
HOUSE BILL 2916

State of Washington

59th Legislature

2006 Regular Session

By Representative Kirby; by request of Uniform Legislation Commission

Read first time 01/16/2006. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to the uniform securities act of Washington;
2 amending RCW 42.56.400; adding a new chapter to Title 21 RCW; repealing
3 RCW 21.20.005, 21.20.010, 21.20.020, 21.20.030, 21.20.035, 21.20.037,
4 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090,
5 21.20.100, 21.20.110, 21.20.120, 21.20.130, 21.20.135, 21.20.140,
6 21.20.180, 21.20.190, 21.20.200, 21.20.210, 21.20.220, 21.20.230,
7 21.20.240, 21.20.250, 21.20.260, 21.20.270, 21.20.275, 21.20.280,
8 21.20.290, 21.20.300, 21.20.310, 21.20.320, 21.20.325, 21.20.327,
9 21.20.330, 21.20.340, 21.20.350, 21.20.360, 21.20.370, 21.20.380,
10 21.20.390, 21.20.395, 21.20.400, 21.20.410, 21.20.420, 21.20.430,
11 21.20.435, 21.20.440, 21.20.450, 21.20.460, 21.20.470, 21.20.480,
12 21.20.490, 21.20.500, 21.20.510, 21.20.520, 21.20.530, 21.20.540,
13 21.20.550, 21.20.560, 21.20.570, 21.20.580, 21.20.590, 21.20.700,
14 21.20.702, 21.20.705, 21.20.710, 21.20.715, 21.20.717, 21.20.720,
15 21.20.725, 21.20.727, 21.20.730, 21.20.732, 21.20.734, 21.20.740,
16 21.20.745, 21.20.750, 21.20.800, 21.20.805, 21.20.810, 21.20.815,
17 21.20.820, 21.20.825, 21.20.830, 21.20.835, 21.20.840, 21.20.845,
18 21.20.850, 21.20.855, 21.20.900, 21.20.905, 21.20.910, 21.20.915,
19 21.20.920, 21.20.925, 21.20.930, 21.20.935, and 21.20.940; prescribing
20 penalties; and providing an effective date.

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

2 NEW SECTION. **Sec. 1.** The following acts or parts of acts are each
3 repealed:

4 (1) RCW 21.20.005 (Definitions) and 2002 c 65 s 1, 1998 c 15 s 1,
5 & 1994 c 256 s 3;

6 (2) RCW 21.20.010 (Unlawful offers, sales, purchases) and 1959 c
7 282 s 1;

8 (3) RCW 21.20.020 (Unlawful acts of person advising another) and
9 2002 c 65 s 2, 1998 c 15 s 2, & 1959 c 282 s 2;

10 (4) RCW 21.20.030 (Unlawful acts of investment adviser) and 1993 c
11 114 s 1 & 1959 c 282 s 3;

12 (5) RCW 21.20.035 (Unlawful purchases or sales for customer's
13 account) and 1994 c 256 s 4 & 1993 c 470 s 1;

14 (6) RCW 21.20.037 (Variable contracts--Registration required--
15 Rules) and 2002 c 65 s 8;

16 (7) RCW 21.20.040 (Registration and notification required--
17 Exemptions) and 2002 c 65 s 3, 1998 c 15 s 3, 1994 c 256 s 5, 1989 c
18 391 s 2, 1979 ex.s. c 68 s 2, 1975 1st ex.s. c 84 s 2, 1974 ex.s. c 77
19 s 1, & 1959 c 282 s 4;

20 (8) RCW 21.20.050 (Application for registration--Filing of
21 documents--Consent to service of process--Fee) and 1998 c 15 s 4, 1994
22 c 256 s 6, 1981 c 272 s 1, 1979 ex.s. c 68 s 3, 1975 1st ex.s. c 84 s
23 3, 1961 c 37 s 2, & 1959 c 282 s 5;

24 (9) RCW 21.20.060 (Contents of application for registration--
25 Capital requirements) and 1998 c 15 s 5, 1995 c 46 s 1, 1994 c 256 s 7,
26 1965 c 17 s 1, & 1959 c 282 s 6;

27 (10) RCW 21.20.070 (When registration effective--Requirements
28 determined by rule) and 1998 c 15 s 6, 1981 c 272 s 2, 1979 ex.s. c 68
29 s 4, 1975 1st ex.s. c 84 s 4, 1974 ex.s. c 77 s 2, & 1959 c 282 s 7;

30 (11) RCW 21.20.080 (Duration of registration--Association with
31 issuer, broker-dealer, federal covered adviser, or investment adviser--
32 Notice to director--Extension of licensing period) and 1998 c 15 s 7,
33 1994 c 256 s 8, 1981 c 272 s 3, 1979 ex.s. c 68 s 5, 1975 1st ex.s. c
34 84 s 5, & 1959 c 282 s 8;

35 (12) RCW 21.20.090 (Renewal of registration--Financial reports--
36 Application for a successor) and 1998 c 15 s 8, 1995 c 46 s 2, 1994 c

1 256 s 9, 1981 c 272 s 4, 1979 ex.s. c 68 s 6, 1975 1st ex.s. c 84 s 6,
2 1961 c 37 s 3, & 1959 c 282 s 9;

3 (13) RCW 21.20.100 (Accounts, correspondence, memoranda, papers,
4 books, and other records--Release of information--Correction of filed
5 document--Examination) and 1998 c 15 s 9 & 1959 c 282 s 10;

6 (14) RCW 21.20.110 (Director may deny, suspend, revoke, restrict,
7 condition, or limit any application or registration--Director may
8 censure or fine registrant--Grounds--Procedures--Costs--Accounting) and
9 2003 c 288 s 4, 2002 c 65 s 4, 1998 c 15 s 10, 1997 c 58 s 856, 1994 c
10 256 s 10, 1993 c 470 s 3, 1986 c 14 s 45, 1979 ex.s. c 68 s 7, 1975 1st
11 ex.s. c 84 s 7, 1965 c 17 s 2, & 1959 c 282 s 11;

12 (15) RCW 21.20.120 (Denial, suspension, revocation of
13 registration--Order--Request for, notice of hearing--Findings and
14 conclusions) and 1994 c 256 s 11, 1979 ex.s. c 68 s 8, 1975 1st ex.s.
15 c 84 s 8, & 1959 c 282 s 12;

16 (16) RCW 21.20.130 (Cancellation of registration or application--
17 Grounds) and 1994 c 256 s 12, 1979 ex.s. c 68 s 9, 1975 1st ex.s. c 84
18 s 9, & 1959 c 282 s 13;

19 (17) RCW 21.20.135 (License as salesperson or broker-dealer
20 prerequisite to suit for commission) and 1979 ex.s. c 68 s 10, 1974
21 ex.s. c 77 s 3, & 1961 c 37 s 10;

22 (18) RCW 21.20.140 (Unlawful to offer or sell unregistered
23 securities--Exceptions) and 1998 c 15 s 11, 1975 1st ex.s. c 84 s 10,
24 & 1959 c 282 s 14;

25 (19) RCW 21.20.180 (Registration by coordination--Requirements--
26 Statement, contents) and 1994 c 256 s 13, 1979 ex.s. c 68 s 11, 1961 c
27 37 s 4, & 1959 c 282 s 18;

28 (20) RCW 21.20.190 (Time of taking effect of registration statement
29 by coordination--Conditions--"Price amendment", notification) and 1994
30 c 256 s 14, 1961 c 37 s 5, & 1959 c 282 s 19;

31 (21) RCW 21.20.200 (Failure to notify of price amendment, proof of
32 compliance--Stop order--Waiver of certain conditions) and 1994 c 256 s
33 15, 1979 ex.s. c 68 s 12, & 1959 c 282 s 20;

34 (22) RCW 21.20.210 (Registration by qualification--Statements--
35 Requirements--Audits) and 1994 c 256 s 16, 1979 ex.s. c 68 s 13, 1973
36 1st ex.s. c 171 s 1, & 1959 c 282 s 21;

37 (23) RCW 21.20.220 (Information not required when nonissuer
38 distribution) and 1959 c 282 s 22;

1 (24) RCW 21.20.230 (Time of taking effect of registration statement
2 by qualification--Conditions) and 1979 ex.s. c 68 s 14, 1975 1st ex.s.
3 c 84 s 11, 1974 ex.s. c 77 s 4, 1961 c 37 s 6, & 1959 c 282 s 23;
4 (25) RCW 21.20.240 (Registration statements--Generally) and 1975
5 1st ex.s. c 84 s 12 & 1959 c 282 s 24;
6 (26) RCW 21.20.250 (Registration by qualification or coordination--
7 Escrow--Impounding proceeds) and 1979 ex.s. c 68 s 15 & 1959 c 282 s
8 25;
9 (27) RCW 21.20.260 (Registration by coordination or qualification--
10 Offer and sale--Duration of effectiveness) and 1975 1st ex.s. c 84 s
11 13, 1974 ex.s. c 77 s 5, & 1959 c 282 s 26;
12 (28) RCW 21.20.270 (Reports by filer of statement--Annual financial
13 statements) and 1995 c 46 s 3, 1975 1st ex.s. c 84 s 14, 1965 c 17 s 3,
14 1961 c 37 s 7, & 1959 c 282 s 27;
15 (29) RCW 21.20.275 (Pending registration--Notice of termination--
16 Application for continuation) and 1994 c 256 s 17, 1979 ex.s. c 68 s
17 16, & 1974 ex.s. c 77 s 12;
18 (30) RCW 21.20.280 (Stop orders--Grounds) and 1979 ex.s. c 68 s 17,
19 1975 1st ex.s. c 84 s 15, & 1959 c 282 s 28;
20 (31) RCW 21.20.290 (Stop order prohibited if facts known on
21 effective date of statement) and 1979 ex.s. c 68 s 18 & 1959 c 282 s
22 29;
23 (32) RCW 21.20.300 (Notification of entry of stop order--Hearing--
24 Findings, conclusions, modification, etc.) and 1979 ex.s. c 68 s 19 &
25 1959 c 282 s 30;
26 (33) RCW 21.20.310 (Securities exempt from registration) and 2002
27 c 65 s 5, 1998 c 15 s 13, 1995 c 46 s 4, 1994 c 256 s 18, 1981 c 272 s
28 5, 1979 ex.s. c 68 s 20, 1979 c 130 s 4, & 1979 c 8 s 1;
29 (34) RCW 21.20.320 (Exempt transactions) and 1998 c 15 s 14 & 1989
30 c 307 s 34;
31 (35) RCW 21.20.325 (Denial, revocation, condition, of exemptions--
32 Authority--Procedure) and 1979 ex.s. c 68 s 22, 1979 c 130 s 14, 1977
33 ex.s. c 188 s 3, 1975 1st ex.s. c 84 s 18, 1974 ex.s. c 77 s 7, & 1967
34 c 199 s 3;
35 (36) RCW 21.20.327 (Required filings--Consent to service--Failure
36 to comply--Rules--Fees) and 1998 c 15 s 12;
37 (37) RCW 21.20.330 (Consent to service of process--Service, how

1 made) and 1998 c 15 s 15, 1994 c 256 s 19, 1979 ex.s. c 68 s 23, 1975
2 1st ex.s. c 84 s 19, & 1959 c 282 s 33;

3 (38) RCW 21.20.340 (Fees--Disposition) and 1998 c 15 s 16, 1995 c
4 46 s 5, 1994 c 256 s 20, 1988 c 244 s 17, 1986 c 90 s 2, 1981 c 272 s
5 7, & 1979 ex.s. c 68 s 24;

6 (39) RCW 21.20.350 (False or misleading statements in filed
7 documents) and 1959 c 282 s 35;

8 (40) RCW 21.20.360 (Filing, registration, statement, exemption not
9 conclusive as to truth or completeness--Unlawful representations) and
10 1975 1st ex.s. c 84 s 21 & 1959 c 282 s 36;

11 (41) RCW 21.20.370 (Investigations--Statement of facts relating to
12 investigation may be permitted--Publication of information--Use of
13 criminal history record information) and 2002 c 65 s 6, 1998 c 15 s 17,
14 1994 c 256 s 21, 1979 ex.s. c 68 s 25, 1973 1st ex.s. c 171 s 2, & 1959
15 c 282 s 37;

16 (42) RCW 21.20.380 (Oaths--Subpoenas--Assisting another state--
17 Compelling obedience--Punishment) and 2002 c 65 s 7, 1995 c 46 s 6,
18 1994 c 256 s 22, 1979 ex.s. c 68 s 26, 1975 1st ex.s. c 84 s 22, 1974
19 ex.s. c 77 s 9, & 1959 c 282 s 38;

20 (43) RCW 21.20.390 (Injunction, cease and desist order, restraining
21 order, mandamus--Appointment of receiver or conservator for insolvent--
22 Restitution or damages--Costs--Accounting) and 2003 c 288 s 5, 1995 c
23 46 s 7, 1994 c 256 s 23, 1981 c 272 s 8, 1979 ex.s. c 68 s 27, 1975 1st
24 ex.s. c 84 s 23, 1974 ex.s. c 77 s 10, & 1959 c 282 s 39;

25 (44) RCW 21.20.395 (Administrative action--Hearing--Judicial
26 review--Judgment) and 2003 c 288 s 6 & 1998 c 15 s 18;

27 (45) RCW 21.20.400 (Penalty for violation of chapter--Limitation of
28 actions) and 2003 c 288 s 3, 2003 c 53 s 163, 1979 ex.s. c 68 s 28,
29 1965 c 17 s 5, & 1959 c 282 s 40;

30 (46) RCW 21.20.410 (Attorney general, prosecuting attorney may
31 institute criminal proceeding--Referral of evidence by director) and
32 1998 c 15 s 19, 1979 ex.s. c 68 s 29, & 1959 c 282 s 41;

33 (47) RCW 21.20.420 (Criminal punishment, chapter not exclusive) and
34 1959 c 282 s 42;

35 (48) RCW 21.20.430 (Civil liabilities--Survival, limitation of
36 actions--Waiver of chapter void--Scienter) and 1998 c 15 s 20, 1986 c
37 304 s 1, 1985 c 171 s 1, 1981 c 272 s 9, 1979 ex.s. c 68 s 30, 1977

1 ex.s. c 172 s 4, 1975 1st ex.s. c 84 s 24, 1974 ex.s. c 77 s 11, 1967
2 c 199 s 2, & 1959 c 282 s 43;

3 (49) RCW 21.20.435 (Assurance of discontinuance of violations--
4 Acceptance--Filing) and 1979 ex.s. c 68 s 31 & 1974 ex.s. c 77 s 13;

5 (50) RCW 21.20.440 (Judicial review of order--Modification of order
6 by director on additional evidence) and 1979 ex.s. c 68 s 32 & 1959 c
7 282 s 44;

8 (51) RCW 21.20.450 (Administration of chapter--Rules and forms,
9 publication--Cooperation with other state and federal authorities) and
10 1994 c 256 s 24, 1993 c 472 s 15, 1979 ex.s. c 68 s 33, 1979 c 158 s
11 86, 1975 1st ex.s. c 84 s 25, & 1959 c 282 s 45;

12 (52) RCW 21.20.460 (Administrator of securities--Appointment,
13 qualifications, term, etc.) and 1959 c 282 s 46;

14 (53) RCW 21.20.470 (Compensation, travel expenses of administrator
15 and employees) and 1979 ex.s. c 68 s 34, 1975-'76 2nd ex.s. c 34 s 64,
16 & 1959 c 282 s 47;

17 (54) RCW 21.20.480 (Unlawful use or disclosure of filed
18 information) and 1979 ex.s. c 68 s 35 & 1959 c 282 s 48;

19 (55) RCW 21.20.490 (No liability under chapter for act in good
20 faith) and 1959 c 282 s 49;

21 (56) RCW 21.20.500 (Administrative hearings public--Exception) and
22 1979 ex.s. c 68 s 36 & 1959 c 282 s 50;

23 (57) RCW 21.20.510 (Document filed when received--Register--
24 Inspection of register, information, etc.) and 1994 c 256 s 25 & 1959
25 c 282 s 51;

26 (58) RCW 21.20.520 (Copies of entries, documents to be furnished--
27 Copies as prima facie evidence) and 1979 ex.s. c 68 s 37 & 1959 c 282
28 s 52;

29 (59) RCW 21.20.530 (Interpretative opinions by director) and 1979
30 ex.s. c 68 s 38 & 1959 c 282 s 53;

31 (60) RCW 21.20.540 (Exemptions, exceptions, and preemptions--Burden
32 of proof) and 1998 c 15 s 21 & 1959 c 282 s 54;

33 (61) RCW 21.20.550 (State advisory committee--Composition,
34 appointment, qualifications) and 1973 1st ex.s. c 171 s 3 & 1959 c 282
35 s 55;

36 (62) RCW 21.20.560 (State advisory committee--Chairperson,
37 secretary--Meetings) and 1979 ex.s. c 68 s 39, 1973 1st ex.s. c 171 s
38 4, & 1959 c 282 s 56;

1 (63) RCW 21.20.570 (State advisory committee--Terms--Vacancies) and
2 1959 c 282 s 57;

3 (64) RCW 21.20.580 (State advisory committee--Duties) and 1981 c
4 272 s 10, 1979 ex.s. c 68 s 40, & 1959 c 282 s 58;

5 (65) RCW 21.20.590 (State advisory committee--Reimbursement of
6 travel expenses) and 1981 c 272 s 11, 1975-'76 2nd ex.s. c 34 s 65, &
7 1959 c 282 s 59;

8 (66) RCW 21.20.700 (Investigations and examinations--Additional
9 authority--Scope) and 1988 c 244 s 1 & 1973 1st ex.s. c 171 s 5;

10 (67) RCW 21.20.702 (Suitability of recommendation--Reasonable
11 grounds required) and 1994 c 256 s 26 & 1993 c 470 s 2;

12 (68) RCW 21.20.705 (Debenture companies--Definitions) and 1988 c
13 244 s 2, 1987 c 421 s 1, 1979 c 140 s 1, & 1973 1st ex.s. c 171 s 6;

14 (69) RCW 21.20.710 (Debenture companies--Capital requirements) and
15 1988 c 244 s 3 & 1973 1st ex.s. c 171 s 7;

