 1940" means the federal
11 statutes of those names as amended before or after June 10, 1959.

12 (12)(a) "Security" means any note; stock; treasury stock; bond;
13 debenture; evidence of indebtedness; certificate of interest or
14 participation in any profit-sharing agreement; collateral-trust
15 certificate; preorganization certificate or subscription; transferable
16 share; investment contract; investment of money or other consideration
17 in the risk capital of a venture with the expectation of some valuable
18 benefit to the investor where the investor does not receive the right
19 to exercise practical and actual control over the managerial decisions
20 of the venture; voting-trust certificate; certificate of deposit for a
21 security; ~~((certificate of))~~ fractional undivided interest ~~((or~~
22 ~~participation))~~ in an oil, gas, or ~~((mining title or))~~ mineral lease or
23 in payments out of production under ~~((such))~~ a ~~((title or))~~ lease,
24 right, or royalty; charitable gift annuity; any put, call, straddle,
25 option, or privilege on any security, certificate of deposit, or group
26 or index of securities, including any interest therein or based on the
27 value thereof; or any put, call, straddle, option, or privilege entered
28 into on a national securities exchange relating to foreign currency;
29 or, in general, any interest or instrument commonly known as a
30 "security," or any certificate of interest or participation in,
31 temporary or interim certificate for, receipt for, guarantee of, or
32 warrant or right to subscribe to or purchase, any ~~((of the foregoing;~~
33 ~~or any sale of or indenture, bond or contract for the conveyance of~~
34 ~~land or any interest therein where such land is situated outside of the~~
35 ~~state of Washington and such sale or its offering is not conducted by~~
36 ~~a real estate broker licensed by the state of Washington))~~ security
37 under this subsection. This subsection applies whether or not the
38 security is evidenced by a written document.

1 (b) "Security" does not include: (i) Any insurance or endowment
2 policy or annuity contract under which an insurance company promises to
3 pay a fixed sum of money either in a lump sum or periodically for life
4 or some other specified period; or (ii) an interest in a contributory
5 or noncontributory pension or welfare plan subject to the Employee
6 Retirement Income Security Act of 1974.

7 (13) "State" means any state, territory, or possession of the
8 United States, as well as the District of Columbia and Puerto Rico.

9 (14) "Investment adviser representative" means any partner,
10 officer, director, or a person occupying similar status or performing
11 similar functions, or other individual, who is employed by or
12 associated with an investment adviser, and who does any of the
13 following:

14 (a) Makes any recommendations or otherwise renders advice regarding
15 securities;

16 (b) Manages accounts or portfolios of clients;

17 (c) Determines which recommendation or advice regarding securities
18 should be given;

19 (d) Solicits, offers, or negotiates for the sale of or sells
20 investment advisory services; or

21 (e) Supervises employees who perform any of the functions under (a)
22 through (d) of this subsection.

23 (15) "Relatives," as used in RCW 21.20.310(11) includes:

24 (a) A member's spouse;

25 (b) Parents of the member or the member's spouse;

26 (c) Grandparents of the member or the member's spouse;

27 (d) Natural or adopted children of the member or the member's
28 spouse;

29 (e) Aunts and uncles of the member or the member's spouse; and

30 (f) First cousins of the member or the member's spouse.

31 (16) "Customer" means a person other than a broker-dealer or
32 investment adviser.

33 (17) "Federal covered security" means any security defined as a
34 covered security in the Securities Act of 1933.

35 (18) "Federal covered adviser" means any person registered as an
36 investment adviser under section 203 of the Investment Advisers Act of
37 1940.

1 **Sec. 2.** RCW 21.20.020 and 1998 c 15 s 2 are each amended to read
2 as follows:

3 (1) It is unlawful for any person who receives any consideration
4 from another party primarily for advising the other person as to the
5 value of securities or their purchase or sale, whether through the
6 issuance of analyses or reports or otherwise:

7 ~~((1))~~ (a) To employ any device, scheme, or artifice to defraud
8 the other person;

9 ~~((2))~~ (b) To engage in any act, practice, or course of business
10 which operates or would operate as a fraud or deceit upon the other
11 person; or

12 (c) To engage in any dishonest or unethical practice as the
13 director may define by rule.

