

SHB 1219 - S COMM AMD

By Committee on Financial Services, Insurance & Housing

ADOPTED 04/09/2003

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 43.320.110 and 2002 c 371 s 912 are each amended to  
4 read as follows:

5 There is created a local fund known as the "financial services  
6 regulation fund" which shall consist of all moneys received by the  
7 divisions of the department of financial institutions, except for the  
8 division of securities which shall deposit thirteen percent of all  
9 moneys received, except as provided in section 2 of this act, and which  
10 shall be used for the purchase of supplies and necessary equipment; the  
11 payment of salaries, wages, and utilities; the establishment of  
12 reserves; and other incidental costs required for the proper regulation  
13 of individuals and entities subject to regulation by the department.  
14 The state treasurer shall be the custodian of the fund. Disbursements  
15 from the fund shall be on authorization of the director of financial  
16 institutions or the director's designee. In order to maintain an  
17 effective expenditure and revenue control, the fund shall be subject in  
18 all respects to chapter 43.88 RCW, but no appropriation is required to  
19 permit expenditures and payment of obligations from the fund.

20 ~~((Between July 1, 2001, and December 31, 2001, the legislature may  
21 transfer up to two million dollars from the financial services  
22 regulation fund to the digital government revolving account. During  
23 the 2001-2003 fiscal biennium, the legislature may transfer from the  
24 financial services regulation fund to the state general fund such  
25 amounts as reflect the excess fund balance of the fund and  
26 appropriations reductions made by the 2002 supplemental appropriations  
27 act for administrative efficiencies and savings.))~~

28 NEW SECTION. Sec. 2. A new section is added to chapter 43.320 RCW  
29 to read as follows:

1 (1) The securities prosecution fund is created in the custody of  
2 the state treasurer and shall consist of all fines received by the  
3 division of securities under RCW 21.20.400(2), 21.20.110, and 21.20.395  
4 and all undistributed funds from orders of disgorgement and restitution  
5 under RCW 21.20.110(8) and 21.20.390(6). No appropriation is required  
6 to permit expenditures from this fund, but the account is subject to  
7 allotment procedures under chapter 43.88 RCW.

8 (2) Expenditures from this fund may be used solely for  
9 administering the fund and for payment of costs, expenses, and charges  
10 incurred in the preparation, initiation, and prosecution of criminal  
11 charges for violations of chapters 21.20, 21.30, 19.100, and 19.110  
12 RCW. Only the director or the director's designee may authorize  
13 expenditures from the fund.

14 (3) Applications for fund expenditures must be submitted by the  
15 attorney general or the proper prosecuting attorney to the director.  
16 The application must clearly identify the alleged criminal violations  
17 identified in subsection (2) of this section and indicate the purpose  
18 for which the funds will be used. The application must also certify  
19 that any funds received will be expended only for the purpose  
20 requested. Funding requests must be approved by the director prior to  
21 any expenditure being incurred by the requesting attorney general or  
22 prosecuting attorney. At the conclusion of the prosecution, the  
23 attorney general or prosecuting attorney shall provide the director  
24 with an accounting of fund expenditures, a summary of the case, and  
25 certify his or her compliance with any rules adopted by the director  
26 relating to the administration of the fund.

27 (4) If the balance of the securities prosecution fund reaches three  
28 hundred fifty thousand dollars, all fines received by the division of  
29 securities under RCW 21.20.400(2), 21.20.110, and 21.20.395 and all  
30 undistributed funds from orders of disgorgement and restitution under  
31 RCW 21.20.110(8) and 21.20.390(6) shall be deposited in the financial  
32 services regulation fund until such time as the balance in the fund  
33 falls below three hundred fifty thousand dollars, at which time the  
34 fines received by the division of securities under RCW 21.20.400(2),  
35 21.20.110, and 21.20.395 and all undistributed funds from orders of  
36 disgorgement and restitution under RCW 21.20.110(8) and 21.20.390(6)

1 shall be deposited to the securities prosecution fund until balance in  
2 the fund once again reaches three hundred fifty thousand dollars.