16 (70) RCW 21.20.715 (Debenture companies--Maturity date
17 requirements) and 1987 c 421 s 2 & 1973 1st ex.s. c 171 s 8;

18 (71) RCW 21.20.717 (Debenture companies--Controlling person--
19 Exceptions) and 1987 c 421 s 3;

20 (72) RCW 21.20.720 (Debenture companies--Prohibited activities by
21 directors, officers, or controlling persons) and 1993 c 472 s 16, 1987
22 c 421 s 4, 1979 ex.s. c 68 s 41, 1979 c 158 s 87, & 1973 1st ex.s. c
23 171 s 9;

24 (73) RCW 21.20.725 (Debenture companies--Debentures payable on
25 demand--Interest--Certificates of debenture) and 1988 c 244 s 4 & 1973
26 1st ex.s. c 171 s 10;

27 (74) RCW 21.20.727 (Debenture companies--Acquisition of control--
28 Requirements--Violation--Penalty) and 1987 c 421 s 5;

29 (75) RCW 21.20.730 (Debenture companies--Acquisition of control--
30 Grounds for disapproval) and 1987 c 421 s 6;

31 (76) RCW 21.20.732 (Debenture companies--Notice of charges--
32 Hearing--Cease and desist orders) and 1988 c 244 s 5 & 1987 c 421 s 7;

33 (77) RCW 21.20.734 (Debenture companies--Temporary cease and desist
34 orders) and 1988 c 244 s 6 & 1987 c 421 s 8;

35 (78) RCW 21.20.740 (Reports--Requirements) and 1997 c 101 s 1, 1979
36 ex.s. c 68 s 42, & 1973 1st ex.s. c 171 s 11;

37 (79) RCW 21.20.745 (Reports--Violations of reporting requirements--

1 Penalties--Contribution) and 1979 ex.s. c 68 s 43 & 1973 1st ex.s. c
2 171 s 12;

3 (80) RCW 21.20.750 (Reports--Suspension of sale of securities until
4 reporting requirements complied with) and 1973 1st ex.s. c 171 s 13;

5 (81) RCW 21.20.800 (Severability--1973 1st ex.s. c 171) and 1973
6 1st ex.s. c 171 s 15;

7 (82) RCW 21.20.805 (Effective date--Construction--1973 1st ex.s. c
8 171) and 1973 1st ex.s. c 171 s 14;

9 (83) RCW 21.20.810 (Application of chapter not limited) and 1988 c
10 244 s 7;

11 (84) RCW 21.20.815 (Debenture companies--Equity investments) and
12 1988 c 244 s 8;

13 (85) RCW 21.20.820 (Debenture companies--Loans to any one
14 borrower--Limitations) and 1988 c 244 s 9;

15 (86) RCW 21.20.825 (Debenture companies--Bad debts) and 1988 c 244
16 s 10;

17 (87) RCW 21.20.830 (Debenture companies--Investments in unsecured
18 loans) and 1988 c 244 s 11;

19 (88) RCW 21.20.835 (Debenture companies--Debenture holders--Notice
20 of maturity date of debenture) and 1988 c 244 s 12;

21 (89) RCW 21.20.840 (Debenture companies--Annual financial
22 statement) and 1988 c 244 s 13;

23 (90) RCW 21.20.845 (Debenture companies--Rules) and 1988 c 244 s
24 14;

25 (91) RCW 21.20.850 (Debenture companies--Record maintenance and
26 preservation--Examination) and 1988 c 244 s 15;

27 (92) RCW 21.20.855 (Debenture companies--Examination reports and
28 information--Exempt from public disclosure--Use in civil actions) and
29 2005 c 274 § 238 & 1988 c 244 s 16;

30 (93) RCW 21.20.900 (Construction to secure uniformity) and 1959 c
31 282 s 61;

32 (94) RCW 21.20.905 (Severability--1959 c 282) and 1959 c 282 s 62;

33 (95) RCW 21.20.910 (Saving--Civil, criminal proceedings) and 1959
34 c 282 s 63;

35 (96) RCW 21.20.915 (Saving--Prior effective registrations) and 1979
36 ex.s. c 68 s 44 & 1959 c 282 s 64;

37 (97) RCW 21.20.920 (Application of prior law) and 1959 c 282 s 65;

1 (98) RCW 21.20.925 (Judicial review of prior administrative orders)
2 and 1959 c 282 s 66;
3 (99) RCW 21.20.930 (Solicitation permits under insurance laws not
4 limited) and 1959 c 282 s 67;
5 (100) RCW 21.20.935 (Repealer) and 1959 c 282 s 68; and
6 (101) RCW 21.20.940 (Short title) and 1959 c 282 s 69.

7 NEW SECTION. **Sec. 2.** SHORT TITLE. This chapter may be known and
8 cited as the uniform securities act of Washington.

9 NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this
10 section apply throughout this chapter unless the context clearly
11 requires otherwise.

12 (1) "Director" means the director of the department of financial
13 institutions.

14 (2) "Sales agent" means an individual, other than a broker-dealer,
15 who represents a broker-dealer in effecting or attempting to effect
16 purchases or sales of securities or represents an issuer in effecting
17 or attempting to effect purchases or sales of the issuer's securities.
18 But a partner, officer, or director of a broker-dealer or issuer, or an
19 individual having a similar status or performing similar functions is
20 a sales agent only if the individual otherwise comes within this
21 definition. "Sales agent" does not include an individual excluded by
22 rule adopted or order issued under this chapter.

23 (3) "Bank" means:

24 (a) A banking institution organized under the laws of the United
25 States;

26 (b) A member bank of the Federal Reserve System;

27 (c) Any other banking institution, whether incorporated or not,
28 doing business under the laws of a state or of the United States, a
29 substantial portion of the business of which consists of receiving
30 deposits or exercising fiduciary powers similar to those permitted to
31 be exercised by national banks under the authority of the comptroller
32 of the currency pursuant to section 1 of Public Law 87-722 (12 U.S.C.
33 Sec. 92a), and which is supervised and examined by a state or federal
34 agency having supervision over banks, and which is not operated for the
35 purpose of evading this chapter; and

1 (d) A receiver, conservator, or other liquidating agent of any
2 institution or firm included in this subsection.

3 (4) "Broker-dealer" means a person engaged in the business of
4 effecting transactions in securities for the account of others or for
5 the person's own account. "Broker-dealer" does not include:

6 (a) A sales agent;

7 (b) An issuer;

8 (c) A bank or savings institution if its activities as a broker-
9 dealer are limited to those specified in subsections 3(a)(4)(B)(i)
10 through (vi), (viii) through (x), and (xi) if limited to unsolicited
11 transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange Act
12 of 1934 (15 U.S.C. Secs. 78c(a)(4) and (5)) or a bank that satisfies
13 the conditions described in subsection 3(a)(4)(E) of the Securities
14 Exchange Act of 1934 (15 U.S.C. Sec. 78c(a)(4));

15 (d) An international banking institution; or

16 (e) A person excluded by rule adopted or order issued under this
17 chapter.

18 (5) "Depository institution" means:

19 (a) A bank; or

20 (b) A savings institution, trust company, credit union, or similar
21 institution that is organized or chartered under the laws of a state or
22 of the United States, authorized to receive deposits, and supervised
23 and examined by an official or agency of a state or the United States
24 if its deposits or share accounts are insured to the maximum amount
25 authorized by statute by the Federal Deposit Insurance Corporation, the
26 National Credit Union Share Insurance Fund, or a successor authorized
27 by federal law. "Depository institution" does not include:

28 (i) An insurance company or other organization primarily engaged in
29 the business of insurance;

30 (ii) A Morris Plan bank; or

31 (iii) An industrial loan company that is not an "insured depository
32 institution" as defined in Section 3(c)(2) of the Federal Deposit
33 Insurance Act, 12 U.S.C. Sec. 1813(c)(2), or any successor federal
34 statute.

35 (6) "Federal covered investment adviser" means a person registered
36 under the Investment Advisers Act of 1940.

37 (7) "Federal covered security" means a security that is, or upon

1 completion of a transaction will be, a covered security under Section
2 18(b) of the Securities Act of 1933 (15 U.S.C. Sec. 77r(b)) or rules or
3 regulations adopted pursuant to that section.

4 (8) "Filing" means the receipt under this chapter of a record by
5 the director or a designee of the director.

6 (9) "Fraud," "deceit," and "defraud" are not limited to common law
7 deceit.

8 (10) "Guaranteed" means guaranteed as to payment of all principal
9 and all interest.

10 (11) "Institutional investor" means any of the following, whether,
11 except as otherwise stated, acting for itself or for others in a
12 fiduciary capacity:

13 (a) A depository institution or international banking institution;

14 (b) An insurance company;

15 (c) A separate account of an insurance company;

16 (d) An investment company as defined in the Investment Company Act
17 of 1940;

18 (e) A broker-dealer registered under the Securities Exchange Act of
19 1934;

20 (f) An employee pension, profit-sharing, or benefit plan if the
21 plan has total assets in excess of ten million dollars or its
22 investment decisions are made by a named fiduciary, as defined in the
23 Employee Retirement Income Security Act of 1974, that is a broker-
24 dealer registered under the Securities Exchange Act of 1934, an
25 investment adviser registered or exempt from registration under the
26 Investment Advisers Act of 1940, an investment adviser registered under
27 this chapter, a depository institution, or an insurance company;

28 (g) A plan established and maintained by a state, a political
29 subdivision of a state, or an agency or instrumentality of a state or
30 a political subdivision of a state for the benefit of its employees, if
31 the plan has total assets in excess of ten million dollars or its
32 investment decisions are made by a duly designated public official or
33 by a named fiduciary, as defined in the Employee Retirement Income
34 Security Act of 1974, that is a broker-dealer registered under the
35 Securities Exchange Act of 1934, an investment adviser registered or
36 exempt from registration under the Investment Advisers Act of 1940, an
37 investment adviser registered under this chapter, a depository
38 institution, or an insurance company;

1 (h) A trust, if it has total assets in excess of ten million
2 dollars, its trustee is a depository institution, and its participants
3 are exclusively plans of the types identified in (f) or (g) of this
4 subsection, regardless of the size of their assets, except a trust that
5 includes as participants self-directed individual retirement accounts
6 or similar self-directed plans;

7 (i) An organization described in Section 501(c)(3) of the Internal
8 Revenue Code (26 U.S.C. Sec. 501(c)(3)), corporation, Massachusetts
9 trust or similar business trust, limited liability company, or
10 partnership, not formed for the specific purpose of acquiring the
11 securities offered, with total assets in excess of ten million dollars;

12 (j) A small business investment company licensed by the Small
13 Business Administration under Section 301(c) of the Small Business
14 Investment Act of 1958 (15 U.S.C. Sec. 681(c)) with total assets in
15 excess of ten million dollars;

16 (k) A private business development company as defined in Section
17 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-
18 2(a)(22)) with total assets in excess of ten million dollars;

19 (l) A federal covered investment adviser acting for its own
20 account;

21 (m) A "qualified institutional buyer" as defined in Rule
22 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under the
23 Securities Act of 1933 (17 C.F.R. 230.144A);

24 (n) A "major U.S. institutional investor" as defined in Rule 15a-
25 6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 C.F.R.
26 240.15a-6);

27 (o) Any other person, other than an individual, of institutional
28 character with total assets in excess of ten million dollars not
29 organized for the specific purpose of evading this chapter; or

30 (p) Any other person specified by rule adopted or order issued
31 under this chapter.

32 (12) "Insurance company" means a company organized as an insurance
33 company whose primary business is writing insurance or reinsuring risks
34 underwritten by insurance companies and which is subject to supervision
35 by the insurance commissioner or a similar official or agency of a
36 state.

37 (13) "Insured" means insured as to payment of all principal and all
38 interest.

1 (14) "International banking institution" means an international
2 financial institution of which the United States is a member and whose
3 securities are exempt from registration under the Securities Act of
4 1933.

5 (15) "Investment adviser" means a person that, for compensation,
6 engages in the business of advising others, either directly or through
7 publications or writings, as to the value of securities or the
8 advisability of investing in, purchasing, or selling securities or
9 that, for compensation and as a part of a regular business, issues or
10 promulgates analyses or reports concerning securities. "Investment
11 advisor" includes a financial planner or other person that, as an
12 integral component of other financially related services, provides
13 investment advice to others for compensation as part of a business or
14 that holds itself out as providing investment advice to others for
15 compensation. "Investment advisor" does not include:

16 (a) An investment adviser representative;

17 (b) A lawyer, accountant, engineer, or teacher whose performance of
18 investment advice is solely incidental to the practice of the person's
19 profession;

20 (c) A broker-dealer or its sales agents whose performance of
21 investment advice is solely incidental to the conduct of business as a
22 broker-dealer and that does not receive special compensation for the
23 investment advice;

24 (d) A publisher of a bona fide newspaper, news magazine, or
25 business or financial publication of general and regular circulation;

26 (e) A federal covered investment adviser;

27 (f) A bank or savings institution;

28 (g) Any other person that is excluded by the Investment Advisers
29 Act of 1940 from the definition of investment adviser; or

30 (h) Any other person excluded by rule adopted or order issued under
31 this chapter.

32 (16) "Investment adviser representative" means an individual
33 employed by or associated with an investment adviser or federal covered
34 investment adviser and who makes any recommendations or otherwise gives
35 investment advice regarding securities, manages accounts or portfolios
36 of clients, determines which recommendation or advice regarding
37 securities should be given, provides investment advice or holds herself
38 or himself out as providing investment advice, receives compensation to

1 solicit, offer, or negotiate for the sale of or for selling investment
2 advice, or supervises employees who perform any of these activities.
3 "Investment advisor representative" does not include an individual who:
4 (a) Performs only clerical or ministerial acts;
5 (b) Is a sales agent whose performance of investment advice is
6 solely incidental to the individual acting as a sales agent and who
7 does not receive special compensation for investment advisory services;
8 (c) Is employed by or associated with a federal covered investment
9 adviser, unless the individual has a "place of business" in this state
10 as defined by rule adopted under Section 203A of the Investment
11 Advisers Act of 1940 (15 U.S.C. Sec. 80b-3a) and is:
12 (i) An "investment adviser representative" as defined by rule
13 adopted under Section 203A of the Investment Advisers Act of 1940 (15
14 U.S.C. Sec. 80b-3a); or
15 (ii) Not a "supervised person" as defined in Section 202(a)(25) of
16 the Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-2(a)(25)); or
17 (d) Is excluded by rule adopted or order issued under this chapter.
18 (17) "Issuer" means a person that issues or proposes to issue a
19 security, subject to the following:
20 (a) The issuer of a voting trust certificate, collateral trust
21 certificate, certificate of deposit for a security, or share in an
22 investment company without a board of directors or individuals
23 performing similar functions is the person performing the acts and
24 assuming the duties of depositor or manager pursuant to the trust or
25 other agreement or instrument under which the security is issued;
26 (b) The issuer of an equipment trust certificate or similar
27 security serving the same purpose is the person by which the property
28 is or will be used or to which the property or equipment is or will be
29 leased or conditionally sold or that is otherwise contractually
30 responsible for assuring payment of the certificate; and
31 (c) The issuer of a fractional undivided interest in an oil, gas,
32 or other mineral lease or in payments out of production under a lease,
33 right, or royalty is the owner of an interest in the lease or in
34 payments out of production under a lease, right, or royalty, whether
35 whole or fractional, that creates fractional interests for the purpose
36 of sale.
37 (18) "Nonissuer transaction" or "nonissuer distribution" means a

1 transaction or distribution not directly or indirectly for the benefit
2 of the issuer.

3 (19) "Offer to purchase" includes an attempt or offer to obtain, or
4 solicitation of an offer to sell, a security or interest in a security
5 for value. "Offer to purchase" does not include a tender offer that is
6 subject to Section 14(d) of the Securities Exchange Act of 1934 (15
7 U.S.C. Sec. 78n(d)).

8 (20) "Person" means an individual; corporation; business trust;
9 estate; trust; partnership; limited liability company; association;
10 joint venture; government; governmental subdivision, agency, or
11 instrumentality; public corporation; or any other legal or commercial
12 entity.

13 (21) "Place of business" of a broker-dealer, an investment adviser,
14 or a federal covered investment adviser means:

15 (a) An office at which the broker-dealer, investment adviser, or
16 federal covered investment adviser regularly provides brokerage or
17 investment advice or solicits, meets with, or otherwise communicates
18 with customers or clients; or

19 (b) Any other location that is held out to the general public as a
20 location at which the broker-dealer, investment adviser, or federal
21 covered investment adviser provides brokerage or investment advice or
22 solicits, meets with, or otherwise communicates with customers or
23 clients.

24 (22) "Predecessor act" means chapter 21.20 RCW as repealed by
25 section 1 of this act.

26 (23) "Price amendment" means the amendment to a registration
27 statement filed under the Securities Act of 1933 or, if an amendment is
28 not filed, the prospectus or prospectus supplement filed under the
29 Securities Act of 1933 that includes a statement of the offering price,
30 underwriting and selling discounts or commissions, amount of proceeds,
31 conversion rates, call prices, and other matters dependent upon the
32 offering price.

33 (24) "Principal place of business" of a broker-dealer or an
34 investment adviser means the executive office of the broker-dealer or
35 investment adviser from which the officers, partners, or managers of
36 the broker-dealer or investment adviser direct, control, and coordinate
37 the activities of the broker-dealer or investment adviser.

1 (25) "Record," except in the phrases "of record," "official
2 record," and "public record," means information that is inscribed on a
3 tangible medium or that is stored in an electronic or other medium and
4 is retrievable in perceivable form.

5 (26) "Sale" includes every contract of sale, contract to sell, or
6 disposition of, a security or interest in a security for value, and
7 "offer to sell" includes every attempt or offer to dispose of, or
8 solicitation of an offer to purchase, a security or interest in a
9 security for value. "Sale" and "offer to sell" include:

10 (a) A security given or delivered with, or as a bonus on account
11 of, a purchase of securities or any other thing constituting part of
12 the subject of the purchase and having been offered and sold for value;

13 (b) A gift of assessable stock involving an offer and sale; and

14 (c) A sale or offer of a warrant or right to purchase or subscribe
15 to another security of the same or another issuer and a sale or offer
16 of a security that gives the holder a present or future right or
17 privilege to convert the security into another security of the same or
18 another issuer, including an offer of the other security.