14 This subsection (1) applies whether or not the person is an
15 investment adviser, federal covered adviser, or investment adviser
16 under this chapter or the Investment Advisers Act of 1940.

17 ~~((3) To act))~~ (2) It is unlawful for an investment adviser, acting
18 as principal for his or her own account, knowingly to sell any security
19 to or purchase any security from a client, or act as a broker for a
20 person other than such client, knowingly to effect any sale or purchase
21 of any security for the account of such client, without disclosing to
22 such client in writing before the execution of such transaction the
23 capacity in which he or she is acting and obtaining the consent of the
24 client to such transaction~~(; or~~

25 ~~(4) To engage in any dishonest or unethical practice as the~~
26 ~~director may define by rule)).~~

27 This subsection (2) does not apply to a transaction with a customer
28 of a broker-dealer if the broker-dealer is not acting as an investment
29 adviser in relation to the transaction.

30 **Sec. 3.** RCW 21.20.040 and 1998 c 15 s 3 are each amended to read
31 as follows:

32 (1) It is unlawful for any person to transact business in this
33 state as a broker-dealer or salesperson, unless: (a) The person is
34 registered under this chapter; (b) the person is exempted from
35 registration as a broker-dealer or salesperson to sell or resell
36 condominium units sold in conjunction with an investment contract as
37 may be provided by rule or order of the director as to persons who are
38 licensed pursuant to the provisions of chapter 18.85 RCW; (c) the

1 person is a salesperson who satisfies the requirements of section
2 15(h)(2) of the Securities Exchange Act of 1934 and effects in this
3 state no transactions other than those described by section 15(h)(3) of
4 the Securities Exchange Act of 1934; ~~((or))~~ (d) the person is a
5 salesperson effecting transactions in open-end investment company
6 securities sold at net asset value without any sales charges; or (e)
7 the person participates only in the sale or offering for sale of
8 variable contracts which fund corporate plans meeting the requirements
9 for qualification under section 401 or 403 of the United States
10 Internal Revenue Code as set forth in RCW 48.18A.060.

11 (2) It is unlawful for any broker-dealer or issuer to employ a
12 salesperson unless the salesperson is registered or exempted from
13 registration.

14 (3) It is unlawful for any person to transact business in this
15 state as an investment adviser or investment adviser representative
16 unless: (a) The person is so registered or exempt from registration
17 under this chapter; (b) the person has no place of business in this
18 state and (i) the person's only clients in this state are investment
19 advisers registered under this chapter, federal covered advisers,
20 broker-dealers, banks, savings institutions, trust companies, insurance
21 companies, investment companies as defined in the Investment Company
22 Act of 1940, employee benefit plans with assets of not less than one
23 million dollars, or governmental agencies or instrumentalities, whether
24 acting for themselves or as trustees with investment control, or (ii)
25 during the preceding twelve-month period the person has had fewer than
26 six clients who are residents of this state other than those specified
27 in (b)(i) of this subsection; (c) the person is an investment adviser
28 to an investment company registered under the Investment Company Act of
29 1940; (d) the person is a federal covered adviser and the person has
30 complied with requirements of RCW 21.20.050; or (e) the person is
31 excepted from the definition of investment adviser under section
32 202(a)(11) of the Investment Advisers Act of 1940.

33 (4) It is unlawful for any person, other than a federal covered
34 adviser, to hold himself or herself out as, or otherwise represent that
35 he or she is a "financial planner", "investment counselor", or other
36 similar term, as may be specified in rules adopted by the director,
37 unless the person is registered as an investment adviser or investment
38 adviser representative, is exempt from registration under RCW

1 21.20.040(1), or is excluded from the definition of investment adviser
2 under RCW 21.20.005(6).

3 (5)(a) It is unlawful for any person registered or required to be
4 registered as an investment adviser under this chapter to employ,
5 supervise, or associate with an investment adviser representative
6 unless such investment adviser representative is registered as an
7 investment adviser representative under this chapter.