3 **Sec. 3.** RCW 21.20.400 and 1979 ex.s. c 68 s 28 are each amended to  
4 read as follows:

5 (1) Any person who willfully violates any provision of this chapter  
6 except RCW 21.20.350, or who willfully violates any rule or order under  
7 this chapter, or who willfully violates RCW 21.20.350 knowing the  
8 statement made to be false or misleading in any material respect,  
9 ((shall upon conviction be fined not more than five thousand dollars or  
10 imprisoned not more than ten years, or both; but no)) is guilty of a  
11 class B felony punishable under RCW 9A.20.021(1)(b). However, a person  
12 may not be imprisoned for the violation of any rule or order if that  
13 person proves that he or she had no knowledge of the rule or order.

14 (2) Any person who knowingly alters, destroys, shreds, mutilates,  
15 or conceals a record, document, or other object, or attempts to do so,  
16 with the intent to impair the object's integrity or availability for  
17 use in an official proceeding under this chapter, is guilty of a class  
18 B felony punishable under RCW 9A.20.021(1)(b) or punishable by a fine  
19 of not more than five hundred thousand dollars, or both. The fines  
20 paid under this subsection shall be deposited into the securities  
21 prosecution fund.

22 (3) No indictment or information may be returned under this chapter  
23 more than (a) five years after the ((alleged)) violation, or (b) three  
24 years after the actual discovery of the violation, whichever date of  
25 limitation is later.

26 **Sec. 4.** RCW 21.20.110 and 2002 c 65 s 4 are each amended to read  
27 as follows:

28 (1) The director may by order deny, suspend, revoke, restrict,  
29 condition, or limit any application or registration of any broker-  
30 dealer, salesperson, investment adviser representative, or investment  
31 adviser; or censure or fine the registrant or an officer, director,  
32 partner, or person ((occupying)) performing similar functions for a  
33 registrant; if the director finds that the order is in the public  
34 interest and that the applicant or registrant or, in the case of a

1 broker-dealer or investment adviser, any partner, officer, director, or  
2 person (~~occupying~~) performing similar functions:

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

9 (b) Has willfully violated or willfully failed to comply with any  
10 provision of this chapter or a predecessor act or any rule or order  
11 under this chapter or a predecessor act, or any provision of chapter  
12 21.30 RCW or any rule or order thereunder;

13 (c) Has been convicted, within the past ten years, of any  
14 misdemeanor involving a security, or a commodity contract or commodity  
15 option as defined in RCW 21.30.010, or any aspect of the securities,  
16 commodities, business investments, franchises, business opportunities,  
17 insurance, banking, or finance business, or any felony involving moral  
18 turpitude;

19 (d) Is permanently or temporarily enjoined or restrained by any  
20 court of competent jurisdiction in an action brought by the director,  
21 a state, or a federal government agency from engaging in or continuing  
22 any conduct or practice involving any aspect of the securities,  
23 commodities, business investments, franchises, business opportunities,  
24 insurance, banking, or finance business;

25 (e) Is the subject of an order entered after notice and opportunity  
26 for hearing:

27 (i) By the securities administrator of a state or by the Securities  
28 and Exchange Commission denying, revoking, barring, or suspending  
29 registration as a broker-dealer, salesperson, investment adviser, or  
30 investment adviser representative;

31 (ii) By the securities administrator of a state or by the  
32 Securities and Exchange Commission (~~sanctioning~~) against a broker-  
33 dealer (~~or an~~), salesperson, investment adviser, or an investment  
34 adviser representative;

35 (iii) By the Securities and Exchange Commission or self-regulatory  
36 organization suspending or expelling the registrant from membership in  
37 a self-regulatory organization; or

1 (iv) By a court adjudicating a United States Postal Service fraud;  
2 The director may not commence a revocation or suspension proceeding  
3 more than one year after the date of the order relied on. The director  
4 may not enter an order on the basis of an order under another state  
5 securities act unless that order was based on facts that would  
6 constitute a ground for an order under this section;