19 (27) "Securities and Exchange Commission" means the United States
20 Securities and Exchange Commission.

21 (28) "Security" means a note; stock; treasury stock; security
22 future; bond; debenture; evidence of indebtedness; certificate of
23 interest or participation in a profit-sharing agreement; collateral
24 trust certificate; preorganization certificate or subscription;
25 transferable share; investment contract; voting trust certificate;
26 certificate of deposit for a security; fractional undivided interest in
27 oil, gas, or other mineral rights; put, call, straddle, option, or
28 privilege on a security, certificate of deposit, or group or index of
29 securities, including an interest therein or based on the value
30 thereof; put, call, straddle, option, or privilege entered into on a
31 national securities exchange relating to foreign currency; or, in
32 general, an interest or instrument commonly known as a "security"; or
33 a certificate of interest or participation in, temporary or interim
34 certificate for, receipt for, guarantee of, or warrant or right to
35 subscribe to or purchase, any of the foregoing. "Security":

36 (a) Includes both a certificated and an uncertificated security;

37 (b) Does not include an insurance or endowment policy or annuity

1 contract under which an insurance company promises to pay a fixed sum
2 of money either in a lump sum or periodically for life or other
3 specified period;

4 (c) Does not include an interest in a contributory or
5 noncontributory pension or welfare plan subject to the Employee
6 Retirement Income Security Act of 1974;

7 (d) Includes an investment in a common enterprise with the
8 expectation of profits to be derived primarily from the efforts of a
9 person other than the investor and a "common enterprise" means an
10 enterprise in which the fortunes of the investor are interwoven with
11 those of either the person offering the investment, a third party, or
12 other investors;

13 (e) Includes as an "investment contract," among other contracts, an
14 interest in a limited partnership or a limited liability company, or an
15 investment in a viatical settlement, life settlement, or similar
16 agreement;

17 (f) Includes an investment of money or other consideration in the
18 risk capital of a venture with the expectation of some valuable benefit
19 to the investor where the investor does not receive the right to
20 exercise practical or actual control over the managerial decisions of
21 the venture; and

22 (g) Includes a charitable gift annuity.

23 (29) "Self-regulatory organization" means a national securities
24 exchange registered under the Securities Exchange Act of 1934, a
25 national securities association of broker-dealers registered under the
26 Securities Exchange Act of 1934, a clearing agency registered under the
27 Securities Exchange Act of 1934, or the Municipal Securities Rulemaking
28 Board established under the Securities Exchange Act of 1934.

29 (30) "Sign" means, with present intent to authenticate or adopt a
30 record:

31 (a) To execute or adopt a tangible symbol; or

32 (b) To attach or logically associate with the record an electronic
33 symbol, sound, or process.

34 (31) "State" means a state of the United States, the District of
35 Columbia, Puerto Rico, the United States Virgin Islands, or any
36 territory or insular possession subject to the jurisdiction of the
37 United States.

1 NEW SECTION. **Sec. 4.** REFERENCES TO FEDERAL STATUTES. "Securities
2 Act of 1933" (15 U.S.C. Sec. 77a et seq.), "Securities Exchange Act of
3 1934" (15 U.S.C. Sec. 78a et seq.), "Public Utility Holding Company Act
4 of 1935" (15 U.S.C. Sec. 79 et seq.), "Investment Company Act of 1940"
5 (15 U.S.C. Sec. 80a-1 et seq.), "Investment Advisers Act of 1940" (15
6 U.S.C. Sec. 80b-1 et seq.), "Employee Retirement Income Security Act of
7 1974" (29 U.S.C. Sec. 1001 et seq.), "National Housing Act" (12 U.S.C.
8 Sec. 1701 et seq.), "Commodity Exchange Act" (7 U.S.C. Sec. 1 et seq.),
9 "Internal Revenue Code" (26 U.S.C. Sec. 1 et seq.), "Securities
10 Investor Protection Act of 1970" (15 U.S.C. Sec. 78aaa et seq.),
11 "Securities Litigation Uniform Standards Act of 1998" (112 Stat. 3227),
12 "Small Business Investment Act of 1958" (15 U.S.C. Sec. 661 et seq.),
13 and "Electronic Signatures in Global and National Commerce Act" (15
14 U.S.C. Sec. 7001 et seq.) mean those statutes and the rules and
15 regulations adopted under those statutes, as in effect on the effective
16 date of this section, or as later amended.

17 NEW SECTION. **Sec. 5.** REFERENCES TO FEDERAL AGENCIES. A reference
18 in this chapter to an agency or department of the United States is also
19 a reference to a successor agency or department.

20 NEW SECTION. **Sec. 6.** ELECTRONIC RECORDS AND SIGNATURES. This
21 chapter modifies, limits, and supersedes the Federal Electronic
22 Signatures in Global and National Commerce Act, but does not modify,
23 limit, or supersede Section 101(c) of that act (15 U.S.C. Sec. 7001(c))
24 or authorize electronic delivery of any of the notices described in
25 Section 103(b) of that act (15 U.S.C. Sec. 7003(b)). This chapter
26 authorizes the filing of records and signatures, when specified by this
27 chapter or by a rule adopted or order issued under this chapter, in a
28 manner consistent with Section 104(a) of that act (15 U.S.C. Sec.
29 7004(a)).

30 NEW SECTION. **Sec. 7.** Sections 2 through 6 of this act are each
31 added to chapter 21.20A RCW (created in section 115 of this act) and
32 codified with the subchapter heading of "General Provisions."

33 NEW SECTION. **Sec. 8.** EXEMPT SECURITIES. The following securities

1 are exempt from the requirements of sections 13 through 18 and 37 of
2 this act:

3 (1) A security, including a revenue obligation or a separate
4 security as defined in Rule 131 (17 C.F.R. 230.131) adopted under the
5 Securities Act of 1933, issued, insured, or guaranteed by the United
6 States; by a state; by a political subdivision of a state; by a public
7 authority, agency, or instrumentality of one or more states; by a
8 political subdivision of one or more states; or by a person controlled
9 or supervised by and acting as an instrumentality of the United States
10 under authority granted by the Congress; or a certificate of deposit
11 for any of the securities listed in this subsection, but this exemption
12 does not include any security payable solely from revenues to be
13 received from a nongovernmental industrial or commercial enterprise
14 unless such payments are made or unconditionally guaranteed by a person
15 whose securities are exempt from registration by subsection (5) or (6)
16 of this section. However, the director, by rule or order, may exempt
17 any security payable solely from revenues to be received from a
18 nongovernmental industrial or commercial enterprise if the director
19 finds that registration with respect to such securities is not
20 necessary in the public interest and for the protection of investors;

21 (2) A security issued, insured, or guaranteed by a foreign
22 government with which the United States maintains diplomatic relations,
23 or any of its political subdivisions, if the security is recognized as
24 a valid obligation by the issuer, insurer, or guarantor, but this
25 exemption does not include any security payable solely from revenues to
26 be received from a nongovernmental industrial or commercial enterprise
27 unless such payments are made or unconditionally guaranteed by a person
28 whose securities are exempt from registration by subsection (5) or (6)
29 of this section. However, the director, by rule or order, may exempt
30 any security payable solely from revenues to be received from a
31 nongovernmental industrial or commercial enterprise if the director
32 finds that registration with respect to such securities is not
33 necessary in the public interest and for the protection of investors;

34 (3) A security issued by and representing or that will represent an
35 interest in or a direct obligation of, or be guaranteed by:

- 36 (a) An international banking institution;
- 37 (b) A banking institution organized under the laws of the United
38 States; a member bank of the Federal Reserve System; or a depository

1 institution a substantial portion of the business of which consists or
2 will consist of receiving deposits or share accounts that are insured
3 to the maximum amount authorized by statute by the Federal Deposit
4 Insurance Corporation, the National Credit Union Share Insurance Fund,
5 or a successor authorized by federal law or exercising fiduciary powers
6 that are similar to those permitted for national banks under the
7 authority of the Comptroller of Currency pursuant to Section 1 of
8 Public Law 87-722 (12 U.S.C. Sec. 92a); or

9 (c) Any other depository institution, unless by rule or order the
10 director proceeds under section 11 of this act;

11 (4) A security issued by and representing an interest in, or a debt
12 of, or insured or guaranteed by, an insurance company authorized to do
13 business in this state;

14 (5) A security issued or guaranteed by a railroad, other common
15 carrier, public utility, or public utility holding company that is:

16 (a) Regulated in respect to its rates and charges by the United
17 States or a state;

18 (b) Regulated in respect to the issuance or guarantee of the
19 security by the United States, a state, Canada, or a Canadian province
20 or territory; or

21 (c) A public utility holding company registered under the Public
22 Utility Holding Company Act of 1935 or a subsidiary of such a
23 registered holding company within the meaning of that act;

24 (6) A federal covered security specified in Section 18(b)(1) of the
25 Securities Act of 1933 (15 U.S.C. Sec. 77r(b)(1)) or by rule adopted
26 under that section or a security listed or approved for listing on
27 another securities market specified by rule under this chapter; a put
28 or a call option contract, a warrant, or a subscription right on or
29 with respect to such securities; or an option or similar derivative
30 security on a security or an index of securities or foreign currencies
31 issued by a clearing agency registered under the Securities Exchange
32 Act of 1934 and listed or designated for trading on a national
33 securities exchange, a facility of a national securities exchange, or
34 a facility of a national securities association registered under the
35 Securities Exchange Act of 1934 or an offer or sale, of the underlying
36 security in connection with the offer, sale, or exercise of an option
37 or other security that was exempt when the option or other security was

1 written or issued; or an option or a derivative security designated by
2 the Securities and Exchange Commission under Section 9(b) of the
3 Securities Exchange Act of 1934 (15 U.S.C. Sec. 78i(b));

4 (7) A security issued by a person organized and operated
5 exclusively for religious, educational, benevolent, fraternal,
6 charitable, social, athletic, or reformatory purposes, or as a chamber
7 of commerce, and not for pecuniary profit, no part of the net earnings
8 of which inures to the benefit of a private stockholder or other
9 person, or a security of a company that is excluded from the definition
10 of an investment company under Section 3(c)(10)(B) of the Investment
11 Company Act of 1940 (15 U.S.C. Sec. 80a-3(c)(10)(B)); except that with
12 respect to the offer or sale of a note, bond, debenture, or other
13 evidence of indebtedness issued by such a person, a rule may be adopted
14 under this chapter limiting the availability of this exemption by
15 classifying securities, persons, and transactions, imposing different
16 requirements for different classes, specifying with respect to (b) of
17 this subsection the scope of the exemption and the grounds for denial
18 or suspension, and requiring an issuer:

19 (a) To file a notice specifying the material terms of the proposed
20 offer or sale and copies of any proposed sales and advertising
21 literature to be used and provide that the exemption becomes effective
22 if the director does not disallow the exemption within the period
23 established by the rule;

24 (b) To file a request for exemption authorization for which a rule
25 under this chapter may specify the scope of the exemption, the
26 requirement of an offering statement, the filing of sales and
27 advertising literature, the filing of consent to service of process
28 complying with section 54 of this act, and grounds for denial or
29 suspension of the exemption; or

30 (c) To register under section 16 of this act;

31 (8) Any charitable gift annuity issued:

32 (a) Pursuant to the authority granted by RCW 28B.10.485 or similar
33 authority granted to colleges or universities by any state; or

34 (b) By an insurer or institution holding a certificate of exemption
35 under RCW 48.38.010; and

36 (9) An equipment trust certificate with respect to equipment leased
37 or conditionally sold to a person, if any security issued by the person

1 would be exempt under this section or would be a federal covered
2 security under Section 18(b)(1) of the Securities Act of 1933 (15
3 U.S.C. Sec. 77r(b)(1)).

4 NEW SECTION. **Sec. 9. EXEMPT TRANSACTIONS.** The following
5 transactions are exempt from the requirements of sections 13 through 18
6 and 37 of this act:

7 (1) An isolated nonissuer transaction, whether effected by or
8 through a broker-dealer or not;

9 (2) A nonissuer transaction by or through a broker-dealer
10 registered, or exempt from registration under this chapter, and a
11 resale transaction by a sponsor of a unit investment trust registered
12 under the Investment Company Act of 1940 in a security of a class that
13 has been outstanding in the hands of the public for at least ninety
14 days, if, at the date of the transaction:

15 (a) The issuer of the security is engaged in business, the issuer
16 is not in the organizational stage or in bankruptcy or receivership,
17 and the issuer is not a blank check, blind pool, or shell company that
18 has no specific business plan or purpose or has indicated that its
19 primary business plan is to engage in a merger or combination of the
20 business with, or an acquisition of, an unidentified person;

21 (b) The security is sold at a price reasonably related to its
22 current market price;

23 (c) The security does not constitute the whole or part of an unsold
24 allotment to, or a subscription or participation by, the broker-dealer
25 as an underwriter of the security or a redistribution;

26 (d) A nationally recognized securities manual or its electronic
27 equivalent designated by rule adopted or order issued under this
28 chapter or a record filed with the Securities and Exchange Commission
29 that is publicly available contains:

30 (i) A description of the business and operations of the issuer;

31 (ii) The names of the issuer's executive officers and the names of
32 the issuer's directors, if any;

33 (iii) An audited balance sheet of the issuer as of a date within
34 eighteen months before the date of the transaction or, in the case of
35 a reorganization or merger when the parties to the reorganization or
36 merger each had an audited balance sheet, a pro forma balance sheet for
37 the combined organization; and

1 (iv) An audited income statement for each of the issuer's two
2 immediately previous fiscal years or for the period of existence of the
3 issuer, whichever is shorter, or, in the case of a reorganization or
4 merger when each party to the reorganization or merger had audited
5 income statements, a pro forma income statement; and

6 (e) Any one of the following requirements is met:

7 (i) The issuer of the security has a class of equity securities
8 listed on a national securities exchange registered under Section 6 of
9 the Securities Exchange Act of 1934 or designated for trading on the
10 National Association of Securities Dealers Automated Quotation System;

11 (ii) The issuer of the security is a unit investment trust
12 registered under the Investment Company Act of 1940;

13 (iii) The issuer of the security, including its predecessors, has
14 been engaged in continuous business for at least three years; or

15 (iv) The issuer of the security has total assets of at least two
16 million dollars based on an audited balance sheet as of a date within
17 eighteen months before the date of the transaction or, in the case of
18 a reorganization or merger when the parties to the reorganization or
19 merger each had such an audited balance sheet, a pro forma balance
20 sheet for the combined organization;

21 (3) A nonissuer transaction by or through a broker-dealer
22 registered or exempt from registration under this chapter in a security
23 of a foreign issuer that is a margin security defined in regulations or
24 rules adopted by the Board of Governors of the Federal Reserve System;

25 (4) A nonissuer transaction by or through a broker-dealer
26 registered or exempt from registration under this chapter in an
27 outstanding security if the guarantor of the security files reports
28 with the Securities and Exchange Commission under the reporting
29 requirements of Section 13 or 15(d) of the Securities Exchange Act of
30 1934 (15 U.S.C. Sec. 78m or 78o(d));

31 (5) A nonissuer transaction by or through a broker-dealer
32 registered or exempt from registration under this chapter in a security
33 that:

34 (a) Is rated at the time of the transaction by a nationally
35 recognized statistical rating organization in one of its four highest
36 rating categories; or

37 (b) Has a fixed maturity or a fixed interest or dividend, if:

1 (i) A default has not occurred during the current fiscal year or
2 within the three previous fiscal years or during the existence of the
3 issuer and any predecessor if less than three fiscal years, in the
4 payment of principal, interest, or dividends on the security; and

5 (ii) The issuer is engaged in business, is not in the
6 organizational stage or in bankruptcy or receivership, and is not and
7 has not been within the previous twelve months a blank check, blind
8 pool, or shell company that has no specific business plan or purpose or
9 has indicated that its primary business plan is to engage in a merger
10 or combination of the business with, or an acquisition of, an
11 unidentified person;

12 (6) A nonissuer transaction by or through a broker-dealer
13 registered or exempt from registration under this chapter effecting an
14 unsolicited order or offer to purchase;

15 (7) A nonissuer transaction executed by a bona fide pledgee without
16 the purpose of evading this chapter;

17 (8) A nonissuer transaction by a federal covered investment adviser
18 with investments under management in excess of one hundred million
19 dollars acting in the exercise of discretionary authority in a signed
20 record for the account of others;

21 (9) A transaction in a security, whether or not the security or
22 transaction is otherwise exempt, in exchange for one or more bona fide
23 outstanding securities, claims, or property interests, or partly in
24 such exchange and partly for cash, if the terms and conditions of the
25 issuance and exchange or the delivery and exchange and the fairness of
26 the terms and conditions have been approved after a hearing by a court;
27 an official or agency of the United States; a state securities,
28 banking, or insurance agency; or other government authority, if
29 expressly authorized by law to grant such approvals;

30 (10) A transaction between the issuer or other person on whose
31 behalf the offering is made and an underwriter, or among underwriters;

32 (11)(a) A transaction in a note, bond, debenture, or other evidence
33 of indebtedness secured by a mortgage or other security agreement if:

34 (i) The note, bond, debenture, or other evidence of indebtedness is
35 offered and sold with the mortgage or other security agreement as a
36 unit;

37 (ii) A general solicitation or general advertisement of the
38 transaction is not made; and

1 (iii) A commission or other remuneration is not paid or given,
2 directly or indirectly, to a person not registered under this chapter
3 as a broker-dealer or as a sales agent.