8 (b) It is unlawful for any federal covered adviser or any person
9 required to be registered as an investment adviser under section 203 of
10 the Investment Advisers Act of 1940 to employ, supervise, or associate
11 with an investment adviser representative having a place of business
12 located in this state, unless such investment adviser representative is
13 registered or is exempted from registration under this chapter.

14 **Sec. 4.** RCW 21.20.110 and 1998 c 15 s 10 are each amended to read
15 as follows:

16 (1) The director may by order deny, suspend, ~~((or))~~ revoke,
17 restrict, condition, or limit any application or registration of any
18 broker-dealer, salesperson, investment adviser representative, or
19 investment adviser; or censure or fine the registrant or an officer,
20 director, partner, or person occupying similar functions for a
21 registrant; ~~((or restrict or limit a registrant's function or activity~~
22 ~~of business for which registration is required in this state;))~~ if the
23 director finds that the order is in the public interest and that the
24 applicant or registrant or, in the case of a broker-dealer or
25 investment adviser, any partner, officer, ~~((or))~~ director, or person
26 occupying similar functions:

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

33 (b) Has willfully violated or willfully failed to comply with any
34 provision of this chapter or a predecessor act or any rule or order
35 under this chapter or a predecessor act, or any provision of chapter
36 21.30 RCW or any rule or order thereunder;

37 (c) Has been convicted, within the past ~~((five))~~ ten years, of any
38 misdemeanor involving a security, or a commodity contract or commodity

1 option as defined in RCW 21.30.010, or any aspect of the securities
2 (~~or investment~~), commodities (~~business~~), business investments,
3 franchises, business opportunities, insurance, banking, or finance
4 business, or any felony involving moral turpitude;

5 (d) Is permanently or temporarily enjoined or restrained by any
6 court of competent jurisdiction in an action brought by the director,
7 a state, or a federal government agency from engaging in or continuing
8 any conduct or practice involving any aspect of the securities (~~or~~
9 ~~investment~~), commodities (~~business~~), business investments,
10 franchises, business opportunities, insurance, banking, or finance
11 business;

12 (e) Is the subject of an order (~~of the director denying,~~
13 ~~suspending, or revoking registration as a broker-dealer, salesperson,~~
14 ~~investment adviser, or investment adviser representative~~) entered
15 after notice and opportunity for hearing:

16 (i) By the securities administrator of a state or by the Securities
17 and Exchange Commission denying, revoking, or suspending registration
18 as a broker-dealer, salesperson, investment adviser, or investment
19 adviser representative;

20 (ii) By the securities administrator of a state or by the
21 Securities and Exchange Commission sanctioning against a broker-dealer
22 or an investment adviser;

23 (iii) By the Securities and Exchange Commission suspending or
24 expelling the registrant from membership in a self-regulatory
25 organization; or

26 (iv) By a court adjudicating a United States Postal Service fraud;

27 The director may not commence a revocation or suspension proceeding
28 more than one year after the date of the order relied on. The director
29 may not enter an order on the basis of an order under another state
30 securities act unless that order was based on facts that would
31 constitute a ground for an order under this section;

32 (f) Is the subject of an order (~~entered within the past five years~~
33 ~~by the securities administrator of any other state or by the federal~~
34 ~~securities and exchange commission denying or revoking registration as~~
35 ~~a broker-dealer or salesperson, or a commodity broker-dealer or sales~~
36 ~~representative, or the substantial equivalent of those terms as defined~~
37 ~~in this chapter or by the commodity futures trading commission denying~~
38 ~~or revoking registration as a commodity merchant as defined in RCW~~
39 ~~21.30.010, or is the subject of an order of suspension or expulsion~~

1 from membership in or association with a self-regulatory organization
2 registered under the securities exchange act of 1934 or the federal
3 commodity exchange act, or is the subject of a United States post
4 office fraud order; but (i) the director may not institute a revocation
5 or suspension proceeding under this clause more than one year from the
6 date of the order relied on, and (ii) the director may not enter any
7 order under this clause on the basis of an order unless that order was
8 based on facts which would currently constitute a ground for an order
9 under this section)), adjudication, or determination, after notice and
10 opportunity for hearing, by the Securities and Exchange Commission, the
11 Commodities Futures Trading Commission, the Federal Trade Commission,
12 or a securities or insurance regulator of any state that the person has
13 willfully violated the Securities Act of 1933, the Securities Exchange
14 Act of 1934, the Investment Advisers Act of 1940, the Investment
15 Company Act of 1940, the Commodities Exchange Act, the securities,
16 insurance, or commodities law of any state, or a federal or state law
17 under which a business involving investments, franchises, business
18 opportunities, insurance, banking, or finance is regulated;

