
SENATE BILL 5365

State of Washington

58th Legislature

2003 Regular Session

By Senators Benton, Prentice, Doumit, Keiser and Winsley; by request of Governor Locke

Read first time 01/23/2003. Referred to Committee on Financial Services, Insurance & Housing.

1 AN ACT Relating to violations connected with the offer, sale, or
2 purchase of securities; amending RCW 43.320.110, 21.20.400, 21.20.410,
3 21.20.110, 21.20.390, and 21.20.395; 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 state
15 treasury and shall consist of all fines received by the division of
16 securities under RCW 21.20.400(2), 21.20.110, and 21.20.395 and all
17 undistributed funds from orders of disgorgement and restitution under
18 RCW 21.20.110(8) and 21.20.390(6). No appropriation is required to
19 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. However, a person may not be imprisoned for the
25 violation of any rule or order if that person proves that he or she had
26 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, shall upon conviction
31 be fined not more than five hundred thousand dollars or imprisoned not
32 more than ten years, or both. The fines paid under this subsection
33 shall be deposited into the securities prosecution fund.

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

1 **Sec. 4.** RCW 21.20.410 and 1998 c 15 s 19 are each amended to read
2 as follows:

3 (1) The director may refer such evidence as may be available
4 concerning violations of this chapter or of any rule or order hereunder
5 to the attorney general or the proper prosecuting attorney, who may in
6 his or her discretion, with or without such a reference, institute the
7 appropriate criminal proceedings under this chapter.

8 (2) The director may render such assistance as the prosecuting
9 attorney requests regarding a reference.

10 (3) The attorney general or the proper prosecuting attorney may
11 request that an attorney employed by the director prosecute or assist
12 in the prosecution of the violation or violations on behalf of the
13 state. The attorney general or prosecuting attorney may appoint an
14 employee approved by the director to serve as a special prosecuting
15 attorney with the powers and duties prescribed by law and delegated by
16 the attorney general or prosecuting attorney. The appointed attorney
17 shall serve without compensation from the attorney general or
18 prosecuting attorney.

19 **Sec. 5.** RCW 21.20.110 and 2002 c 65 s 4 are each amended to read
20 as follows:

21 (1) The director may by order deny, suspend, revoke, restrict,
22 condition, or limit any application or registration of any broker-
23 dealer, salesperson, investment adviser representative, or investment
24 adviser; or censure or fine the registrant or an officer, director,
25 partner, or person (~~occupying~~) performing similar functions for a
26 registrant; if the director finds that the order is in the public
27 interest and that the applicant or registrant or, in the case of a
28 broker-dealer or investment adviser, any partner, officer, director, or
29 person (~~occupying~~) performing similar functions:

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

36 (b) Has willfully violated or willfully failed to comply with any

1 provision of this chapter or a predecessor act or any rule or order
2 under this chapter or a predecessor act, or any provision of chapter
3 21.30 RCW or any rule or order thereunder;

4 (c) Has been convicted, within the past ten years, of any
5 misdemeanor involving a security, or a commodity contract or commodity
6 option as defined in RCW 21.30.010, or any aspect of the securities,
7 commodities, business investments, franchises, business opportunities,
8 insurance, banking, or finance business, or any felony involving moral
9 turpitude;

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

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

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

22 (ii) By the securities administrator of a state or by the
23 Securities and Exchange Commission (~~(sanctioning)~~) against a broker-
24 dealer (~~(or an)~~), salesperson, investment adviser, or an investment
25 adviser representative;

26 (iii) By the Securities and Exchange Commission or self-regulatory
27 organization suspending or expelling the registrant from membership in
28 a self-regulatory organization; or

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

35 (f) Is the subject of an order, adjudication, or determination,
36 after notice and opportunity for hearing, by the Securities and
37 Exchange Commission, the Commodities Futures Trading Commission, the
38 Federal Trade Commission, or a securities or insurance regulator of any

1 state that the person has (~~willfully~~) violated the Securities Act of
2 1933, the Securities Exchange Act of 1934, the Investment Advisers Act
3 of 1940, the Investment Company Act of 1940, the Commodities Exchange
4 Act, the securities, insurance, or commodities law of any state, or a
5 federal or state law under which a business involving investments,
6 franchises, business opportunities, insurance, banking, or finance is
7 regulated;

8 (g) Has engaged in dishonest or unethical practices in the
9 securities or commodities business;

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

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

19 (j) Has failed to supervise reasonably a salesperson or an
20 investment adviser representative, or employee, if the salesperson,
21 investment adviser representative, or employee was subject to the
22 person's supervision and committed a violation of this chapter or a
23 rule adopted or order issued under this chapter. For the purposes of
24 this subsection, no person fails to supervise reasonably another
25 person, if:

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

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

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

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

3 (i) (~~Willfully~~) Violated the law of a foreign jurisdiction
4 governing or regulating the business of securities, commodities,
5 insurance, or banking;

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

10 (iii) Been suspended or expelled from membership by a securities
11 exchange or securities association operating under the authority of the
12 securities regulator of a foreign jurisdiction;

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

16 (n) Refuses to allow or otherwise impedes the director from
17 conducting an audit, examination, or inspection, or refuses access to
18 any branch office or business location to conduct an audit,
19 examination, or inspection.