4 (b) A transaction does not qualify for the exemption if it
5 involves:

6 (i) A fractional or partial interest in one or more notes, bonds,
7 debentures, or other evidence of indebtedness, secured by a real or
8 chattel mortgage or deed of trust, or by an agreement for the sale of
9 real estate or chattels;

10 (ii) One of multiple notes, bonds, debentures, or other evidence of
11 indebtedness, all secured by the same real or chattel mortgage or deed
12 of trust, or by an agreement for the sale of real estate or chattels,
13 and sold to more than one purchaser; or

14 (iii) Services by a person other than the primary obligor on a
15 note, bond, debenture, or other evidence of indebtedness, that would
16 render the investor dependent upon such person for a return upon the
17 note, bond, debenture, or other evidence of indebtedness, as specified
18 by rule adopted or order issued under this chapter;

19 (12) A transaction by an executor, director of an estate, sheriff,
20 marshal, receiver, trustee in bankruptcy, guardian, or conservator;

21 (13) A sale or offer to sell to:

22 (a) An institutional investor;

23 (b) A federal covered investment adviser for its own account and
24 not for the account of others; or

25 (c) Any other person exempted by rule adopted or order issued under
26 this chapter;

27 (14) A sale or an offer to sell securities by or on behalf of an
28 issuer, if the transaction is part of a single issue in which:

29 (a) Not more than twenty-five purchasers are present in this state
30 during any twelve consecutive months, other than those designated in
31 subsection (13) of this section;

32 (b) A general solicitation or general advertising is not made in
33 connection with the offer to sell or sale of the securities;

34 (c) A commission or other remuneration is not paid or given,
35 directly or indirectly, to a person other than a broker-dealer
36 registered under this chapter or a sales agent registered under this
37 chapter for soliciting a prospective purchaser in this state;

1 (d) The issuer reasonably believes that all the purchasers in this
2 state, other than those designated in subsection (13) of this section,
3 are purchasing for investment and not with a view to distribution;

4 (e) A filing is made and a fee, not to exceed three hundred
5 dollars, is paid in accordance with a rule adopted by the director. A
6 rule adopted under this subsection may authorize late filings and
7 require the payment of an additional fee not to exceed three hundred
8 dollars for any late filing;

9 (15) A transaction under an offer to existing security holders of
10 the issuer, including persons that at the date of the transaction are
11 holders of convertible securities, options, or warrants, if a
12 commission or other remuneration, other than a standby commission, is
13 not paid or given, directly or indirectly, for soliciting a security
14 holder in this state. For purposes of this section, "standby
15 commission" means the commission payable to a broker-dealer registered
16 or exempt from registration under this chapter for its firm commitment
17 to purchase securities offered to existing security holders which are
18 not purchased by the security holders;

19 (16) An offer to sell, but not a sale of, a security not exempt
20 from registration under the Securities Act of 1933 if:

21 (a) A registration or offering statement or similar record as
22 required under the Securities Act of 1933 has been filed, but is not
23 effective, or the offer is made in compliance with Rule 165 adopted
24 under the Securities Act of 1933 (17 C.F.R. 230.165); and

25 (b) A stop order of which the offeror is aware has not been issued
26 against the offeror by the director or the Securities and Exchange
27 Commission, and an audit, inspection, or proceeding that is public and
28 that may culminate in a stop order is not known by the offeror to be
29 pending;

30 (17) An offer to sell, but not a sale of, a security exempt from
31 registration under the Securities Act of 1933 if:

32 (a) A registration statement has been filed under this chapter but
33 is not effective;

34 (b) A solicitation of interest is provided in a record to offerees
35 in compliance with a rule adopted by the director under this chapter;
36 and

37 (c) A stop order of which the offeror is aware has not been issued

1 by the director under this chapter and an audit, inspection, or
2 proceeding that may culminate in a stop order is not known by the
3 offeror to be pending;

4 (18) A transaction involving the distribution of the securities of
5 an issuer to the security holders of another person in connection with
6 a merger, consolidation, exchange of securities, sale of assets, or
7 other reorganization to which the issuer, or its parent or subsidiary,
8 and the other person, or its parent or subsidiary, are parties;

9 (19) A rescission offer, sale, or purchase under section 43 of this
10 act;

11 (20) An offer or sale of a security to a person not a resident of
12 this state and not present in this state if the offer or sale does not
13 constitute a violation of the laws of the state or foreign jurisdiction
14 in which the offeree or purchaser is present and is not part of an
15 unlawful plan or scheme to evade this chapter;

16 (21) A transaction pursuant to an employees' stock purchase,
17 savings, option, profit-sharing, pension, or similar employees' benefit
18 plan, including any securities, plan interests, and guarantees issued
19 under a compensatory benefit plan or compensation contract, contained
20 in a record, established by the issuer, its parents, its majority-owned
21 subsidiaries, or the majority-owned subsidiaries of the issuer's parent
22 for the participation of their employees including offers or sales of
23 such securities to:

24 (a) Directors; general partners; trustees, if the issuer is a
25 business trust; officers; consultants; and advisors;

26 (b) Family members who acquire such securities from those persons
27 through gifts or domestic relations orders;

28 (c) Former employees, directors, general partners, trustees,
29 officers, consultants, and advisors if those individuals were employed
30 by or providing services to the issuer when the securities were
31 offered; and

32 (d) Insurance agents who are exclusive insurance agents of the
33 issuer, or the issuer's subsidiaries or parents, or who derive more
34 than fifty percent of their annual income from those organizations;

35 (22) A transaction involving:

36 (a) A stock dividend or equivalent equity distribution, whether the
37 corporation or other business organization distributing the dividend or
38 equivalent equity distribution is the issuer or not, if nothing of

1 value is given by stockholders or other equity holders for the dividend
2 or equivalent equity distribution other than the surrender of a right
3 to a cash or property dividend if each stockholder or other equity
4 holder may elect to take the dividend or equivalent equity distribution
5 in cash, property, or stock;

6 (b) An act incident to a judicially approved reorganization in
7 which a security is issued in exchange for one or more outstanding
8 securities, claims, or property interests, or partly in such exchange
9 and partly for cash; or

10 (c) The solicitation of tenders of securities by an offeror in a
11 tender offer in compliance with Rule 162 adopted under the Securities
12 Act of 1933 (17 C.F.R. 230.162);

13 (23) A nonissuer transaction in an outstanding security by or
14 through a broker-dealer registered or exempt from registration under
15 this chapter, if the issuer is a reporting issuer in a foreign
16 jurisdiction designated by this subsection or by rule adopted or order
17 issued under this chapter; has been subject to continuous reporting
18 requirements in the foreign jurisdiction for not less than one hundred
19 eighty days before the transaction; and the security is listed on the
20 foreign jurisdiction's securities exchange that has been designated by
21 this subsection or by rule adopted or order issued under this chapter,
22 or is a security of the same issuer that is of senior or substantially
23 equal rank to the listed security or is a warrant or right to purchase
24 or subscribe to any of the foregoing under this subsection. For
25 purposes of this subsection, Canada, together with its provinces and
26 territories, is a designated foreign jurisdiction and The Toronto Stock
27 Exchange, Inc., is a designated securities exchange. The director, by
28 rule adopted or order issued under this chapter, may revoke the
29 designation of a securities exchange under this subsection, if the
30 director finds that revocation is necessary or appropriate in the
31 public interest and for the protection of investors;

32 (24) A transaction by a mutual or cooperative association which
33 meets the requirements of (a) and (b) of this subsection:

34 (a) The transaction:

35 (i) Does not involve advertising or public solicitation; or

36 (ii) Involves advertising or public solicitation, and:

37 (A) The association first files a notice of claim of exemption on

1 a form prescribed by the director specifying the terms of the offer and
2 the director does not by order deny the exemption within the next ten
3 business days; or

4 (B) The association is an employee cooperative and identifies
5 itself as an employee cooperative in advertising or public
6 solicitation.

7 (b) The transaction involves an instrument or interest that:

8 (i)(A) Qualifies its holder to be a member or patron of the
9 association;

10 (B) Represents a contribution of capital to the association by a
11 person who is or intends to become a member or patron of the
12 association;

13 (C) Represents a patronage dividend or other patronage allocation;
14 or

15 (D) Represents the terms or conditions by which a member or patron
16 purchases, sells, or markets products, commodities, or services from,
17 to, or through the association; and

18 (ii) Is nontransferable except in the case of death; operation of
19 law; bona fide transfer for security purposes only to the association,
20 a bank, or other financial institution; intrafamily transfer; or
21 transfer to an existing member or person who will become a member, and
22 in the case of an instrument so states conspicuously on its face; or

23 (25) A transaction not involving a public offering, whether
24 effected through a broker-dealer or not, consistent with section 4(2)
25 of the Securities Act of 1933.

26 NEW SECTION. **Sec. 10.** ADDITIONAL EXEMPTIONS AND WAIVERS. A rule
27 adopted or order issued under this chapter may exempt a security,
28 transaction, or offer; a rule under this chapter may exempt a class of
29 securities, transactions, or offers from any or all of the requirements
30 of sections 13 through 18 and 37 of this act; and an order under this
31 chapter may waive, in whole or in part, any or all of the conditions
32 for an exemption or offer under sections 8 and 9 of this act.

33 NEW SECTION. **Sec. 11.** DENIAL, SUSPENSION, REVOCATION, CONDITION,
34 OR LIMITATION OF EXEMPTIONS. (1) Enforcement related powers. Except
35 with respect to a federal covered security or a transaction involving
36 a federal covered security, an order under this chapter may deny,

1 suspend application of, condition, limit, or revoke an exemption
2 created under section 8 (3)(c), (7), or (8) or 9 of this act or an
3 exemption or waiver created under section 10 of this act with respect
4 to a specific security, transaction, or offer. An order under this
5 section may be issued only pursuant to the procedures in section 18(4)
6 or 48 of this act and only prospectively.

7 (2) Knowledge of order required. A person does not violate section
8 13, 15 through 18, 37, or 43 of this act by an offer to sell, offer to
9 purchase, sale, or purchase effected after the entry of an order issued
10 under this section if the person did not know, and in the exercise of
11 reasonable care could not have known, of the order.

12 NEW SECTION. **Sec. 12.** Sections 8 through 11 of this act are each
13 added to chapter 21.20A RCW (created in section 115 of this act) and
14 codified with the subchapter heading of "Exemption from Registration of
15 Securities."

16 NEW SECTION. **Sec. 13.** SECURITIES REGISTRATION REQUIREMENT. It is
17 unlawful for a person to offer or sell a security in this state unless:

18 (1) The security is a federal covered security and, if required, a
19 filing is made and a fee is paid in accordance with section 14 of this
20 act;

21 (2) The security, transaction, or offer is exempted from
22 registration under sections 8 through 10 of this act; or

23 (3) The security is registered under this chapter.

24 NEW SECTION. **Sec. 14.** NOTICE FILING. (1) Notice filings for
25 federal covered securities under Section 18(b)(2) or 18(b)(4)(C) of the
26 Securities Act of 1933. With respect to a federal covered security, as
27 defined in Section 18(b)(2) or 18(b)(4)(C) of the Securities Act of
28 1933 (15 U.S.C. Sec. 77r(b)(2) or 77r(b)(4)(C)), that is not otherwise
29 exempt under sections 8 through 10 of this act, a rule adopted or order
30 issued under this chapter may require the filing of any or all of the
31 following records:

32 (a) Before the initial offer of a federal covered security in this
33 state, all records that are part of a federal registration statement
34 filed with the Securities and Exchange Commission under the Securities

1 Act of 1933 and a consent to service of process complying with section
2 54 of this act signed by the issuer and the payment of a fee calculated
3 as follows:

4 (i) For each offering by a closed-end investment company pursuant
5 to Section 18(b)(2) of the Securities Act of 1933, the initial filing
6 fee shall be one hundred dollars for the first one hundred thousand
7 dollars of initial issue, or portion thereof in this state, based on
8 offering price, plus one-fortieth of one percent for any excess over
9 one hundred thousand dollars which are to be offered in this state
10 during the following twelve-month period; or

11 (ii) For every other offering being made pursuant to this
12 subsection, the initial filing fee shall be one hundred dollars for the
13 first one hundred thousand dollars of initial issue, or portion thereof
14 in this state, based on offering price, plus one-twentieth of one
15 percent for any excess over one hundred thousand dollars which are to
16 be offered in this state during the following twelve-month period;

17 (b) After the initial offer of the federal covered security in this
18 state, all records that are part of an amendment to a federal
19 registration statement filed with the Securities and Exchange
20 Commission under the Securities Act of 1933 and the payment of a fee of
21 ten dollars;

22 (c) To the extent necessary or appropriate to compute fees, a
23 report of the value of the federal covered securities sold or offered
24 to persons present in this state, if the sales data are not included in
25 records filed with the Securities and Exchange Commission and payment
26 of a fee of ten dollars; and

27 (d) To increase the amount of an effective notice filing, the
28 payment of a fee of:

29 (i) For a closed-end company offering pursuant to Section 18(b)(2)
30 of the Securities Act of 1933, one-fortieth of one percent of the
31 desired increase, based on offering price, prior to the sale of
32 securities to be covered by the fee; or

33 (ii) For every other effective notice filing under this subsection,
34 one-twentieth of one percent of the desired increase, based on offering
35 price, prior to the sale of securities to be covered by the fee.

36 (2) Notice filing effectiveness and renewal.

37 (a) A notice filing under subsection (1) of this section is

1 effective for one year commencing on the later of the notice filing or
2 the effectiveness of the offering filed with the Securities and
3 Exchange Commission.

4 (b) A notice filing under subsection (1) of this section may be
5 renewed on or before expiration pursuant to (b)(i) or (ii) of this
6 subsection:

7 (i) A closed-end company offering securities pursuant to Section
8 18(b)(2) of the Securities Act of 1933 may renew a notice filing by
9 filing a copy of those records filed by the issuer with the Securities
10 and Exchange Commission that are required by rule or order under this
11 chapter to be filed and by paying a renewal fee of one hundred dollars;
12 or

13 (ii) An issuer not subject to (b)(i) of this subsection may renew
14 an initial notice filing for one additional twelve-month period only by
15 paying a renewal fee of fifty dollars.

16 (c) A previously filed consent to service of process complying with
17 section 54 of this act may be incorporated by reference in a renewal.

18 (d) A renewed notice filing becomes effective upon the expiration
19 of the filing being renewed.

20 (3) Notice filings for federal covered securities under Section
21 18(b)(4)(D) of the Securities Act of 1933. With respect to a security
22 that is a federal covered security under Section 18(b)(4)(D) of the
23 Securities Act of 1933 (15 U.S.C. Sec. 77r(b)(4)(D)), a rule under this
24 chapter may require a notice filing by or on behalf of an issuer to
25 include a copy of Form D, including the Appendix, as promulgated by the
26 Securities and Exchange Commission, and a consent to service of process
27 complying with section 54 of this act signed by the issuer, not later
28 than fifteen days after the first sale of the federal covered security
29 in this state and the payment of a fee of three hundred dollars; and
30 the payment of an additional fee of three hundred dollars for any late
31 filing.

32 (4) Notice filings for federal covered securities under Section
33 18(b)(3) of the Securities Act of 1933. With respect to a security
34 that is a federal covered security under Section 18(b)(3) of the
35 Securities Act of 1933 (15 U.S.C. Sec. 77r(b)(3)), a rule under this
36 chapter may require a notice filing by or on behalf of an issuer. The
37 rule may require the filing of all records filed with the Securities

1 and Exchange Commission under the Securities Act of 1933 and a consent
2 to service of process complying with section 54 of this act signed by
3 the issuer and the payment of a fee.

4 (5) Stop orders. Except with respect to a federal covered security
5 under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Sec.
6 77r(b)(1)), if the director finds that there is a failure to comply
7 with a notice or fee requirement of this section, the director may
8 issue a stop order suspending the offer and sale of a federal covered
9 security in this state. If the deficiency is corrected, the stop order
10 is vacated as of the time the deficiency is corrected and no penalty
11 may be imposed by the director.

12 NEW SECTION. **Sec. 15.** SECURITIES REGISTRATION BY COORDINATION.

13 (1) Registration permitted. A security for which a registration
14 statement has been filed under the Securities Act of 1933, or a
15 security for which an offering statement has been filed under
16 regulation A pursuant to subsection (b) of Section 3 of the Securities
17 Act of 1933, in connection with the same offering may be registered by
18 coordination under this section.

19 (2) Required records. A registration statement and accompanying
20 records under this section must contain or be accompanied by the
21 following records in addition to the information specified in section
22 17 of this act and a consent to service of process complying with
23 section 54 of this act:

24 (a) A copy of the latest form of prospectus or offering circular
25 filed under the Securities Act of 1933;

26 (b) A copy of the articles of incorporation and bylaws or their
27 substantial equivalents currently in effect; a copy of any agreement
28 with or among underwriters; a copy of any indenture or other instrument
29 governing the issuance of the security to be registered; and a
30 specimen, copy, or description of the security that is required by rule
31 adopted or order issued under this chapter;

32 (c) Copies of any other information or any other records filed by
33 the issuer under the Securities Act of 1933 requested by the director;

34 (d) An undertaking to forward each amendment to the federal
35 prospectus or offering circular, other than an amendment that delays
36 the effective date of the registration statement, promptly after it is
37 filed with the Securities and Exchange Commission; and

1 (e) If the aggregate sales price of the offering exceeds one
2 million dollars, audited financial statements and other financial
3 information prepared as to form and content under rules adopted by the
4 director.

5 (3) Conditions for effectiveness of registration statement. A
6 registration statement under this section becomes effective
7 simultaneously with or subsequent to the federal registration statement
8 or offering statement when all the following conditions are satisfied:

9 (a) A stop order under subsection (4) of this section or section 18
10 of this act or issued by the Securities and Exchange Commission is not
11 in effect and a proceeding is not pending against the issuer under
12 section 18 of this act;

13 (b) The registration statement or offering circular has been on
14 file for at least twenty days or a shorter period provided by rule
15 adopted or order issued under this chapter; and

16 (c) The applicant or registrant has not requested that
17 effectiveness be delayed.

18 (4) Notice of federal registration statement or offering statement
19 effectiveness. The registrant shall promptly notify the director in a
20 record of the date when the federal registration statement or offering
21 statement becomes effective and the content of any price amendment and
22 shall promptly file a record containing the price amendment. If the
23 notice is not timely received, the director may issue a stop order,
24 without prior notice or hearing, retroactively denying effectiveness to
25 the registration statement or suspending its effectiveness until
26 compliance with this section. The director shall promptly notify the
27 registrant of an order by telegram, telephone, or electronic means and
28 promptly confirm this notice by a record. If the registrant
29 subsequently complies with the notice requirements of this section, the
30 stop order is void as of the date of its issuance.