19 (g) Has engaged in dishonest or unethical practices in the
20 securities or ((investment)) commodities business;

21 (h) Is insolvent, either in the sense that his or her liabilities
22 exceed his or her assets or in the sense that he or she cannot meet his
23 or her obligations as they mature; but the director may not enter an
24 order against ((a broker-dealer or investment adviser)) an applicant or
25 registrant under this ((clause)) subsection(1)(h) without a finding of
26 insolvency as to the ((broker-dealer or investment adviser)) applicant
27 or registrant;

28 (i) Has not complied with a condition imposed by the director under
29 RCW 21.20.100, or is not qualified on the basis of such factors as
30 training, experience, or knowledge of the securities business, except
31 as otherwise provided in subsection (2) of this section; ((or))

32 (j) Has failed to supervise reasonably a salesperson or an
33 investment adviser representative, or employee, if the salesperson,
34 investment adviser representative, or employee was subject to the
35 person's supervision and committed a violation of this chapter or a
36 rule adopted or order issued under this chapter. For the purposes of
37 this subsection, no person fails to supervise reasonably another
38 person, if:

1 (i) There are established procedures, and a system for applying
2 those procedures, that would reasonably be expected to prevent and
3 detect, insofar as practicable, any violation by another person of this
4 chapter, or a rule or order under this chapter; and

5 (ii) The supervising person has reasonably discharged the duties
6 and obligations required by these procedures and system without
7 reasonable cause to believe that another person was violating this
8 chapter or rules or orders under this chapter;

9 (k) Has failed to pay the proper filing fee within thirty days
10 after being notified by the director of a deficiency, but the director
11 shall vacate an order under this subsection (1)(k) when the deficiency
12 is corrected;

13 (1) Within the past ten years has been found, after notice and
14 opportunity for a hearing to have:

15 (i) Willfully violated the law of a foreign jurisdiction governing
16 or regulating the business of securities, commodities, insurance, or
17 banking;

18 (ii) Been the subject of an order of a securities regulator of a
19 foreign jurisdiction denying, revoking, or suspending the right to
20 engage in the business of securities as a broker-dealer, agent,
21 investment adviser, or investment adviser representative; or

22 (iii) Been suspended or expelled from membership by a securities
23 exchange or securities association operating under the authority of the
24 securities regulator of a foreign jurisdiction;

25 (m) Is the subject of a cease and desist order issued by the
26 Securities and Exchange Commission or issued under the securities or
27 commodities laws of a state; or

28 (n) Refuses to allow or otherwise impedes the director from
29 conducting an audit, examination, or inspection, or refuses access to
30 any branch office or business location to conduct an audit,
31 examination, or inspection.

32 (2) The director, by rule or order, may require that an
33 examination, including an examination developed or approved by an
34 organization of securities administrators, be taken by any class of or
35 all applicants. The director, by rule or order, may waive the
36 examination as to a person or class of persons if the administrator
37 determines that the examination is not necessary or appropriate in the
38 public interest or for the protection of investors.

1 ~~((2))~~ (3) The director may issue a summary order pending final
2 determination of a proceeding under this section upon a finding that it
3 is in the public interest and necessary or appropriate for the
4 protection of investors.

5 ~~((3))~~ (4) The director may not impose a fine under this section
6 except after notice and opportunity for hearing. The fine imposed
7 under this section may not exceed five thousand dollars for each act or
8 omission that constitutes the basis for issuing the order. If a
9 petition for judicial review has not been timely filed under RCW
10 34.05.542(2), a certified copy of the director's order requiring
11 payment of the fine may be filed in the office of the clerk of the
12 superior court in any county of this state. The clerk shall treat the
13 order of the director in the same manner as a judgment of the superior
14 court. The director's order so filed has the same effect as a judgment
15 of the superior court and may be recorded, enforced, or satisfied in
16 like manner.