7 (f) Is the subject of an order, adjudication, or determination,  
8 after notice and opportunity for hearing, by the Securities and  
9 Exchange Commission, the Commodities Futures Trading Commission, the  
10 Federal Trade Commission, or a securities or insurance regulator of any  
11 state that the person has (~~willfully~~) violated the Securities Act of  
12 1933, the Securities Exchange Act of 1934, the Investment Advisers Act  
13 of 1940, the Investment Company Act of 1940, the Commodities Exchange  
14 Act, the securities, insurance, or commodities law of any state, or a  
15 federal or state law under which a business involving investments,  
16 franchises, business opportunities, insurance, banking, or finance is  
17 regulated;

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

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

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

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

36 (i) There are established procedures, and a system for applying

1 those procedures, that would reasonably be expected to prevent and  
2 detect, insofar as practicable, any violation by another person of this  
3 chapter, or a rule or order under this chapter; and

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

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

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

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

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

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

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

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

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

1 (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 (4) The director may not impose a fine under this section except  
6 after notice and opportunity for hearing. The fine imposed under this  
7 section may not exceed ((five)) ten 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) In any action under subsection (1) of this section, the  
36 director may charge the costs, fees, and other expenses incurred by the  
37 director in the conduct of any administrative investigation, hearing,

1 or court proceeding against any person found to be in violation of any  
2 provision of this section or any rule or order adopted under this  
3 section.

4 (8) In any action under subsection (1) of this section, the  
5 director may enter an order requiring an accounting, restitution, and  
6 disgorgement, including interest at the legal rate under RCW  
7 4.56.110(3). The director may by rule or order provide for payments to  
8 investors, rates of interest, periods of accrual, and other matters the  
9 director deems appropriate to implement this subsection.

10 (9) The director shall immediately suspend the license or  
11 certificate of a person who has been certified pursuant to RCW  
12 74.20A.320 by the department of social and health services as a person  
13 who is not in compliance with a support order. If the person has  
14 continued to meet all other requirements for reinstatement during the  
15 suspension, reissuance of the license or certificate shall be automatic  
16 upon the director's receipt of a release issued by the department of  
17 social and health services stating that the licensee is in compliance  
18 with the order.

19 **Sec. 5.** RCW 21.20.390 and 1995 c 46 s 7 are each amended to read  
20 as follows:

21 Whenever it appears to the director that any person has engaged or  
22 is about to engage in any act or practice constituting a violation of  
23 any provision of this chapter or any rule or order hereunder, the  
24 director may in his or her discretion:

25 (1) Issue an order directing the person to cease and desist from  
26 continuing the act or practice and to take appropriate affirmative  
27 action within a reasonable period of time, as prescribed by the  
28 director, to correct conditions resulting from the act or practice  
29 including, without limitation, a requirement to provide restitution(~~(+  
30 PROVIDED, That))~~). Reasonable notice of and opportunity for a hearing  
31 shall be given(~~(+ PROVIDED, FURTHER, That))~~). The director may issue  
32 a (~~temporary~~) summary order pending the hearing which shall remain in  
33 effect until ten days after the hearing is held and which shall become  
34 final if the person to whom notice is addressed does not request a  
35 hearing within (~~fifteen~~) twenty days after the receipt of notice; or



1           (2) The director may without issuing a cease and desist order,  
2 bring an action in any court of competent jurisdiction to enjoin any  
3 such acts or practices and to enforce compliance with this chapter or  
4 any rule or order (~~hereunder~~) adopted under this chapter. The court  
5 may grant such ancillary relief, including a civil penalty,  
6 restitution, and disgorgement, as it deems appropriate. Upon a proper  
7 showing a permanent or temporary injunction, restraining order, or writ  
8 of mandamus shall be granted and a receiver or conservator may be  
9 appointed for the defendant or the defendant's assets. The director  
10 may not be required to post a bond. If the director prevails, the  
11 director shall be entitled to a reasonable attorney's fee to be fixed  
12 by the court.

13           (3) Whenever it appears to the director that any person who has  
14 received a permit to issue, sell, or otherwise dispose of securities  
15 under this chapter, whether current or otherwise, has become insolvent,  
16 the director may petition a court of competent jurisdiction to appoint  
17 a receiver or conservator for the defendant or the defendant's assets.  
18 The director may not be required to post a bond.

