
SUBSTITUTE SENATE BILL 5365

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Financial Services, Insurance & Housing
(originally sponsored by Senators Benton, Prentice, Doumit, Keiser
and Winsley; by request of Governor Locke)

READ FIRST TIME 02/17/03.

1 AN ACT Relating to violations connected with the offer, sale, or
2 purchase of securities; amending RCW 43.320.110, 21.20.400, 21.20.110,
3 21.20.390, 21.20.395, and 9A.20.021; adding a new section to chapter
4 43.320 RCW; and prescribing penalties.

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

6 **Sec. 1.** RCW 43.320.110 and 2002 c 371 s 912 are each amended to
7 read as follows:

8 There is created a local fund known as the "financial services
9 regulation fund" which shall consist of all moneys received by the
10 divisions of the department of financial institutions, except for the
11 division of securities which shall deposit thirteen percent of all
12 moneys received, except as provided in section 2 of this act, and which
13 shall be used for the purchase of supplies and necessary equipment; the
14 payment of salaries, wages, and utilities; the establishment of
15 reserves; and other incidental costs required for the proper regulation
16 of individuals and entities subject to regulation by the department.
17 The state treasurer shall be the custodian of the fund. Disbursements
18 from the fund shall be on authorization of the director of financial
19 institutions or the director's designee. In order to maintain an

1 effective expenditure and revenue control, the fund shall be subject in
2 all respects to chapter 43.88 RCW, but no appropriation is required to
3 permit expenditures and payment of obligations from the fund.

4 ~~((Between July 1, 2001, and December 31, 2001, the legislature may
5 transfer up to two million dollars from the financial services
6 regulation fund to the digital government revolving account. During
7 the 2001-2003 fiscal biennium, the legislature may transfer from the
8 financial services regulation fund to the state general fund such
9 amounts as reflect the excess fund balance of the fund and
10 appropriations reductions made by the 2002 supplemental appropriations
11 act for administrative efficiencies and savings.))~~

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.320 RCW
13 to read as follows:

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

21 (2) Expenditures from this fund may be used solely for
22 administering the fund and for payment of costs, expenses, and charges
23 incurred in the preparation, initiation, and prosecution of criminal
24 charges for violations of chapters 21.20, 21.30, 19.100, and 19.110
25 RCW. Only the director or the director's designee may authorize
26 expenditures from the fund.

27 (3) Applications for fund expenditures must be submitted by the
28 attorney general or the proper prosecuting attorney to the director.
29 The application must clearly identify the alleged criminal violations
30 identified in subsection (2) of this section and indicate the purpose
31 for which the funds will be used. The application must also certify
32 that any funds received will be expended only for the purpose
33 requested. Funding requests must be approved by the director prior to
34 any expenditure being incurred by the requesting attorney general or
35 prosecuting attorney. At the conclusion of the prosecution, the
36 attorney general or prosecuting attorney shall provide the director

1 with an accounting of fund expenditures, a summary of the case, and
2 certify his or her compliance with any rules adopted by the director
3 relating to the administration of the fund.

4 (4) If the balance of the securities prosecution fund reaches three
5 hundred fifty thousand dollars, all fines received by the division of
6 securities under RCW 21.20.400(2), 21.20.110, and 21.20.395 and all
7 undistributed funds from orders of disgorgement and restitution under
8 RCW 21.20.110(8) and 21.20.390(6) shall be deposited in the financial
9 services regulation fund until such time as the balance in the fund
10 falls below three hundred fifty thousand dollars, at which time the
11 fines received by the division of securities under RCW 21.20.400(2),
12 21.20.110, and 21.20.395 and all undistributed funds from orders of
13 disgorgement and restitution under RCW 21.20.110(8) and 21.20.390(6)
14 shall be deposited to the securities prosecution fund until balance in
15 the fund once again reaches three hundred fifty thousand dollars.

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

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

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

35 (3) No indictment or information may be returned under this chapter
36 more than (a) five years after the ((alleged)) violation, or (b) three

1 years after the actual discovery of the violation, whichever date of
2 limitation is later.