17 (5) Withdrawal from registration as a broker-dealer, salesperson,
18 investment adviser, or investment adviser representative becomes
19 effective thirty days after receipt of an application to withdraw or
20 within such shorter period as the administrator determines, unless a
21 revocation or suspension proceeding is pending when the application is
22 filed. If a proceeding is pending, withdrawal becomes effective upon
23 such conditions as the director, by order, determines. If no
24 proceeding is pending or commenced and withdrawal automatically becomes
25 effective, the administrator may nevertheless commence a revocation or
26 suspension proceeding under subsection (1)(b) of this section within
27 one year after withdrawal became effective and enter a revocation or
28 suspension order as of the last date on which registration was
29 effective.

30 (6) A person who, directly or indirectly, controls a person not in
31 compliance with any part of this section may also be sanctioned to the
32 same extent as the noncomplying person, unless the controlling person
33 acted in good faith and did not directly or indirectly induce the
34 conduct constituting the violation or cause of action.

35 (7) The director shall immediately suspend the license or
36 certificate of a person who has been certified pursuant to RCW
37 74.20A.320 by the department of social and health services as a person
38 who is not in compliance with a support order ~~((or a residential or~~
39 ~~visitation order))~~. If the person has continued to meet all other

1 requirements for reinstatement during the suspension, reissuance of the
2 license or certificate shall be automatic upon the director's receipt
3 of a release issued by the department of social and health services
4 stating that the licensee is in compliance with the order.

5 **Sec. 5.** RCW 21.20.310 and 1998 c 15 s 13 are each amended to read
6 as follows:

7 RCW 21.20.140 through 21.20.300, inclusive, and 21.20.327 do not
8 apply to any of the following securities:

9 (1) Any security (including a revenue obligation) issued or
10 guaranteed by the United States, any state, any political subdivision
11 of a state, or any agency or corporate or other instrumentality of one
12 or more of the foregoing; or any certificate of deposit for any of the
13 foregoing; but this exemption does not include any security payable
14 solely from revenues to be received from a nongovernmental industrial
15 or commercial enterprise unless such payments are made or
16 unconditionally guaranteed by a person whose securities are exempt from
17 registration by subsection((s)) (7) or (8) of this section: PROVIDED,
18 That the director, by rule or order, may exempt any security payable
19 solely from revenues to be received from a nongovernmental industrial
20 or commercial enterprise if the director finds that registration with
21 respect to such securities is not necessary in the public interest and
22 for the protection of investors.

23 (2) Any security issued or guaranteed by Canada, any Canadian
24 province, any political subdivision of any such province, any agency or
25 corporate or other instrumentality of one or more of the foregoing, or
26 any other foreign government with which the United States currently
27 maintains diplomatic relations, if the security is recognized as a
28 valid obligation by the issuer or guarantor; but this exemption does
29 not include any security payable solely from revenues to be received
30 from a nongovernmental industrial or commercial enterprise unless such
31 payments shall be made or unconditionally guaranteed by a person whose
32 securities are exempt from registration by subsection((s)) (7) or (8)
33 of this section.

34 (3) Any security issued by and representing an interest in or a
35 debt of, or guaranteed by, any bank organized under the laws of the
36 United States, or any bank or trust company organized or supervised
37 under the laws of any state.

1 (4) Any security issued by and representing an interest in or a
2 debt of, or guaranteed by, any federal savings and loan association, or
3 any building and loan or similar association organized under the laws
4 of any state and authorized to do business in this state.

5 (5) Any security issued by and representing an interest in or a
6 debt of, or insured or guaranteed by, any insurance company (~~organized~~
7 ~~under the laws of this state and~~) authorized to do (~~and actually~~
8 ~~doing~~) business in this state.

9 (6) Any security issued or guaranteed by any federal credit union
10 or any credit union, industrial loan association, or similar
11 association organized and supervised under the laws of this state.