31 (5) Effectiveness of registration statement. If the federal
32 registration statement or offering statement becomes effective before
33 each of the conditions in this section is satisfied or is waived by the
34 director, the registration statement is automatically effective under
35 this chapter when all the conditions are satisfied or waived. If the
36 registrant notifies the director of the date when the federal
37 registration statement or offering statement is expected to become
38 effective, the director shall promptly notify the registrant by

1 telegram, telephone, or electronic means and promptly confirm this
2 notice by a record, indicating whether all the conditions are satisfied
3 or waived and whether the director intends the institution of a
4 proceeding under section 18 of this act. The notice by the director
5 does not preclude the institution of such a proceeding.

6 NEW SECTION. **Sec. 16.** SECURITIES REGISTRATION BY QUALIFICATION.

7 (1) Registration permitted. A security may be registered by
8 qualification under this section.

9 (2) Required records. A registration statement under this section
10 must contain the information or records specified in section 17 of this
11 act, a consent to service of process complying with section 54 of this
12 act, and the following information or records:

13 (a) With respect to the issuer and any significant subsidiary, its
14 name, address, and form of organization; the state or foreign
15 jurisdiction and date of its organization; the general character and
16 location of its business; a description of its physical properties and
17 equipment; and a statement of the general competitive conditions in the
18 industry or business in which it is or will be engaged;

19 (b) With respect to each director and officer of the issuer, and
20 other person having a similar status or performing similar functions,
21 the person's name, address, and principal occupation for the previous
22 five years; the amount of securities of the issuer held by the person
23 as of the thirtieth day before the filing of the registration
24 statement; the amount of the securities covered by the registration
25 statement to which the person has indicated an intention to subscribe;
26 and a description of any material interest of the person in any
27 material transaction with the issuer or a significant subsidiary
28 effected within the previous three years or proposed to be effected;

29 (c) With respect to persons covered by (b) of this subsection, the
30 aggregate sum of the remuneration paid to those persons during the
31 previous twelve months and estimated to be paid during the next twelve
32 months, directly or indirectly, by the issuer, and all predecessors,
33 parents, subsidiaries, and affiliates of the issuer;

34 (d) With respect to a person owning of record or owning
35 beneficially, if known, ten percent or more of the outstanding shares
36 of any class of equity security of the issuer, the information

1 specified in (b) of this subsection, other than the person's
2 occupation;

3 (e) With respect to a promoter, if the issuer was organized within
4 the previous three years, the information or records specified in (b)
5 of this subsection, any amount paid to the promoter within that period
6 or intended to be paid to the promoter, and the consideration for the
7 payment;

8 (f) With respect to a person on whose behalf any part of the
9 offering is to be made in a nonissuer distribution, the person's name
10 and address; the amount of securities of the issuer held by the person
11 as of the date of the filing of the registration statement; a
12 description of any material interest of the person in any material
13 transaction with the issuer or any significant subsidiary effected
14 within the previous three years or proposed to be effected; and a
15 statement of the reasons for making the offering;

16 (g) The capitalization and long-term debt, on both a current and
17 pro forma basis, of the issuer and any significant subsidiary,
18 including a description of each security outstanding or being
19 registered or otherwise offered, and a statement of the amount and kind
20 of consideration, whether in the form of cash, physical assets,
21 services, patents, goodwill, or anything else of value, for which the
22 issuer or any subsidiary has issued its securities within the previous
23 two years or is obligated to issue its securities;

24 (h) The kind and amount of securities to be offered; the proposed
25 offering price or the method by which it is to be computed; any
26 variation at which a proportion of the offering is to be made to a
27 person or class of persons other than the underwriters, with a
28 specification of the person or class; the basis on which the offering
29 is to be made if otherwise than for cash; the estimated aggregate
30 underwriting and selling discounts or commissions and finders' fees,
31 including separately cash, securities, contracts, or anything else of
32 value to accrue to the underwriters or finders in connection with the
33 offering or, if the selling discounts or commissions are variable, the
34 basis of determining them and their maximum and minimum amounts; the
35 estimated amounts of other selling expenses, including legal,
36 engineering, and accounting charges; the name and address of each
37 underwriter and each recipient of a finder's fee; a copy of any
38 underwriting or selling group agreement under which the distribution is

1 to be made or the proposed form of any such agreement whose terms have
2 not yet been determined; and a description of the plan of distribution
3 of any securities that are to be offered otherwise than through an
4 underwriter;

5 (i) The estimated monetary proceeds to be received by the issuer
6 from the offering; the purposes for which the proceeds are to be used
7 by the issuer; the estimated amount to be used for each purpose; the
8 order or priority in which the proceeds will be used for the purposes
9 stated; the amounts of any funds to be raised from other sources to
10 achieve the purposes stated; the sources of the funds; and, if a part
11 of the proceeds is to be used to acquire property, including goodwill,
12 otherwise than in the ordinary course of business, the names and
13 addresses of the vendors, the purchase price, the names of any persons
14 that have received commissions in connection with the acquisition, and
15 the amounts of the commissions and other expenses in connection with
16 the acquisition, including the cost of borrowing money to finance the
17 acquisition;

18 (j) A description of any stock options or other security options
19 outstanding, or to be created in connection with the offering, and the
20 amount of those options held or to be held by each person required to
21 be named in (b), (d) through (f), or (h) of this subsection and by any
22 person that holds or will hold ten percent or more in the aggregate of
23 those options;

24 (k) The dates of, parties to, and general effect concisely stated
25 of each managerial or other material contract made or to be made
26 otherwise than in the ordinary course of business to be performed in
27 whole or in part at or after the filing of the registration statement
28 or that was made within the previous two years, and a copy of the
29 contract;

30 (l) A description of any pending litigation, action, or proceeding
31 to which the issuer is a party and that materially affects its business
32 or assets, and any litigation, action, or proceeding known to be
33 contemplated by governmental authorities;

34 (m) A copy of any prospectus, pamphlet, circular, form letter,
35 advertisement, or other sales literature intended as of the effective
36 date to be used in connection with the offering and any solicitation of
37 interest used in compliance with section 9(17)(b) of this act;

1 (n) A specimen or copy of the security being registered, unless the
2 security is uncertificated; a copy of the issuer's articles of
3 incorporation and bylaws or their substantial equivalents, in effect;
4 and a copy of any indenture or other instrument covering the security
5 to be registered;

6 (o) A signed or conformed copy of an opinion of counsel concerning
7 the legality of the security being registered, with an English
8 translation if it is in a language other than English, which states
9 whether the security when sold will be validly issued, fully paid, and
10 nonassessable and, if a debt security, a binding obligation of the
11 issuer;

12 (p) A signed or conformed copy of a consent of any accountant,
13 engineer, appraiser, or other person whose profession gives authority
14 for a statement made by the person, if the person is named as having
15 prepared or certified a report or valuation, other than an official
16 record, that is public, which is used in connection with the
17 registration statement;

18 (q)(i) A balance sheet of the issuer as of a date within four
19 months before the filing of the registration statement; a statement of
20 income and a statement of cash flows for each of the three fiscal years
21 preceding the date of the balance sheet and for any period between the
22 close of the immediately previous fiscal year and the date of the
23 balance sheet, or for the period of the issuer's and any predecessor's
24 existence if less than three years; and, if any part of the proceeds of
25 the offering is to be applied to the purchase of a business, the
26 financial statements that would be required if that business were the
27 registrant;

28 (ii)(A) If the estimated proceeds to be received from the offering,
29 together with the proceeds from securities registered under this
30 section during the year preceding the date of the filing of this
31 registration statement, exceed one million dollars, but are not more
32 than five million dollars, the balance sheet specified as of the end of
33 the last fiscal year and the related financial statements for the last
34 fiscal year specified in (q)(i) of this subsection shall be audited;

35 (B) If such proceeds exceed five million dollars but are not more
36 than twenty-five million dollars, the balance sheets as of the end of
37 the last two fiscal years and the related financial statements for the

1 last two fiscal years specified in (q)(i) of this subsection shall be
2 audited;

3 (C) If such proceeds exceed twenty-five million dollars, the
4 balance sheets and related financial statements specified in (q)(i) of
5 this subsection for the last three fiscal years shall be audited; and

6 (iii) The financial statements of this subsection and such other
7 financial information as may be prescribed by the director shall be
8 prepared as to form and content in accordance with generally accepted
9 accounting principles and with the rules prescribed by the director,
10 and when applicable, shall be audited by an independent certified
11 public accountant who is registered and in good standing as a certified
12 public accountant under the laws of the place of his or her residence
13 or principal office and who is not an employee, officer, or member of
14 the board of directors of the issuer or a holder of the securities of
15 the issuer. An audit report of such independent certified public
16 accountant shall be based upon an audit made in accordance with
17 generally accepted auditing standards. The audit report shall have no
18 limitations on its scope unless expressly authorized in a record by the
19 director. The director may also verify such statements by examining
20 the issuer's books and records; and

21 (r) Any additional information or records required by rule adopted
22 or order issued under this chapter.

23 (3) Conditions for effectiveness of registration statement. A
24 registration statement under this section becomes effective thirty
25 days, or any shorter period provided by rule adopted or order issued
26 under this chapter, after the date the registration statement or the
27 last amendment other than a price amendment is filed, if:

28 (a) A stop order is not in effect and a proceeding is not pending
29 under section 18 of this act;

30 (b) The director has not issued an order under section 18 of this
31 act delaying effectiveness; or

32 (c) The applicant or registrant has not requested that
33 effectiveness be delayed.

34 (4) Delay of effectiveness of registration statement. The director
35 may delay effectiveness once for not more than ninety days if the
36 director determines the registration statement is not complete in all
37 material respects and promptly notifies the applicant or registrant of

1 that determination. The director may also delay effectiveness for a
2 further period of not more than thirty days if the director determines
3 that the delay is necessary or appropriate.

4 (5) Prospectus distribution may be required. A rule adopted or
5 order issued under this chapter may require as a condition of
6 registration under this section that a prospectus containing a
7 specified part of the information or record specified in subsection (2)
8 of this section be sent or given to each person to which an offer is
9 made, before or concurrently, with the earliest of:

10 (a) The first offer made in a record to the person otherwise than
11 by means of a public advertisement, by or for the account of the issuer
12 or another person on whose behalf the offering is being made or by an
13 underwriter or broker-dealer that is offering part of an unsold
14 allotment or subscription taken by the person as a participant in the
15 distribution;

16 (b) The confirmation of a sale made by or for the account of the
17 person;

18 (c) Payment pursuant to such a sale; or

19 (d) Delivery of the security pursuant to such a sale.

20 NEW SECTION. **Sec. 17.** SECURITIES REGISTRATION FILINGS. (1) Who
21 may file. A registration statement may be filed by the issuer, a
22 person on whose behalf the offering is to be made, or a broker-dealer
23 registered under this chapter.

24 (2) Filing fee. (a) A person filing a registration statement shall
25 pay a filing fee calculated as follows:

26 (i) For an offering pursuant to section 15 of this act, the initial
27 filing fee shall be one hundred dollars for the first one hundred
28 thousand dollars of initial issue, or portion thereof in this state,
29 based on offering price, plus one-fortieth of one percent for any
30 excess over one hundred thousand dollars which are to be offered in
31 this state during the following twelve-month period; and

32 (ii) For an offering pursuant to section 16 of this act, the
33 initial filing fee shall be one hundred dollars for the first one
34 hundred thousand dollars of initial issue, or portion thereof in this
35 state, based on offering price, plus one-twentieth of one percent for
36 any excess over one hundred thousand dollars which are to be offered in
37 this state during the following twelve-month period.

1 (b) If a registration statement is withdrawn before the effective
2 date or a preeffective stop order is issued under section 18 of this
3 act, the director shall retain the fee.

4 (3) Status of offering. A registration statement filed under
5 section 15 or 16 of this act must specify:

6 (a) The amount of securities to be offered in this state;

7 (b) The states in which a registration statement or similar record
8 in connection with the offering has been or is to be filed; and

9 (c) Any adverse order, judgment, or decree issued in connection
10 with the offering by a state securities regulator, the Securities and
11 Exchange Commission, or a court.

12 (4) Incorporation by reference. A record filed under this chapter
13 or chapter 21.20 RCW within five years preceding the filing of a
14 registration statement may be incorporated by reference in the
15 registration statement to the extent that the record is currently
16 accurate.

17 (5) Nonissuer distribution. In the case of a nonissuer
18 distribution, information or a record may not be required under
19 subsection (9) of this section or section 16 of this act, unless it is
20 known to the person filing the registration statement or to the person
21 on whose behalf the distribution is to be made or unless it can be
22 furnished by those persons without unreasonable effort or expense.

23 (6) Escrow and impoundment. A rule adopted or order issued under
24 this chapter may require as a condition of registration that a security
25 issued within the previous five years or to be issued to a promoter for
26 a consideration substantially less than the public offering price or to
27 a person for a consideration other than cash be deposited in escrow;
28 and that the proceeds from the sale of the registered security in this
29 state be impounded until the issuer receives a specified amount from
30 the sale of the security either in this state or elsewhere. The
31 conditions of any escrow or impoundment required under this subsection
32 may be established by rule adopted or order issued under this chapter,
33 but the director may not reject a depository institution solely because
34 of its location in another state.

35 (7) Form of subscription. A rule adopted or order issued under
36 this chapter may require as a condition of registration that a security
37 registered under this chapter be sold only on a specified form of
38 subscription or sale contract and that a signed or conformed copy of

1 each contract be filed under this chapter or preserved for a period
2 specified by the rule or order, which may not be longer than five
3 years.

4 (8) Effective period. Except while a stop order is in effect under
5 section 18 of this act, a registration statement is effective for one
6 year after its effective date, or for any longer period designated in
7 an order under this chapter during which the security is being offered
8 or distributed in a nonexempted transaction by or for the account of
9 the issuer or other person on whose behalf the offering is being made
10 or by an underwriter or broker-dealer that is still offering part of an
11 unsold allotment or subscription taken as a participant in the
12 distribution. For the purposes of a nonissuer transaction, all
13 outstanding securities of the same class identified in the registration
14 statement as a security registered under this chapter are considered to
15 be registered while the registration statement is effective. If any
16 securities of the same class are outstanding, a registration statement
17 may not be withdrawn until one year after its effective date. A
18 registration statement may be withdrawn only with the approval of the
19 director.

20 (9) Periodic reports. While a registration statement is effective,
21 a rule adopted or order issued under this chapter may require the
22 person that filed the registration statement to file reports, not more
23 often than quarterly, to keep the information or other record in the
24 registration statement reasonably current and to disclose the progress
25 of the offering.

26 (10) Posteffective amendments. (a) A registration statement may be
27 amended after its effective date. The posteffective amendment becomes
28 effective when the director so orders.

29 (b) The person filing the posteffective amendment shall pay a
30 filing fee of ten dollars.

31 (c) If a posteffective amendment is made to increase the number of
32 securities specified to be offered or sold, the person filing the
33 amendment shall pay, in addition to the filing fee required by (b) of
34 this subsection, a registration fee of:

35 (i) For an offering registered pursuant to section 15 of this act,
36 one-fortieth of one percent of the desired increase, based on offering
37 price, prior to the sale of securities to be covered by the fee; or

1 (ii) For an offering registered pursuant to section 16 of this act,
2 one-twentieth of one percent of the desired increase, based on offering
3 price, prior to the sale of securities to be covered by the fee.

4 (d) The director, in his or her discretion, may make effective a
5 posteffective amendment to register securities that have been sold in
6 excess of the amount registered, and may require the person filing the
7 amendment to pay, in addition to the filing fee required by (b) of this
8 subsection, a registration fee of three times the fee prescribed by (c)
9 of this subsection.

10 (e) A posteffective amendment relates back to the date of the
11 offering of the additional securities being registered if, within one
12 year after the date of the sale, the amendment is filed, the additional
13 registration fee is paid, and the director so orders.

14 NEW SECTION. **Sec. 18.** DENIAL, SUSPENSION, AND REVOCATION OF
15 SECURITIES REGISTRATION. (1) Stop orders. The director may issue a
16 stop order denying effectiveness to, or suspending or revoking the
17 effectiveness of, a registration statement if the director finds that
18 the order is in the public interest and that:

19 (a) The registration statement as of its effective date or before
20 the effective date in the case of an order denying effectiveness, an
21 amendment under section 17(10) of this act as of its effective date, or
22 a report under section 17(9) of this act, is incomplete in a material
23 respect or contains a statement that, in the light of the circumstances
24 under which it was made, was false or misleading with respect to a
25 material fact;

26 (b) This chapter or a rule adopted or order issued under this
27 chapter or a condition imposed under this chapter has been willfully
28 violated, in connection with the offering, by the person filing the
29 registration statement; by the issuer, a partner, officer, or director
30 of the issuer or a person having a similar status or performing a
31 similar function; a promoter of the issuer; or a person directly or
32 indirectly controlling or controlled by the issuer; but only if the
33 person filing the registration statement is directly or indirectly
34 controlled by or acting for the issuer; or by an underwriter;

35 (c) The security registered or sought to be registered is the
36 subject of a permanent or temporary injunction of a court of competent
37 jurisdiction or an administrative stop order or similar order issued

1 under any federal, foreign, or state law other than this chapter
2 applicable to the offering, but the director may not institute a
3 proceeding against an effective registration statement under this
4 subsection (1)(c) more than one year after the date of the order or
5 injunction on which it is based, and the director may not issue an
6 order under this subsection (1)(c) on the basis of an order or
7 injunction issued under the securities act of another state unless the
8 order or injunction was based on conduct that would constitute, as of
9 the date of the order, a ground for a stop order under this section;

10 (d) The issuer's enterprise or method of business includes or would
11 include activities that are unlawful where performed;

12 (e) With respect to a security sought to be registered under
13 section 15 of this act, there has been a failure to comply with the
14 undertaking required by section 15(2)(d) of this act;

15 (f) The applicant or registrant has not paid the filing fee, but
16 the director shall vacate the order if the deficiency is corrected; or

17 (g) The offering:

18 (i) Will work or tend to work a fraud upon purchasers or would so
19 operate; or

20 (ii) Has been or would be made with unreasonable amounts of
21 underwriters' and sellers' discounts, commissions, or other
22 compensation, or promoters' profits or participations, or unreasonable
23 amounts or kinds of options.