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

5 (1) The director may by order deny, suspend, revoke, restrict,
6 condition, or limit any application or registration of any broker-
7 dealer, salesperson, investment adviser representative, or investment
8 adviser; or censure or fine the registrant or an officer, director,
9 partner, or person (~~occupying~~) performing similar functions for a
10 registrant; if the director finds that the order is in the public
11 interest and that the applicant or registrant or, in the case of a
12 broker-dealer or investment adviser, any partner, officer, director, or
13 person (~~occupying~~) performing similar functions:

14 (a) Has filed an application for registration under this section
15 which, as of its effective date, or as of any date after filing in the
16 case of an order denying effectiveness, was incomplete in any material
17 respect or contained any statement which was, in the light of the
18 circumstances under which it was made, false, or misleading with
19 respect to any material fact;

20 (b) Has willfully violated or willfully failed to comply with any
21 provision of this chapter or a predecessor act or any rule or order
22 under this chapter or a predecessor act, or any provision of chapter
23 21.30 RCW or any rule or order thereunder;

24 (c) Has been convicted, within the past ten years, of any
25 misdemeanor involving a security, or a commodity contract or commodity
26 option as defined in RCW 21.30.010, or any aspect of the securities,
27 commodities, business investments, franchises, business opportunities,
28 insurance, banking, or finance business, or any felony involving moral
29 turpitude;

30 (d) Is permanently or temporarily enjoined or restrained by any
31 court of competent jurisdiction in an action brought by the director,
32 a state, or a federal government agency from engaging in or continuing
33 any conduct or practice involving any aspect of the securities,
34 commodities, business investments, franchises, business opportunities,
35 insurance, banking, or finance business;

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

1 (i) By the securities administrator of a state or by the Securities
2 and Exchange Commission denying, revoking, barring, or suspending
3 registration as a broker-dealer, salesperson, investment adviser, or
4 investment adviser representative;

5 (ii) By the securities administrator of a state or by the
6 Securities and Exchange Commission (~~(sanctioning)~~) against a broker-
7 dealer (~~(or an)~~), salesperson, investment adviser, or an investment
8 adviser representative;

9 (iii) By the Securities and Exchange Commission or self-regulatory
10 organization suspending or expelling the registrant from membership in
11 a self-regulatory organization; or

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

18 (f) Is the subject of an order, adjudication, or determination,
19 after notice and opportunity for hearing, by the Securities and
20 Exchange Commission, the Commodities Futures Trading Commission, the
21 Federal Trade Commission, or a securities or insurance regulator of any
22 state that the person has (~~(willfully)~~) violated the Securities Act of
23 1933, the Securities Exchange Act of 1934, the Investment Advisers Act
24 of 1940, the Investment Company Act of 1940, the Commodities Exchange
25 Act, the securities, insurance, or commodities law of any state, or a
26 federal or state law under which a business involving investments,
27 franchises, business opportunities, insurance, banking, or finance is
28 regulated;

29 (g) Has engaged in dishonest or unethical practices in the
30 securities or commodities business;

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

36 (i) Has not complied with a condition imposed by the director under
37 RCW 21.20.100, or is not qualified on the basis of such factors as

1 training, experience, or knowledge of the securities business, except
2 as otherwise provided in subsection (2) of this section;

3 (j) Has failed to supervise reasonably a salesperson or an
4 investment adviser representative, or employee, if the salesperson,
5 investment adviser representative, or employee was subject to the
6 person's supervision and committed a violation of this chapter or a
7 rule adopted or order issued under this chapter. For the purposes of
8 this subsection, no person fails to supervise reasonably another
9 person, if:

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

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

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

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

24 (i) (~~Willfully~~) Violated the law of a foreign jurisdiction
25 governing or regulating the business of securities, commodities,
26 insurance, or banking;

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

31 (iii) Been suspended or expelled from membership by a securities
32 exchange or securities association operating under the authority of the
33 securities regulator of a foreign jurisdiction;

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

37 (n) Refuses to allow or otherwise impedes the director from

1 conducting an audit, examination, or inspection, or refuses access to
2 any branch office or business location to conduct an audit,
3 examination, or inspection.