12 (7) Any security issued or guaranteed by any railroad, other common
13 carrier, public utility, or holding company which is (a) (~~subject to~~
14 ~~the jurisdiction of the interstate commerce commission; (b)~~) a
15 registered holding company under the public utility holding company act
16 of 1935 or a subsidiary of such a company within the meaning of that
17 act; (~~(+e)~~) (b) regulated in respect of its rates and charges by a
18 governmental authority of the United States or any state or
19 municipality; or (~~(+d)~~) (c) regulated in respect of the issuance or
20 guarantee of the security by a governmental authority of the United
21 States, any state, Canada, or any Canadian province; (~~also~~) and
22 equipment trust certificates in respect of equipment conditionally sold
23 or leased to a railroad or public utility, if other securities issued
24 by such railroad or public utility would be exempt under this
25 subsection.

26 (8) Any security which meets the criteria for investment grade
27 securities that the director may adopt by rule.

28 (9) Any prime quality negotiable commercial paper not intended to
29 be marketed to the general public and not advertised for sale to the
30 general public that is of a type eligible for discounting by federal
31 reserve banks, that arises out of a current transaction or the proceeds
32 of which have been or are to be used for a current transaction, and
33 that evidences an obligation to pay cash within nine months of the date
34 of issuance, exclusive of days of grace, or any renewal of such paper
35 which is likewise limited, or any guarantee of such paper or of any
36 such renewal.

37 (10) Any security issued in connection with an employee's stock
38 purchase, savings, pension, profit-sharing, or similar benefit plan if:
39 (a) The plan meets the requirements for qualification as a pension,

1 profit sharing, or stock bonus plan under section 401 of the internal
2 revenue code, as an incentive stock option plan under section 422 of
3 the internal revenue code, as a nonqualified incentive stock option
4 plan adopted with or as a supplement to an incentive stock option plan
5 under section 422 of the internal revenue code, or as an employee stock
6 purchase plan under section 423 of the internal revenue code; or (b)
7 the director is notified in writing with a copy of the plan thirty days
8 before offering the plan to employees in this state. In the event of
9 late filing of notification the director may upon application, for good
10 cause excuse such late filing if he or she finds it in the public
11 interest to grant such relief.

12 (11) Any security issued by any person organized and operated as a
13 nonprofit organization as defined in RCW 84.36.800(4) exclusively for
14 religious, educational, fraternal, or charitable purposes and which
15 nonprofit organization also possesses a current tax exempt status under
16 the laws of the United States, which security is offered or sold only
17 to persons who, prior to their solicitation for the purchase of said
18 securities, were members of, contributors to, or listed as participants
19 in, the organization, or their relatives, if such nonprofit
20 organization first files a notice specifying the terms of the offering
21 and the director does not by order disallow the exemption within the
22 next ten full business days: PROVIDED, That no offerings may be made
23 until expiration of the ten full business days. Every such nonprofit
24 organization which files a notice of exemption of such securities shall
25 pay a filing fee as set forth in RCW 21.20.340(11) as now or hereafter
26 amended.

27 The notice shall consist of the following:

28 (a) The name and address of the issuer;

29 (b) The names, addresses, and telephone numbers of the current
30 officers and directors of the issuer;

31 (c) A short description of the security, price per security, and
32 the number of securities to be offered;

33 (d) A statement of the nature and purposes of the organization as
34 a basis for the exemption under this section;

35 (e) A statement of the proposed use of the proceeds of the sale of
36 the security; and

37 (f) A statement that the issuer shall provide to a prospective
38 purchaser written information regarding the securities offered prior to
39 consummation of any sale, which information shall include the following

1 statements: (i) "ANY PROSPECTIVE PURCHASER IS ENTITLED TO REVIEW
2 FINANCIAL STATEMENTS OF THE ISSUER WHICH SHALL BE FURNISHED UPON
3 REQUEST."; (ii) "RECEIPT OF NOTICE OF EXEMPTION BY THE WASHINGTON
4 ADMINISTRATOR OF SECURITIES DOES NOT SIGNIFY THAT THE ADMINISTRATOR HAS
5 APPROVED OR RECOMMENDED THESE SECURITIES, NOR HAS THE ADMINISTRATOR
6 PASSED UPON THE OFFERING. ANY REPRESENTATION TO THE CONTRARY IS A
7 CRIMINAL OFFENSE."; and (iii) "THE RETURN OF THE FUNDS OF THE PURCHASER
8 IS DEPENDENT UPON THE FINANCIAL CONDITION OF THE ORGANIZATION."