24 (2) Enforcement of subsection (1)(g) of this section. To the
25 extent practicable, the director by rule adopted or order issued under
26 this chapter shall publish standards that provide notice of conduct
27 that violates subsection (1)(g) of this section.

28 (3) Institution of stop order. The director may not institute a
29 stop order proceeding against an effective registration statement on
30 the basis of conduct or a transaction known to the director when the
31 registration statement became effective unless the proceeding is
32 instituted within thirty days after the registration statement became
33 effective.

34 (4) Summary process. The director may summarily revoke, deny,
35 postpone, or suspend the effectiveness of a registration statement
36 pending final determination of an administrative proceeding. Upon the
37 issuance of the order, the director shall promptly notify each person
38 specified in subsection (5) of this section that the order has been

1 issued, the reasons for the revocation, denial, postponement, or
2 suspension, and that, after the receipt of a request in a record from
3 the person, the matter will be scheduled for a hearing in accordance
4 with the adjudicative proceedings provisions of chapter 34.05 RCW. If
5 a hearing is not requested and none is ordered by the director, within
6 twenty days after the date of service of the order, the order becomes
7 final. If a hearing is requested or ordered, the director, after
8 notice of and opportunity for hearing for each person subject to the
9 order, may modify or vacate the order or extend the order until final
10 determination.

11 (5) Procedural requirements for stop order. A stop order may not
12 be issued under this section without:

13 (a) Appropriate notice to the applicant or registrant, the issuer,
14 and the person on whose behalf the securities are to be or have been
15 offered;

16 (b) An opportunity for hearing; and

17 (c) Findings of fact and conclusions of law in a record in
18 accordance with chapter 34.05 RCW.

19 (6) Modification or vacation of stop order. The director may
20 modify or vacate a stop order issued under this section if the director
21 finds that the conditions that caused its issuance have changed or that
22 it is necessary or appropriate in the public interest or for the
23 protection of investors.

24 NEW SECTION. **Sec. 19.** WAIVER AND MODIFICATION. The director may
25 waive or modify, in whole or in part, any or all of the requirements of
26 sections 14, 15, and 16(2) of this act or the requirement of any
27 information or record in a registration statement or in a periodic
28 report filed pursuant to section 17(9) of this act.

29 NEW SECTION. **Sec. 20.** Sections 13 through 19 of this act are each
30 added to chapter 21.20A RCW (created in section 115 of this act) and
31 codified with the subchapter heading of "Registration of Securities and
32 Notice Filing of Federal Covered Securities."

33 NEW SECTION. **Sec. 21.** BROKER-DEALER REGISTRATION REQUIREMENT AND
34 EXEMPTIONS. (1) Registration requirement. It is unlawful for a person
35 to transact business in this state as a broker-dealer unless the person

1 is registered under this chapter as a broker-dealer or is exempt from
2 registration as a broker-dealer under subsection (2) or (4) of this
3 section.

4 (2) Exemptions from registration. The following persons are exempt
5 from the registration requirement of subsection (1) of this section:

6 (a) A broker-dealer without a place of business in this state if
7 its only transactions effected in this state are with:

8 (i) The issuer of the securities involved in the transactions;

9 (ii) A broker-dealer registered as a broker-dealer under this
10 chapter or not required to be registered as a broker-dealer under this
11 chapter;

12 (iii) An institutional investor;

13 (iv) A nonaffiliated federal covered investment adviser with
14 investments under management in excess of one hundred million dollars
15 acting for the account of others pursuant to discretionary authority in
16 a signed record;

17 (v) A bona fide preexisting customer whose principal place of
18 residence is not in this state and the person is registered as a
19 broker-dealer under the Securities Exchange Act of 1934 or not required
20 to be registered under the Securities Exchange Act of 1934 and is
21 registered under the securities act of the state in which the customer
22 maintains a principal place of residence;

23 (vi) A bona fide preexisting customer whose principal place of
24 residence is in this state but was not present in this state when the
25 customer relationship was established, if:

26 (A) The broker-dealer is registered under the Securities Exchange
27 Act of 1934 or not required to be registered under the Securities
28 Exchange Act of 1934 and is registered under the securities laws of the
29 state in which the customer relationship was established and where the
30 customer had maintained a principal place of residence; and

31 (B) Within forty-five days after the customer's first transaction
32 in this state, the person files an application for registration as a
33 broker-dealer in this state and a further transaction is not effected
34 more than seventy-five days after the date on which the application is
35 filed, or, if earlier, the date on which the director notifies the
36 person that the director has denied the application for registration or
37 has stayed the pendency of the application for good cause;

1 (vii) Not more than three customers in this state during the
2 previous twelve months, in addition to those customers specified in
3 (a)(i) through (vi) of this subsection and under (a)(viii) of this
4 subsection, if the broker-dealer is registered under the Securities
5 Exchange Act of 1934 or not required to be registered under the
6 Securities Exchange Act of 1934 and is registered under the securities
7 act of the state in which the broker-dealer has its principal place of
8 business; and

9 (viii) Any other person exempted by rule adopted or order issued
10 under this chapter;

11 (b) A person that deals solely in United States government
12 securities and is supervised as a dealer in government securities by
13 the Board of Governors of the Federal Reserve System, the Comptroller
14 of the Currency, the Federal Deposit Insurance Corporation, or the
15 Office of Thrift Supervision;

16 (c)(i) Subject to (c)(ii) and (iii) of this subsection, a
17 broker-dealer that exclusively effects transactions:

18 (A) Exempt under section 9 (13) or (25) of this act; or

19 (B) Involving a federal covered security under Section 18(b)(4)(D)
20 of the Securities Act of 1933 for which the issuer has made the filing
21 and paid the fee required under section 14 of this act.

22 (ii) A broker-dealer is not exempted under (c)(i) of this
23 subsection if the broker-dealer, or any of the following persons, is
24 currently the subject of an order, judgment, adjudication,
25 determination, or conviction that would constitute grounds for
26 discipline under section 32(4) (a) through (f), (h), or (k) through (m)
27 of this act:

28 (A) An employee, associate, partner, officer, or director of the
29 broker-dealer;

30 (B) A person having a status similar to, or performing functions
31 similar to those performed by, the persons described in (c)(ii)(A) of
32 this subsection; or

33 (C) A person directly or indirectly in control of the
34 broker-dealer.

35 (iii) The exemption created by (c)(i) of this subsection is subject
36 to any further provision to coordinate with federal or state law as may
37 be imposed by rule adopted or order issued by the director; and

1 (d) A person that participates only in the sale or offering for
2 sale of variable contracts which fund corporate plans meeting the
3 requirements for qualification under section 401 or 403 of the United
4 States Internal Revenue Code as set forth in RCW 48.18A.060.

5 (3) Limits on employment or association. It is unlawful for a
6 broker-dealer, or for an issuer engaged in offering, offering to
7 purchase, purchasing, or selling securities in this state, directly or
8 indirectly, to employ or associate with an individual to engage in an
9 activity related to securities transactions in this state if the
10 registration of the individual is suspended or revoked or the
11 individual is barred from employment or association with a broker-
12 dealer, an issuer, an investment adviser, or a federal covered
13 investment adviser by an order of the director under this chapter, the
14 Securities and Exchange Commission, or a self-regulatory organization.
15 A broker-dealer or issuer does not violate this subsection if the
16 broker-dealer or issuer did not know and in the exercise of reasonable
17 care could not have known, of the suspension, revocation, or bar. Upon
18 request from a broker-dealer or issuer and for good cause, an order
19 under this chapter may modify or waive, in whole or in part, the
20 application of the prohibitions of this subsection to the broker-
21 dealer.

22 (4) Foreign transactions. A rule adopted or order issued under
23 this chapter may permit:

24 (a) A broker-dealer that is registered in Canada or other foreign
25 jurisdiction and that does not have a place of business in this state
26 to effect transactions in securities with or for, or attempt to effect
27 the purchase or sale of any securities by:

28 (i) An individual from Canada or other foreign jurisdiction who is
29 temporarily present in this state and with whom the broker-dealer had
30 a bona fide customer relationship before the individual entered the
31 United States;

32 (ii) An individual from Canada or other foreign jurisdiction who is
33 present in this state and whose transactions are in a self-directed tax
34 advantaged retirement plan of which the individual is the holder or
35 contributor in that foreign jurisdiction; or

36 (iii) An individual who is present in this state, with whom the
37 broker-dealer customer relationship arose while the individual was

1 temporarily or permanently resident in Canada or the other foreign
2 jurisdiction; and

3 (b) A sales agent who represents a broker-dealer that is exempt
4 under this subsection to effect transactions in securities or attempt
5 to effect the purchase or sale of securities in this state as permitted
6 for a broker-dealer described in (a) of this subsection.

7 NEW SECTION. **Sec. 22.** SALES AGENT REGISTRATION REQUIREMENT AND
8 EXEMPTIONS. (1) Registration requirement. It is unlawful for an
9 individual to transact business in this state as a sales agent unless
10 the individual is registered under this chapter as a sales agent or is
11 exempt from registration as a sales agent under subsection (2) of this
12 section.

13 (2) Exemptions from registration. The following individuals are
14 exempt from the registration requirement of subsection (1) of this
15 section:

16 (a) An individual who represents a broker-dealer in effecting
17 transactions in this state limited to those described in Section
18 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. Sec.
19 78(o)(2));

20 (b) An individual who represents a broker-dealer that is exempt
21 under section 21 (2) or (4) of this act;

22 (c) An individual who represents an issuer with respect to an offer
23 or sale of the issuer's own securities or those of the issuer's parent
24 or any of the issuer's subsidiaries, and who is not compensated in
25 connection with the individual's participation by the payment of
26 commissions or other remuneration based, directly or indirectly, on
27 transactions in those securities;

28 (d) An individual who represents an issuer and who effects
29 transactions in the issuer's securities exempted by section 9 of this
30 act, other than section 9 (11) and (14) of this act, but an individual
31 who is compensated in connection with the sales agent's participation
32 by the payment of commissions or other remuneration based, directly or
33 indirectly, on transactions in those securities is not exempt if the
34 individual is currently the subject of an order, judgment,
35 adjudication, determination, or conviction that would constitute
36 grounds for discipline under section 32(4) (a) through (f), (h), or (k)
37 through (m) of this act;

1 (e) An individual who represents an issuer that effects
2 transactions solely in federal covered securities of the issuer, but an
3 individual who effects transactions in a federal covered security under
4 section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15
5 U.S.C. Sec. 77r(b)(3) or 77r(b)(4)(D)) and is compensated in connection
6 with the sales agent's participation by the payment of commissions or
7 other remuneration based, directly or indirectly, on transactions in
8 those securities is not exempt if the individual is currently the
9 subject of an order, judgment, adjudication, determination, or
10 conviction that would constitute grounds for discipline under section
11 32(4) (a) through (f), (h), or (k) through (m) of this act;

12 (f) An individual who represents a broker-dealer registered in this
13 state under section 21(1) of this act or exempt from registration under
14 section 21(2) of this act in the offer and sale of securities for an
15 account of a nonaffiliated federal covered investment adviser with
16 investments under management in excess of one hundred million dollars
17 acting for the account of others pursuant to discretionary authority in
18 a signed record;

19 (g) An individual who represents an issuer in connection with the
20 purchase of the issuer's own securities;

21 (h) An individual who represents an issuer and who restricts
22 participation to performing clerical or ministerial acts; or

23 (i) Any other individual exempted by rule adopted or order issued
24 under this chapter.

25 (3) Registration effective only while employed or associated. The
26 registration of a sales agent is effective only while the sales agent
27 is employed by or associated with a broker-dealer registered under this
28 chapter or an issuer that is offering, selling, or purchasing its
29 securities in this state.

30 (4) Limit on employment or association. It is unlawful for a
31 broker-dealer, or an issuer engaged in offering, selling, or purchasing
32 securities in this state, to employ or associate with a sales agent who
33 transacts business in this state on behalf of broker-dealers or issuers
34 unless the sales agent is registered under subsection (1) of this
35 section or exempt from registration under subsection (2) of this
36 section.

37 (5) Limit on affiliations. An individual may not act as a sales
38 agent for more than one broker-dealer or one issuer at a time, unless

1 the broker-dealer or the issuer for which the sales agent acts are
2 affiliated by direct or indirect common control or are authorized by
3 rule or order under this chapter.

4 NEW SECTION. **Sec. 23.** INVESTMENT ADVISER REGISTRATION REQUIREMENT
5 AND EXEMPTIONS. (1) Registration requirement. It is unlawful for a
6 person to transact business in this state as an investment adviser
7 unless the person is registered under this chapter as an investment
8 adviser or is exempt from registration as an investment adviser under
9 subsection (2) of this section.

10 (2) Exemptions from registration. The following persons are exempt
11 from the registration requirement of subsection (1) of this section:

12 (a) A person without a place of business in this state that is
13 registered under the securities act of the state in which the person
14 has its principal place of business if its only clients in this state
15 are:

16 (i) Federal covered investment advisers, investment advisers
17 registered under this chapter, or broker-dealers registered under this
18 chapter;

19 (ii) Institutional investors;

20 (iii) Bona fide preexisting clients whose principal places of
21 residence are not in this state if the investment adviser is registered
22 under the securities act of the state in which the clients maintain
23 principal places of residence; or

24 (iv) Any other client exempted by rule adopted or order issued
25 under this chapter;

26 (b) A person without a place of business in this state if the
27 person has had, during the preceding twelve months, not more than five
28 clients that are resident in this state in addition to those specified
29 under (a) of this subsection; or

30 (c) Any other person exempted by rule adopted or order issued under
31 this chapter.

32 (3) Limits on employment or association. It is unlawful for an
33 investment adviser, directly or indirectly, to employ or associate with
34 an individual to engage in an activity related to investment advice in
35 this state if the registration of the individual is suspended or
36 revoked or the individual is barred from employment or association with
37 an investment adviser, federal covered investment adviser, or broker-

1 dealer by an order under this chapter, the Securities and Exchange
2 Commission, or a self-regulatory organization, unless the investment
3 adviser did not know, and in the exercise of reasonable care could not
4 have known, of the suspension, revocation, or bar. Upon request from
5 the investment adviser and for good cause, the director, by order, may
6 waive, in whole or in part, the application of the prohibitions of this
7 subsection to the investment adviser.

8 (4) Investment adviser representative registration required. It is
9 unlawful for an investment adviser to employ or associate with an
10 individual required to be registered under this chapter as an
11 investment adviser representative who transacts business in this state
12 on behalf of the investment adviser unless the individual is registered
13 under section 24(1) of this act or is exempt from registration under
14 section 24(2) of this act.

15 NEW SECTION. **Sec. 24.** INVESTMENT ADVISER REPRESENTATIVE
16 REGISTRATION REQUIREMENT AND EXEMPTIONS. (1) Registration requirement.
17 It is unlawful for an individual to transact business in this state as
18 an investment adviser representative unless the individual is
19 registered under this chapter as an investment adviser representative
20 or is exempt from registration as an investment adviser representative
21 under subsection (2) of this section.

22 (2) Exemptions from registration. The following individuals are
23 exempt from the registration requirement of subsection (1) of this
24 section:

25 (a) An individual who is employed by or associated with an
26 investment adviser that is exempt from registration under section 23(2)
27 of this act or a federal covered investment adviser that is excluded
28 from the notice filing requirements of section 25 of this act; and

29 (b) Any other individual exempted by rule adopted or order issued
30 under this chapter.

31 (3) Registration effective only while employed or associated. The
32 registration of an investment adviser representative is not effective
33 while the investment adviser representative is not employed by or
34 associated with an investment adviser registered under this chapter or
35 a federal covered investment adviser that has made or is required to
36 make a notice filing under section 25 of this act.

1 (4) Limit on affiliations. An individual may transact business as
2 an investment adviser representative for more than one investment
3 adviser or federal covered investment adviser unless a rule adopted or
4 order issued under this chapter prohibits or limits an individual from
5 acting as an investment adviser representative for more than one
6 investment adviser or federal covered investment adviser.

7 (5) Limits on employment or association. It is unlawful for an
8 individual acting as an investment adviser representative, directly or
9 indirectly, to conduct business in this state on behalf of an
10 investment adviser or a federal covered investment adviser if the
11 registration of the individual as an investment adviser representative
12 is suspended or revoked or the individual is barred from employment or
13 association with an investment adviser or a federal covered investment
14 adviser by an order under this chapter, the Securities and Exchange
15 Commission, or a self-regulatory organization. Upon request from a
16 federal covered investment adviser and for good cause, the director, by
17 order issued, may waive, in whole or in part, the application of the
18 requirements of this subsection to the federal covered investment
19 adviser.

20 (6) Referral fees. An investment adviser registered under this
21 chapter, a federal covered investment adviser that has filed a notice
22 under section 25 of this act, or a broker-dealer registered under this
23 chapter is not required to employ or associate with an individual as an
24 investment adviser representative if the only compensation paid to the
25 individual for a referral of investment advisory clients is paid to an
26 investment adviser registered under this chapter, a federal covered
27 investment adviser who has filed a notice under section 25 of this act,
28 or a broker-dealer registered under this chapter with which the
29 individual is employed or associated as an investment adviser
30 representative.

31 NEW SECTION. **Sec. 25.** FEDERAL COVERED INVESTMENT ADVISER NOTICE
32 FILING REQUIREMENT. (1) Notice filing requirement. Except with
33 respect to a federal covered investment adviser described in subsection
34 (2) of this section, it is unlawful for a federal covered investment
35 adviser to transact business in this state as a federal covered
36 investment adviser unless the federal covered investment adviser
37 complies with subsection (3) of this section.