19           (4) The director may bring an action for restitution or damages on  
20 behalf of the persons injured by a violation of this chapter, if the  
21 court finds that private civil action would be so burdensome or  
22 expensive as to be impractical.

23           (5) In any action under this section, the director may charge the  
24 costs, fees, and other expenses incurred by the director in the conduct  
25 of any administrative investigation, hearing, or court proceeding  
26 against any person found to be in violation of any provision of this  
27 section or any rule or order adopted under this section.

28           (6) In any action under subsection (1) of this section, the  
29 director may enter an order requiring an accounting, restitution, and  
30 disgorgement, including interest at the legal rate under RCW  
31 4.56.110(3). The director may by rule or order provide for payments to  
32 investors, interest rates, periods of accrual, and other matters the  
33 director deems appropriate to implement this subsection.

34           **Sec. 6.** RCW 21.20.395 and 1998 c 15 s 18 are each amended to read  
35 as follows:

36           (1) A person who, in an administrative action by the director, is

1 found to have knowingly or recklessly violated any provision of this  
2 chapter, or any rule or order under this chapter, may be fined, after  
3 notice and opportunity for hearing, in an amount not to exceed ((five))  
4 ten thousand dollars for each violation.

5 (2) A person who, in an administrative action by the director, is  
6 found to have knowingly or recklessly violated an administrative order  
7 issued under RCW 21.20.110 or 21.20.390 shall pay an administrative  
8 fine in an amount not to exceed twenty-five thousand dollars for each  
9 violation.

10 (3) The fines paid under subsections (1) and (2) of this section  
11 shall be deposited into the securities prosecution fund.

12 (4) If a petition for judicial review has not been timely filed  
13 under RCW 34.05.542(2), a certified copy of the director's order  
14 requiring payment of the fine may be filed in the office of the clerk  
15 of the superior court in any county of this state. The clerk shall  
16 treat the order of the director in the same manner as a judgment of the  
17 superior court. The director's order so filed has the same effect as  
18 a judgment of the superior court and may be recorded, enforced, or  
19 satisfied in like manner.

20 **Sec. 7.** RCW 9A.20.021 and 1982 c 192 s 10 are each amended to read  
21 as follows:

22 (1) Felony. Unless a different maximum sentence for a classified  
23 felony is specifically established by statute, no person convicted of  
24 a classified felony shall be punished by confinement or fine exceeding  
25 the following:

26 (a) For a class A felony, by confinement in a state correctional  
27 institution for a term of life imprisonment, or by a fine in an amount  
28 fixed by the court of fifty thousand dollars, or by both such  
29 confinement and fine;

30 (b) For a class B felony, by confinement in a state correctional  
31 institution for a term of ten years, or by a fine in an amount fixed by  
32 the court of twenty thousand dollars, or by both such confinement and  
33 fine;

34 (c) For a class C felony, by confinement in a state correctional  
35 institution for five years, or by a fine in an amount fixed by the  
36 court of ten thousand dollars, or by both such confinement and fine.

1           (2) Gross misdemeanor. Every person convicted of a gross  
2 misdemeanor defined in Title 9A RCW shall be punished by imprisonment  
3 in the county jail for a maximum term fixed by the court of not more  
4 than one year, or by a fine in an amount fixed by the court of not more  
5 than five thousand dollars, or by both such imprisonment and fine.

6           (3) Misdemeanor. Every person convicted of a misdemeanor defined  
7 in Title 9A RCW shall be punished by imprisonment in the county jail  
8 for a maximum term fixed by the court of not more than ninety days, or  
9 by a fine in an amount fixed by the court of not more than one thousand  
10 dollars, or by both such imprisonment and fine.

11           (4) This section applies to only those crimes committed on or after  
12 July 1, 1984."

**SHB 1219** - S COMM AMD

By Committee on Financial Services, Insurance & Housing

**ADOPTED 04/09/2003**

13           On page 1, line 2 of the title, after "securities;" strike the  
14 remainder of the title and insert "amending RCW 43.320.110, 21.20.400,  
15 21.20.110, 21.20.390, 21.20.395, and 9A.20.021; adding a new section to  
16 chapter 43.320 RCW; and prescribing penalties."

--- END ---