20 (2) The director, by rule or order, may require that an
21 examination, including an examination developed or approved by an
22 organization of securities administrators, be taken by any class of or
23 all applicants. The director, by rule or order, may waive the
24 examination as to a person or class of persons if the administrator
25 determines that the examination is not necessary or appropriate in the
26 public interest or for the protection of investors.

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

31 (4) The director may not impose a fine under this section except
32 after notice and opportunity for hearing. The fine imposed under this
33 section may not exceed (~~five~~) ten thousand dollars for each act or
34 omission that constitutes the basis for issuing the order. If a
35 petition for judicial review has not been timely filed under RCW
36 34.05.542(2), a certified copy of the director's order requiring
37 payment of the fine may be filed in the office of the clerk of the
38 superior court in any county of this state. The clerk shall treat the

1 order of the director in the same manner as a judgment of the superior
2 court. The director's order so filed has the same effect as a judgment
3 of the superior court and may be recorded, enforced, or satisfied in
4 like manner.

5 (5) Withdrawal from registration as a broker-dealer, salesperson,
6 investment adviser, or investment adviser representative becomes
7 effective thirty days after receipt of an application to withdraw or
8 within such shorter period as the administrator determines, unless a
9 revocation or suspension proceeding is pending when the application is
10 filed. If a proceeding is pending, withdrawal becomes effective upon
11 such conditions as the director, by order, determines. If no
12 proceeding is pending or commenced and withdrawal automatically becomes
13 effective, the administrator may nevertheless commence a revocation or
14 suspension proceeding under subsection (1)(b) of this section within
15 one year after withdrawal became effective and enter a revocation or
16 suspension order as of the last date on which registration was
17 effective.

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

23 (7) In any action under subsection (1) of this section, the
24 director may charge the costs, fees, and other expenses incurred by the
25 director in the conduct of any administrative investigation, hearing,
26 or court proceeding against any person found to be in violation of any
27 provision of this section or any rule or order adopted under this
28 section.

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

35 (9) 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. If the person has

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

6 **Sec. 6.** RCW 21.20.390 and 1995 c 46 s 7 are each amended to read
7 as follows:

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

12 (1) Issue an order directing the person to cease and desist from
13 continuing the act or practice and to take appropriate affirmative
14 action within a reasonable period of time, as prescribed by the
15 director, to correct conditions resulting from the act or practice
16 including, without limitation, a requirement to provide restitution(~~(+~~
17 ~~PROVIDED, That~~)). Reasonable notice of and opportunity for a hearing
18 shall be given(~~(+~~~~PROVIDED, FURTHER, That~~)). The director may issue
19 a (~~temporary~~) summary order pending the hearing which shall remain in
20 effect until ten days after the hearing is held and which shall become
21 final if the person to whom notice is addressed does not request a
22 hearing within (~~fifteen~~) twenty days after the receipt of notice; or

23 (2) The director may without issuing a cease and desist order,
24 bring an action in any court of competent jurisdiction to enjoin any
25 such acts or practices and to enforce compliance with this chapter or
26 any rule or order (~~hereunder~~) adopted under this chapter. The court
27 may grant such ancillary relief, including a civil penalty,
28 restitution, and disgorgement, as it deems appropriate. Upon a proper
29 showing a permanent or temporary injunction, restraining order, or writ
30 of mandamus shall be granted and a receiver or conservator may be
31 appointed for the defendant or the defendant's assets. The director
32 may not be required to post a bond. If the director prevails, the
33 director shall be entitled to a reasonable attorney's fee to be fixed
34 by the court.

35 (3) Whenever it appears to the director that any person who has
36 received a permit to issue, sell, or otherwise dispose of securities
37 under this chapter, whether current or otherwise, has become insolvent,

1 the director may petition a court of competent jurisdiction to appoint
2 a receiver or conservator for the defendant or the defendant's assets.
3 The director may not be required to post a bond.

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

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

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

19 **Sec. 7.** RCW 21.20.395 and 1998 c 15 s 18 are each amended to read
20 as follows:

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

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

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

33 (4) If a petition for judicial review has not been timely filed
34 under RCW 34.05.542(2), a certified copy of the director's order
35 requiring payment of the fine may be filed in the office of the clerk
36 of the superior court in any county of this state. The clerk shall
37 treat the order of the director in the same manner as a judgment of the

1 superior court. The director's order so filed has the same effect as
2 a judgment of the superior court and may be recorded, enforced, or
3 satisfied in like manner.

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