1 (2) Notice filing requirement not required. The following federal
2 covered investment advisers are not required to comply with subsection
3 (3) of this section:

4 (a) A federal covered investment adviser without a place of
5 business in this state if its only clients in this state are:

6 (i) Federal covered investment advisers, investment advisers
7 registered under this chapter, and broker-dealers registered under this
8 chapter;

9 (ii) Institutional investors;

10 (iii) Bona fide preexisting clients whose principal places of
11 residence are not in this state; or

12 (iv) Other clients specified by rule adopted or order issued under
13 this chapter;

14 (b) A federal covered investment adviser without a place of
15 business in this state if the person has had, during the preceding
16 twelve months, not more than five clients that are resident in this
17 state in addition to those specified under (a) of this subsection; and

18 (c) Any other person excluded by rule adopted or order issued under
19 this chapter.

20 (3) Notice filing procedure. A person acting as a federal covered
21 investment adviser, not excluded under subsection (2) of this section,
22 shall file a notice, a consent to service of process complying with
23 section 54 of this act, and such records as have been filed with the
24 Securities and Exchange Commission under the Investment Advisers Act of
25 1940 required by rule adopted or order issued under this chapter and
26 pay the fees specified in section 30(5) of this act.

27 (4) Effectiveness of filing. The notice under subsection (3) of
28 this section becomes effective upon its filing.

29 NEW SECTION. **Sec. 26.** REGISTRATION BY BROKER-DEALER, SALES AGENT,
30 INVESTMENT ADVISER, AND INVESTMENT ADVISER REPRESENTATIVE. (1)
31 Application for initial registration. A person shall register as a
32 broker-dealer, sales agent, investment adviser, or investment adviser
33 representative by filing an application and a consent to service of
34 process complying with section 54 of this act, and paying the fee
35 specified in section 30 of this act and any reasonable fees charged by
36 the designee of the director for processing the filing. The
37 application must contain:

1 (a) The information or record required for the filing of a uniform
2 application; and

3 (b) Upon request by the director, any other financial or other
4 information or record that the director determines is appropriate.

5 (2) Amendment. If the information or record contained in an
6 application filed under subsection (1) of this section is or becomes
7 inaccurate or incomplete in a material respect, the registrant shall
8 promptly file a correcting amendment.

9 (3) Effectiveness of registration. If an order is not in effect,
10 a proceeding is not pending under section 32 of this act, and the
11 applicant has not requested that effectiveness be delayed, registration
12 becomes effective at noon on the forty-fifth day after a completed
13 application is filed, unless the registration is denied. A rule
14 adopted or order issued under this chapter may set an earlier effective
15 date or may defer the effective date until noon on the forty-fifth day
16 after the filing of any amendment completing the application.

17 (4) Registration renewal. A registration is effective until
18 midnight on December 31st of the year for which the application for
19 registration is filed unless the director by rule or order provides
20 otherwise. Unless an order is in effect under section 32 of this act,
21 a registration may be automatically renewed each year by filing such
22 records as are required by rule adopted or order issued under this
23 chapter, by paying the fee specified in section 30 of this act, and by
24 paying costs charged by the designee of the director for processing the
25 filings.

26 (5) Additional conditions or waivers. A rule adopted or order
27 issued under this chapter may impose other conditions that are not
28 inconsistent with the National Securities Markets Improvement Act of
29 1996 including, but not limited to, conditions governing the
30 registration of broker-dealers not registered under the Securities
31 Exchange Act of 1934. An order issued under this chapter may waive, in
32 whole or in part, specific requirements in connection with registration
33 as are in the public interest and for the protection of investors.

34 (6) Sellers of variable contracts. As required by chapter 48.18A
35 RCW, a person selling variable contracts shall be registered as a
36 broker-dealer or sales agent as required by this chapter. This
37 chapter, and any rules or orders adopted under this chapter, applies to

1 any person engaged in the offer, sale, or purchase of a variable
2 contract. "Variable contract" means the same as set forth under
3 chapter 48.18A RCW.

4 NEW SECTION. **Sec. 27.** SUCCESSION AND CHANGE IN REGISTRATION OF
5 BROKER-DEALER OR INVESTMENT ADVISER. (1) Succession. A broker-dealer
6 or investment adviser may succeed to the current registration of
7 another broker-dealer or investment adviser or a notice filing of a
8 federal covered investment adviser, and a federal covered investment
9 adviser may succeed to the current registration of an investment
10 adviser or notice filing of another federal covered investment adviser,
11 by filing as a successor an application for registration pursuant to
12 section 21 or 23 of this act or a notice pursuant to section 25 of this
13 act for the unexpired portion of the current registration or notice
14 filing and paying the filing fee required by section 30 of this act.

15 (2) Organizational change. A broker-dealer or investment adviser
16 that changes its form of organization or state of incorporation or
17 organization may continue its registration by filing an amendment to
18 its registration if the change does not involve a material change in
19 its financial condition or management. The amendment becomes effective
20 when filed or on a date designated by the registrant in its filing.
21 The new organization is a successor to the original registrant for the
22 purposes of this chapter. If there is a material change in financial
23 condition or management, the broker-dealer or investment adviser shall
24 file a new application for registration. A predecessor registered
25 under this chapter shall stop conducting its securities business other
26 than winding down transactions and shall file for withdrawal of broker-
27 dealer or investment adviser registration within forty-five days after
28 filing its amendment to effect succession.

29 (3) Name change. A broker-dealer or investment adviser that
30 changes its name may continue its registration by filing an amendment
31 to its registration. The amendment becomes effective when filed or on
32 a date designated by the registrant.

33 (4) Change of control. A change of control of a broker-dealer or
34 investment adviser may be made in accordance with a rule adopted or
35 order issued under this chapter.

1 NEW SECTION. **Sec. 28.** TERMINATION OF EMPLOYMENT OR ASSOCIATION OF
2 SALES AGENT AND INVESTMENT ADVISER REPRESENTATIVE AND TRANSFER OF
3 EMPLOYMENT OR ASSOCIATION. (1) Notice of termination. If a sales
4 agent registered under this chapter terminates employment by or
5 association with a broker-dealer or issuer, or if an investment adviser
6 representative registered under this chapter terminates employment by
7 or association with an investment adviser or federal covered investment
8 adviser, or if either registrant terminates activities that require
9 registration as a sales agent or investment adviser representative, the
10 broker-dealer, issuer, investment adviser, or federal covered
11 investment adviser shall promptly file a notice of termination. If the
12 registrant learns that the broker-dealer, issuer, investment adviser,
13 or federal covered investment adviser has not filed the notice, the
14 registrant may do so.

15 (2) Transfer of employment or association. If a sales agent
16 registered under this chapter terminates employment by or association
17 with a broker-dealer registered under this chapter, and begins
18 employment by or association with another broker-dealer registered
19 under this chapter; or if an investment adviser representative
20 registered under this chapter terminates employment by or association
21 with an investment adviser registered under this chapter, or a federal
22 covered investment adviser that has filed a notice under section 25 of
23 this act, and begins employment by or association with another
24 investment adviser registered under this chapter, or a federal covered
25 investment adviser that has filed a notice under section 25 of this
26 act, then upon the filing by or on behalf of the registrant, within
27 thirty days after the termination, of an application for registration
28 that complies with the requirement of section 26(1) of this act and
29 payment of the filing fee required under section 30 of this act, the
30 registration of the sales agent or investment adviser representative
31 is:

32 (a) Immediately effective as of the date of the completed filing,
33 if the sales agent's Central Registration Depository record or
34 successor record or the investment adviser representative's Investment
35 Adviser Registration Depository record or successor record does not
36 contain a new or amended disciplinary disclosure within the previous
37 twelve months; or

1 (b) Temporarily effective as of the date of the completed filing,
2 if the sales agent's Central Registration Depository record or
3 successor record or the investment adviser representative's Investment
4 Adviser Registration Depository record or successor record contains a
5 new or amended disciplinary disclosure within the preceding twelve
6 months.

7 (3) Withdrawal of temporary registration. The director may
8 withdraw a temporary registration if there are or were grounds for
9 discipline as specified in section 32 of this act and the director does
10 so within thirty days after the filing of the application. If the
11 director does not withdraw the temporary registration within the
12 thirty-day period, registration becomes automatically effective on the
13 thirty-first day after filing.

14 (4) Power to prevent registration. The director may prevent the
15 effectiveness of a transfer of a sales agent or investment adviser
16 representative under subsection (2)(a) or (b) of this section based on
17 the public interest and the protection of investors.

18 (5) Termination of registration or application for registration.
19 If the director determines that a registrant or applicant for
20 registration is no longer in existence or has ceased to act as a
21 broker-dealer, sales agent, investment adviser, or investment adviser
22 representative, or is the subject of an adjudication of incapacity or
23 is subject to the control of a committee, conservator, or guardian, or
24 cannot reasonably be located, a rule adopted or order issued under this
25 chapter may require the registration be canceled or terminated or the
26 application denied. The director may reinstate a canceled or
27 terminated registration, with or without hearing, and may make the
28 registration retroactive.

29 NEW SECTION. **Sec. 29.** WITHDRAWAL OF REGISTRATION OF BROKER-
30 DEALER, SALES AGENT, INVESTMENT ADVISER, AND INVESTMENT ADVISER
31 REPRESENTATIVE. Withdrawal of registration by a broker-dealer, sales
32 agent, investment adviser, or investment adviser representative becomes
33 effective sixty days after the filing of the application to withdraw or
34 within any shorter period as provided by rule adopted or order issued
35 under this chapter unless a revocation or suspension proceeding is
36 pending when the application is filed. If a proceeding is pending,
37 withdrawal becomes effective when and upon such conditions as required

1 by rule adopted or order issued under this chapter. The director may
2 institute a revocation or suspension proceeding under section 32 of
3 this act within one year after the withdrawal became effective
4 automatically and issue a revocation or suspension order as of the last
5 date on which registration was effective if a proceeding is not
6 pending.

7 NEW SECTION. **Sec. 30. FILING FEES.** (1)(a) Broker-dealers. A
8 person shall pay a fee of one hundred fifty dollars when initially
9 filing an application for registration as a broker-dealer and a fee of
10 seventy-five dollars when filing a renewal of registration as a broker-
11 dealer. If the filing results in a denial or withdrawal, the director
12 shall retain seventy-five dollars of the fee.

13 (b) The fee for transfer of a broker-dealer registration to a
14 successor shall be fifty dollars.

15 (2) Sales agents. The fee for an individual is forty dollars when
16 filing an application for registration as a sales agent, a fee of
17 twenty dollars when filing a renewal of registration as a sales agent,
18 and a fee of twenty-five dollars when filing for a change of
19 registration as a sales agent. If the filing results in a denial or
20 withdrawal, the director shall retain twenty dollars of the fee.

21 (3)(a) Investment advisers. A person shall pay a fee of one
22 hundred fifty dollars when filing an application for registration as an
23 investment adviser and a fee of seventy-five dollars when filing a
24 renewal of registration as an investment adviser. If the filing
25 results in a denial or withdrawal, the director shall retain seventy-
26 five dollars of the fee.

27 (b) The fee for transfer of an investment adviser registration to
28 a successor shall be fifty dollars.

29 (4) Investment adviser representatives. The fee for an individual
30 is forty dollars when filing an application for registration as an
31 investment adviser representative, a fee of twenty dollars when filing
32 a renewal of registration as an investment adviser representative, and
33 a fee of twenty-five dollars when filing a change of registration as an
34 investment adviser representative. If the filing results in a denial
35 or withdrawal, the director shall retain twenty dollars of the fee.

36 (5)(a) Federal covered investment advisers. A federal covered
37 investment adviser required to file a notice under section 25 of this

1 act shall pay an initial fee of one hundred fifty dollars and an annual
2 notice fee of seventy-five dollars. A fee shall not be assessed in
3 connection with converting an investment adviser registration to a
4 notice filing when the investment adviser becomes a federal covered
5 adviser.

6 (b) The fee for transfer of a notice filing of a federal covered
7 investment adviser to a successor shall be fifty dollars.

8 (6) Payment. A person required to pay a filing or notice fee under
9 this section may transmit the fee through or to a designee as a rule or
10 order provides under this chapter.

11 (7) Duplicate certificate. The fee for a duplicate registration
12 certificate shall be five dollars.

13 NEW SECTION. **Sec. 31.** POSTREGISTRATION REQUIREMENTS. (1)
14 Financial requirements. Subject to Section 15(h) of the Securities
15 Exchange Act of 1934 (15 U.S.C. Sec. 78o(h)) or Section 222 of the
16 Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-22), a rule adopted
17 or order issued under this chapter may establish minimum financial
18 requirements for broker-dealers registered or required to be registered
19 under this chapter and investment advisers registered or required to be
20 registered under this chapter.

21 (2) Financial reports. Subject to Section 15(h) of the Securities
22 Exchange Act of 1934 (15 U.S.C. Sec. 78o(h)) or Section 222(b) of the
23 Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-22), a broker-
24 dealer registered or required to be registered under this chapter and
25 an investment adviser registered or required to be registered under
26 this chapter shall file such financial reports as are required by a
27 rule adopted or order issued under this chapter. If the information
28 contained in a record filed under this subsection is or becomes
29 inaccurate or incomplete in a material respect, the registrant shall
30 promptly file a correcting amendment.

31 (3) Recordkeeping. Subject to Section 15(h) of the Securities
32 Exchange Act of 1934 (15 U.S.C. Sec. 78o(h)) or Section 222 of the
33 Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-22):

34 (a) A broker-dealer registered or required to be registered under
35 this chapter and an investment adviser registered or required to be
36 registered under this chapter shall make and maintain the accounts,

1 correspondence, memoranda, papers, books, and other records required by
2 rule adopted or order issued under this chapter;

3 (b) Broker-dealer records required to be maintained under (a) of
4 this subsection may be maintained in any form of data storage
5 acceptable under Section 17(a) of the Securities Exchange Act of 1934
6 (15 U.S.C. Sec. 78q(a)) if they are readily accessible to the director;
7 and

8 (c) Investment adviser records required to be maintained under (a)
9 of this subsection may be maintained in any form of data storage
10 required by rule adopted or order issued under this chapter.

11 (4) Audits or inspections. The records of a broker-dealer
12 registered or required to be registered under this chapter and of an
13 investment adviser registered or required to be registered under this
14 chapter are subject to such reasonable periodic, special, or other
15 audits or inspections by a representative of the director, within or
16 without this state, as the director considers necessary or appropriate
17 in the public interest and for the protection of investors. An audit
18 or inspection may be made at any time and without prior notice. The
19 director may copy, and remove for audit or inspection copies of, all
20 records the director reasonably considers necessary or appropriate to
21 conduct the audit or inspection. The director may assess a reasonable
22 charge for conducting an audit or inspection under this subsection.

23 (5) Custody and discretionary authority bond or insurance. Subject
24 to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Sec.
25 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15
26 U.S.C. Sec. 80b-22), a rule adopted or order issued under this chapter
27 may require a broker-dealer or investment adviser that has custody of
28 or discretionary authority over funds or securities of a customer or
29 client to obtain insurance or post a bond or other satisfactory form of
30 security. The director may determine the requirements of the
31 insurance, bond, or other satisfactory form of security. Insurance or
32 a bond or other satisfactory form of security may not be required of a
33 broker-dealer registered under this chapter whose net capital exceeds,
34 or of an investment adviser registered under this chapter whose minimum
35 financial requirements exceed, the amounts required by rule or order
36 under this chapter. The insurance, bond, or other satisfactory form of
37 security must permit an action by a person to enforce any liability on

1 the insurance, bond, or other satisfactory form of security if
2 instituted within the time limitations in section 42(10)(b) of this
3 act.

4 (6) Requirements for custody. Subject to Section 15(h) of the
5 Securities Exchange Act of 1934 (15 U.S.C. Sec. 78o(h)) or Section 222
6 of the Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-22), a sales
7 agent may not have custody of funds or securities of a customer except
8 under the supervision of a broker-dealer and an investment adviser
9 representative may not have custody of funds or securities of a client
10 except under the supervision of an investment adviser or a federal
11 covered investment adviser. A rule adopted or order issued under this
12 chapter may prohibit, limit, or impose conditions on a broker-dealer
13 regarding custody of funds or securities of a customer and on an
14 investment adviser regarding custody of securities or funds of a
15 client.

16 (7) Investment adviser brochure rule. With respect to an
17 investment adviser registered or required to be registered under this
18 chapter, a rule adopted or order issued under this chapter may require
19 that information or a record be furnished or disseminated to clients or
20 prospective clients in this state as necessary or appropriate in the
21 public interest and for the protection of investors and advisory
22 clients.

23 (8) Continuing education. A rule adopted or order issued under
24 this chapter may require an individual registered under section 22 or
25 24 of this act to participate in a continuing education program
26 approved by the Securities and Exchange Commission and administered by
27 a self-regulatory organization or, in the absence of such a program, a
28 rule adopted or order issued under this chapter may require continuing
29 education for an individual registered under section 24 of this act.

30 NEW SECTION. **Sec. 32.** DENIAL, REVOCATION, SUSPENSION, WITHDRAWAL,
31 RESTRICTION, CONDITION, OR LIMITATION OF REGISTRATION. (1)
32 Disciplinary conditions - applicants. If the director finds that the
33 order is in the public interest and subsection (4) of this section
34 authorizes the action, an order issued under this chapter may deny an
35 application, or may condition or limit registration of an applicant to
36 be a broker-dealer, sales agent, investment adviser, or investment
37 adviser representative, and, if the applicant is a broker-dealer or

1 investment adviser, of a partner, officer, director, or person having
2 a similar status or performing similar functions, or a person directly
3 or indirectly in control of the broker-dealer or investment adviser.

4 (2) Disciplinary conditions - registrants. If the director finds
5 that the order is in the public interest and subsection (4) of this
6 section authorizes the action, an order issued under this chapter may
7 revoke, suspend, condition, or limit the registration of a registrant
8 and if the registrant is a broker-dealer or investment adviser, of a
9 partner, officer, director, or person having a similar status or
10 performing similar functions, or a person directly or indirectly in
11 control of the broker-dealer or investment adviser. However, the
12 director may not:

13 (a) Institute a revocation or suspension proceeding under this
14 subsection based on an order issued under a law of another state that
15 is reported to the director or a designee of the director more than one
16 year after the date of the order on which it is based; or

17 (b) Under subsection (4)(e)(i) or (ii) of this section, issue an
18 order on the basis of an order issued under the securities act of
19 another state unless the other order was based on conduct for which
20 subsection (4) of this section would authorize the action had the
21 conduct occurred in this state.