9 (12) Any charitable gift annuities issued by a board of a state
10 university, regional university, or of the state college.

11 (13) Any charitable gift annuity issued by an insurer or
12 institution holding a certificate of exemption under RCW 48.38.010.

13 **Sec. 6.** RCW 21.20.370 and 1998 c 15 s 17 are each amended to read
14 as follows:

15 (1) The director in his or her discretion (~~((+1))~~) (a) may annually,
16 or more frequently, make such public or private investigations within
17 or without this state as the director deems necessary to determine
18 whether any registration should be granted, denied or revoked or
19 whether any person has violated, is violating, or is about to violate
20 any provision of this chapter or any rule or order (~~((hereunder))~~) under
21 this chapter, or to aid in the enforcement of this chapter or in the
22 (~~((prescribing))~~) adoption of rules and forms (~~((hereunder, (2))~~) under
23 this chapter, (b) may engage in the detection and identification of
24 criminal activities subject to this chapter, (~~((+3))~~) (c) may require or
25 permit any person to testify or to file a statement in writing, under
26 oath or otherwise as the director may determine, as to all the facts
27 and circumstances concerning the matter to be investigated, and (~~((+4))~~)
28 (d) may publish information concerning a proceeding, an investigation,
29 or any violation of this chapter or any rule or order (~~((hereunder))~~)
30 under this chapter, if the director determines it is necessary or
31 appropriate in the public interest or for the protection of investors.

32 (2) The enforcement unit of the securities division of the
33 department of financial institutions may be authorized to receive
34 criminal history record information in connection with the
35 investigation of criminal activities subject to this chapter.

36 **Sec. 7.** RCW 21.20.380 and 1995 c 46 s 6 are each amended to read
37 as follows:

1 (1) For the purpose of any investigation or proceeding under this
2 chapter, the director or any officer designated by the director may
3 administer oaths and affirmations, subpoena witnesses, compel their
4 attendance, take evidence, and require the production of any books,
5 papers, correspondence, memoranda, agreements, or other documents or
6 records which the director deems relevant or material to the inquiry.

7 (2) If the activities constituting an alleged violation for which
8 the information is sought would be a violation of this chapter had the
9 activities occurred in this state, the director may issue and apply to
10 enforce subpoenas in this state at the request of a securities agency
11 or administrator of another state.

12 (3) A subpoena issued to a financial institution under this section
13 may, if the director finds it necessary or appropriate in the public
14 interest or for the protection of investors, include a directive that
15 the financial institution subpoenaed shall not disclose to third
16 parties that are not affiliated with the financial institution, other
17 than to the institution's legal counsel, the existence or content of
18 the subpoena.

19 (4) In case of disobedience on the part of any person to comply
20 with any subpoena lawfully issued by the director, (~~or~~~~on~~) the
21 refusal of any witness to testify to any matters regarding which the
22 witness may be lawfully interrogated, or the failure to comply with a
23 nondisclosure directive under subsection (3) of this section, a court
24 of competent jurisdiction of any county or the judge thereof, on
25 application of the director, and after satisfactory evidence of willful
26 disobedience, may compel obedience by proceedings for contempt, as in
27 the case of disobedience of the requirements of a subpoena issued from
28 such a court on a refusal to testify therein.

29 NEW SECTION. Sec. 8. A new section is added to chapter 21.20 RCW
30 to read as follows:

31 As required by chapter 48.18A RCW, a person selling variable
32 contracts shall be registered as a broker-dealer or securities
33 salesperson as required by this chapter. This chapter, and any rules
34 or orders adopted under this chapter, applies to any person engaged in
35 the offer, sale, or purchase of a variable contract. "Variable
36 contract" means the same as set forth under chapter 48.18A RCW.

--- END ---