4 (2) The director, by rule or order, may require that an
5 examination, including an examination developed or approved by an
6 organization of securities administrators, be taken by any class of or
7 all applicants. The director, by rule or order, may waive the
8 examination as to a person or class of persons if the administrator
9 determines that the examination is not necessary or appropriate in the
10 public interest or for the protection of investors.

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

15 (4) The director may not impose a fine under this section except
16 after notice and opportunity for hearing. The fine imposed under this
17 section may not exceed ((five)) ten thousand dollars for each act or
18 omission that constitutes the basis for issuing the order. If a
19 petition for judicial review has not been timely filed under RCW
20 34.05.542(2), a certified copy of the director's order requiring
21 payment of the fine may be filed in the office of the clerk of the
22 superior court in any county of this state. The clerk shall treat the
23 order of the director in the same manner as a judgment of the superior
24 court. The director's order so filed has the same effect as a judgment
25 of the superior court and may be recorded, enforced, or satisfied in
26 like manner.

27 (5) Withdrawal from registration as a broker-dealer, salesperson,
28 investment adviser, or investment adviser representative becomes
29 effective thirty days after receipt of an application to withdraw or
30 within such shorter period as the administrator determines, unless a
31 revocation or suspension proceeding is pending when the application is
32 filed. If a proceeding is pending, withdrawal becomes effective upon
33 such conditions as the director, by order, determines. If no
34 proceeding is pending or commenced and withdrawal automatically becomes
35 effective, the administrator may nevertheless commence a revocation or
36 suspension proceeding under subsection (1)(b) of this section within
37 one year after withdrawal became effective and enter a revocation or

1 suspension order as of the last date on which registration was
2 effective.

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

8 (7) In any action under subsection (1) of this section, the
9 director may charge the costs, fees, and other expenses incurred by the
10 director in the conduct of any administrative investigation, hearing,
11 or court proceeding against any person found to be in violation of any
12 provision of this section or any rule or order adopted under this
13 section.

14 (8) In any action under subsection (1) of this section, the
15 director may enter an order requiring an accounting, restitution, and
16 disgorgement, including interest at the legal rate under RCW
17 4.56.110(3). The director may by rule or order provide for payments to
18 investors, rates of interest, periods of accrual, and other matters the
19 director deems appropriate to implement this subsection.

20 (9) The director shall immediately suspend the license or
21 certificate of a person who has been certified pursuant to RCW
22 74.20A.320 by the department of social and health services as a person
23 who is not in compliance with a support order. If the person has
24 continued to meet all other requirements for reinstatement during the
25 suspension, reissuance of the license or certificate shall be automatic
26 upon the director's receipt of a release issued by the department of
27 social and health services stating that the licensee is in compliance
28 with the order.

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

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

35 (1) Issue an order directing the person to cease and desist from
36 continuing the act or practice and to take appropriate affirmative
37 action within a reasonable period of time, as prescribed by the

1 director, to correct conditions resulting from the act or practice
2 including, without limitation, a requirement to provide restitution(~~(+
3 PROVIDED, That))~~). Reasonable notice of and opportunity for a hearing
4 shall be given(~~(+ PROVIDED, FURTHER, That))~~). The director may issue
5 a (~~temporary~~) summary order pending the hearing which shall remain in
6 effect until ten days after the hearing is held and which shall become
7 final if the person to whom notice is addressed does not request a
8 hearing within (~~fifteen~~) twenty days after the receipt of notice; or

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

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

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

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

36 (6) In any action under subsection (1) of this section, the
37 director may enter an order requiring an accounting, restitution, and
38 disgorgement, including interest at the legal rate under RCW

1 4.56.110(3). The director may by rule or order provide for payments to
2 investors, interest rates, periods of accrual, and other matters the
3 director deems appropriate to implement this subsection.

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

6 (1) A person who, in an administrative action by the director, is
7 found to have knowingly or recklessly violated any provision of this
8 chapter, or any rule or order under this chapter, may be fined, after
9 notice and opportunity for hearing, in an amount not to exceed (~~five~~)
10 ten thousand dollars for each violation.

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

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

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

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

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

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

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

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

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

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

18 (4) This section applies to only those crimes committed on or after
19 July 1, 1984.

--- END ---