22 (3) Disciplinary penalties - registrants. If the director finds
23 that the order is in the public interest and subsection (4)(a) through
24 (f), (h) through (j), (l), (m), or (o) through (q) of this section
25 authorizes the action, an order under this chapter may censure, impose
26 a bar, or impose a civil penalty in an amount not to exceed a maximum
27 of ten thousand dollars for each violation on a registrant and, if the
28 registrant is a broker-dealer or investment adviser, a partner,
29 officer, director, or person having a similar status or performing
30 similar functions, or a person directly or indirectly in control of the
31 broker-dealer or investment adviser.

32 (4) Grounds for discipline. A person may be disciplined under
33 subsections (1) through (3) of this section if the person:

34 (a) Has filed an application for registration in this state under
35 this chapter or chapter 21.20 RCW within the previous ten years, which,
36 as of the effective date of registration or as of any date after filing
37 in the case of an order denying effectiveness, was incomplete in any

1 material respect or contained a statement that, in light of the
2 circumstances under which it was made, was false or misleading with
3 respect to a material fact;

4 (b) Willfully violated or willfully failed to comply with this
5 chapter or chapter 21.20 RCW or a rule adopted or order issued under
6 this chapter or chapter 21.20 RCW within the previous ten years;

7 (c) Has been convicted of a felony or within the previous ten years
8 has been convicted of a misdemeanor involving a security, a commodity
9 future or option contract, or an aspect of a business involving
10 securities, commodities, investments, franchises, insurance, banking,
11 or finance;

12 (d) Is enjoined or restrained by a court of competent jurisdiction
13 in an action instituted by the director under this chapter or chapter
14 21.20 RCW, a state, the Securities and Exchange Commission, or the
15 United States from engaging in or continuing an act, practice, or
16 course of business involving an aspect of a business involving
17 securities, commodities, investments, franchises, insurance, banking,
18 or finance;

19 (e) Is the subject of an order, issued after notice and opportunity
20 for hearing by:

21 (i) The securities or other financial services regulator of a state
22 or the Securities and Exchange Commission or other federal agency
23 denying, revoking, barring, or suspending registration as a broker-
24 dealer, sales agent, investment adviser, federal covered investment
25 adviser, or investment adviser representative;

26 (ii) The securities regulator of a state or the Securities and
27 Exchange Commission against a broker-dealer, sales agent, investment
28 adviser, investment adviser representative, or federal covered
29 investment adviser;

30 (iii) The Securities and Exchange Commission or a self-regulatory
31 organization suspending or expelling the registrant from membership in
32 the self-regulatory organization;

33 (iv) A court adjudicating a United States Postal Service fraud
34 order;

35 (v) The insurance regulator of a state denying, suspending, or
36 revoking registration as an insurance agent; or

37 (vi) A depository institution or financial services regulator

1 suspending or barring the person from the depository institution or
2 other financial services business;

3 (f) Is the subject of an adjudication or determination, after
4 notice and opportunity for hearing, by the Securities and Exchange
5 Commission; the Commodity Futures Trading Commission; the Federal Trade
6 Commission; a federal depository institution regulator; or a depository
7 institution, insurance, or other financial services regulator of a
8 state, that the person willfully violated the Securities Act of 1933,
9 the Securities Exchange Act of 1934, the Investment Advisers Act of
10 1940, the Investment Company Act of 1940, or the Commodity Exchange
11 Act, the securities or commodities law of a state, or a federal or
12 state law under which a business involving investments, franchises,
13 insurance, banking, or finance is regulated;

14 (g) Is insolvent, either because the person's liabilities exceed
15 the person's assets or because the person cannot meet the person's
16 obligations as they mature, but the director may not issue an order
17 against an applicant or registrant under this subsection (4)(g) without
18 a finding of insolvency as to the applicant or registrant;

19 (h) Refuses to allow or otherwise impedes the director from
20 conducting an audit or inspection under section 31(4) of this act or
21 refuses access to a registrant's office to conduct an audit or
22 inspection under section 31(4) of this act;

23 (i) Has failed to reasonably supervise a sales agent, investment
24 adviser representative, or other individual, if the sales agent,
25 investment adviser representative, or other individual was subject to
26 the person's supervision and committed a violation of this chapter or
27 chapter 21.20 RCW or a rule adopted or order issued under this chapter
28 or chapter 21.20 RCW within the previous ten years;

29 (j) Has not paid the proper filing fee within thirty days after
30 having been notified by the director of a deficiency, but the director
31 shall vacate an order under this subsection (4)(j) when the deficiency
32 is corrected;

33 (k) After notice and opportunity for a hearing, has been found
34 within the previous ten years:

35 (i) By a court of competent jurisdiction to have willfully violated
36 the laws of a foreign jurisdiction under which the business of
37 securities, commodities, investment, franchises, insurance, banking, or
38 finance is regulated;

1 (ii) To have been the subject of an order of a securities regulator
2 of a foreign jurisdiction denying, revoking, or suspending the right to
3 engage in the business of securities as a broker-dealer, sales agent,
4 investment adviser, investment adviser representative, or similar
5 person; or

6 (iii) To have been suspended or expelled from membership by or
7 participation in a securities exchange or securities association
8 operating under the securities laws of a foreign jurisdiction;

9 (l) Is the subject of a cease and desist order issued by the
10 Securities and Exchange Commission or issued under the securities,
11 commodities, investment, franchise, banking, finance, or insurance laws
12 of a state;

13 (m) Has engaged in dishonest or unethical practices in the
14 securities, commodities, investment, franchise, banking, finance, or
15 insurance business within the previous ten years;

16 (n) Is not qualified on the basis of factors such as training,
17 experience, and knowledge of the securities business. However, in the
18 case of an application by a sales agent for a broker-dealer that is a
19 member of a self-regulatory organization or by an individual for
20 registration as an investment adviser representative, a denial order
21 may not be based on this subsection (4)(n) if the individual has
22 successfully completed all examinations required by subsection (5) of
23 this section. The director may require an applicant for registration
24 under section 22 or 24 of this act who has not been registered in a
25 state within the two years preceding the filing of an application in
26 this state to successfully complete an examination;

27 (o) Knowingly effects or causes to be effected, with or for a
28 customer's account, transactions of purchase or sale that:

29 (i) Are excessive in size or frequency in view of the financial
30 resources and character of the account; and

31 (ii) Are effected because the person is vested with discretionary
32 power or is able by reason of the customer's trust and confidence to
33 influence the volume and frequency of the transactions;

34 (p) In recommending to a customer the purchase, sale, or exchange
35 of a security, does not have reasonable grounds for believing that the
36 recommendation is suitable for the customer upon the basis of the
37 facts, if any, disclosed by the customer as to his or her other

1 security holdings and as to his or her financial situation and needs;
2 or

3 (q) Before the execution of a transaction recommended to a
4 noninstitutional customer, other than transactions with customers where
5 investments are limited to money market mutual funds, does not make
6 reasonable efforts to obtain information concerning:

7 (i) The customer's financial status;

8 (ii) The customer's tax status;

9 (iii) The customer's investment objectives; and

10 (iv) Such other information used or considered to be reasonable in
11 making recommendations to the customer.

12 (5) Examinations. A rule adopted or order issued under this
13 chapter may require that an examination, including an examination
14 developed or approved by an organization of securities regulators, be
15 successfully completed by a class of individuals or all individuals.
16 An order issued under this chapter may waive, in whole or in part, an
17 examination as to an individual and a rule adopted under this chapter
18 may waive, in whole or in part, an examination as to a class of
19 individuals if the director determines that the examination is not
20 necessary or appropriate in the public interest and for the protection
21 of investors.

22 (6) Summary process. The director may suspend or deny an
23 application summarily; restrict, condition, limit, or suspend a
24 registration; or censure, bar, or impose a civil penalty on a
25 registrant before final determination of an administrative proceeding.
26 Upon the issuance of an order under this subsection, the director shall
27 give such notice of the order and of the opportunity for a hearing
28 pursuant to chapter 34.05 RCW as is practicable to persons who are
29 required to comply with the order. If a hearing is not requested and
30 none is ordered by the director within twenty days after the date of
31 service of the order, the order becomes final by operation of law. If
32 a hearing is requested or ordered, the director, after notice of and
33 opportunity for hearing to each person subject to the order, may modify
34 or vacate the order or extend the order until final determination.

35 (7) Procedural requirements. An order under this section, except
36 when issued under subsection (6) of this section, shall comply with the
37 adjudicative proceedings provisions of chapter 34.05 RCW.

1 (8) Control person liability. A person that controls, directly or
2 indirectly, a person not in compliance with this section may be
3 disciplined by order of the director under subsections (1) through (3)
4 of this section to the same extent as the noncomplying person, unless
5 the controlling person did not know, and in the exercise of reasonable
6 care could not have known, of the existence of conduct that is a ground
7 for discipline under this section.

8 (9) Limit on investigation or proceeding. The director may not
9 institute a proceeding under subsections (1) through (3) of this
10 section based solely on material facts actually known by the director
11 unless an investigation or the proceeding is instituted within one year
12 after the director actually acquires knowledge of the material facts.

13 (10) Costs, fees, and expenses. In any action under this section,
14 the director may charge the costs, fees, and other expenses incurred by
15 the director in the conduct of any administrative investigation,
16 hearing, or court proceeding against any person found to be in
17 violation of any provision of this section or any rule or order adopted
18 under this section.

19 (11) Accounting, restitution, and disgorgement. In any action
20 under this section, the director may issue an order requiring an
21 accounting, restitution, and disgorgement, including interest at the
22 legal rate under RCW 4.56.110(4). The director may by rule or order
23 provide for payments to investors, rates of interest, periods of
24 accrual, and other matters the director deems appropriate to implement
25 this subsection.

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

35 NEW SECTION. **Sec. 33.** Sections 21 through 32 of this act are each
36 added to chapter 21.20A RCW (created in section 115 of this act) and

1 codified with the subchapter heading of "Broker-Dealers, Investment
2 Advisers, Investment Adviser Representatives, and Federal Covered
3 Investment Advisers."

4 NEW SECTION. **Sec. 34.** GENERAL FRAUD. It is unlawful for a
5 person, in connection with the offer, sale, or purchase of a security,
6 directly or indirectly:

- 7 (1) To employ a device, scheme, or artifice to defraud;
- 8 (2) To make an untrue statement of a material fact or to omit to
9 state a material fact necessary in order to make the statements made,
10 in the light of the circumstances under which they were made, not
11 misleading; or
- 12 (3) To engage in an act, practice, or course of business that
13 operates or would operate as a fraud or deceit upon another person.

14 NEW SECTION. **Sec. 35.** PROHIBITED CONDUCT IN PROVIDING INVESTMENT
15 ADVICE. (1) Fraud in providing investment advice. It is unlawful for
16 a person that advises others for compensation, either directly or
17 indirectly or through publications or writings, as to the value of
18 securities or the advisability of investing in, purchasing, or selling
19 securities or that, for compensation and as part of a regular business,
20 issues or promulgates analyses or reports relating to securities:

- 21 (a) To employ a device, scheme, or artifice to defraud another
22 person; or
- 23 (b) To engage in an act, practice, or course of business that
24 operates or would operate as a fraud or deceit upon another person.

25 (2) Rules defining fraud. A rule adopted under this chapter may
26 define an act, practice, or course of business of an investment adviser
27 or an investment adviser representative, other than a supervised person
28 of a federal covered investment adviser, as fraudulent, deceptive, or
29 manipulative, and prescribe means reasonably designed to prevent
30 investment advisers and investment adviser representatives, other than
31 supervised persons of a federal covered investment adviser, from
32 engaging in acts, practices, and courses of business defined as
33 fraudulent, deceptive, or manipulative.

34 (3) Contents of advisory contract. It is unlawful for any
35 investment adviser to enter into, extend, or renew any investment
36 advisory contract unless it provides in writing:

1 (a) That the investment adviser shall not be compensated on the
2 basis of a share of capital gains upon or capital appreciation of the
3 funds or any portion of the funds of the client. However, this
4 subsection does not prohibit:

5 (i) An investment advisory contract which provides for compensation
6 based upon the total of a fund averaged over a definite period, or as
7 of definite dates or taken as of a definite date; or

8 (ii) Performance compensation arrangements permitted under any rule
9 the director may adopt in order to allow performance compensation
10 arrangements permitted under the Investment Advisers Act of 1940 and
11 regulations promulgated by the securities and exchange commission
12 thereunder;

13 (b) That no assignment of the contract may be made by the
14 investment adviser without the consent of the other party to the
15 contract; and

16 (c) That the investment adviser, if a partnership, shall notify the
17 other party to the contract of any change in the membership of the
18 partnership within a reasonable time after the change.

19 "Assignment," as used in (b) of this subsection, includes any
20 direct or indirect transfer or hypothecation of an investment advisory
21 contract by the assignor or of a controlling block of the assignor's
22 outstanding voting securities by a security holder of the assignor;
23 but, if the investment adviser is a partnership, no assignment of an
24 investment advisory contract is considered to result from the death or
25 withdrawal of a minority of the members of the investment adviser
26 having only a minority interest in the business of the investment
27 adviser, or from the admission to the investment adviser of one or more
28 members who, after admission, will be only a minority of the members
29 and will have only a minority interest in the business.

30 (4) Subsection (1) of this section applies whether or not the
31 person is an investment adviser, federal covered investment adviser, or
32 investment adviser representative under this chapter or the Investment
33 Advisers Act of 1940.

34 NEW SECTION. **Sec. 36.** EVIDENTIARY BURDEN. (1) Civil. In a civil
35 action or administrative proceeding under this chapter, a person
36 claiming an exemption, exception, preemption, or exclusion has the
37 burden to prove the applicability of the claim.

1 (2) Criminal. In a criminal proceeding under this chapter, a
2 person claiming an exemption, exception, preemption, or exclusion has
3 the burden of going forward with evidence of the claim.

4 NEW SECTION. **Sec. 37.** FILING OF SALES AND ADVERTISING LITERATURE.

5 (1) Filing requirements. Except as otherwise provided in subsection
6 (2) of this section, a rule adopted or order issued under this chapter
7 may require the filing of a prospectus, pamphlet, circular, form
8 letter, advertisement, sales literature, or other advertising record
9 relating to a security or investment advice, addressed or intended for
10 distribution to prospective investors, including clients or prospective
11 clients of a person registered or required to be registered as an
12 investment adviser under this chapter.

13 (2) Excluded communications. This section does not apply to sales
14 or advertising literature specified in subsection (1) of this section
15 which relates to a federal covered security or a federal covered
16 investment adviser.

17 NEW SECTION. **Sec. 38.** MISLEADING FILINGS. It is unlawful for a

18 person to make or cause to be made, in a record that is used in an
19 action or proceeding or filed under this chapter, a statement that, at
20 the time and in the light of the circumstances under which it is made,
21 is false or misleading in a material respect, or, in connection with
22 the statement, to omit to state a material fact necessary to make the
23 statement made, in the light of the circumstances under which it was
24 made, not false or misleading.

25 NEW SECTION. **Sec. 39.** MISREPRESENTATIONS CONCERNING REGISTRATION

26 OR EXEMPTION. The filing of an application for registration, a
27 registration statement, a notice filing under this chapter, the
28 registration of a person, the notice filing by a person, or the
29 registration of a security under this chapter does not constitute a
30 finding by the director that a record filed under this chapter is true,
31 complete, and not misleading. The filing or registration or the
32 availability of an exemption, exception, preemption, or exclusion for
33 a security or a transaction does not mean that the director has passed
34 upon the merits or qualifications of, or recommended or given approval

1 to, a person, security, or transaction. It is unlawful to make, or
2 cause to be made, to a purchaser, customer, client, or prospective
3 customer or client a representation inconsistent with this section.

4 NEW SECTION. **Sec. 40.** IMMUNITY. A "person" under RCW 4.24.510
5 includes a broker-dealer, sales agent, investment adviser, federal
6 covered investment adviser, or investment adviser representative.

7 NEW SECTION. **Sec. 41.** CRIMINAL PENALTIES. (1) Criminal
8 penalties. (a) A person that willfully violates this chapter, or a
9 rule adopted or order issued under this chapter, except section 37 of
10 this act or the notice filing requirements of section 14 or 25 of this
11 act, or that willfully violates section 38 of this act knowing the
12 statement made to be false or misleading in a material respect, is
13 guilty of a class B felony punishable under RCW 9A.20.021. An
14 individual convicted of violating a rule or order under this chapter
15 may be fined, but may not be imprisoned, if the individual did not have
16 knowledge of the rule or order.

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

25 (2) Criminal reference not required. The director may refer such
26 evidence as may be available concerning violations of this chapter or
27 of any rule or order under this chapter to the attorney general or the
28 proper prosecuting attorney, who may in his or her discretion, with or
29 without a reference from the director, institute criminal proceedings
30 under this chapter. The director may render such assistance as the
31 attorney general or prosecuting attorney requests regarding a
32 reference.

33 (3) No limitation on other criminal enforcement. This chapter does
34 not limit the power of this state to punish a person for conduct that
35 constitutes a crime under other laws of this state.

1 (4) Statute of limitations. No indictment or information may be
2 returned under this chapter more than:

3 (a) Five years after the violation; or

4 (b) Three years after the actual discovery of the violation;

5 whichever date of limitation is later.

6 NEW SECTION. **Sec. 42.** CIVIL LIABILITY. (1) Securities Litigation
7 Uniform Standards Act. Enforcement of civil liability under this
8 section is subject to the Securities Litigation Uniform Standards Act
9 of 1998.

10 (2) Liability of seller to purchaser. (a) A person is liable to
11 the purchaser if the person sells a security in violation of:

12 (i) Section 13 (2) or (3) of this act; or

13 (ii) Section 34 of this act, the purchaser not knowing the untruth
14 or omission or violation and the seller not sustaining the burden of
15 proof that the seller did not know and, in the exercise of reasonable
16 care, could not have known of the untruth or omission or violation.

17 (b) An action under (a) of this subsection is governed by the
18 following:

19 (i) The purchaser may maintain an action to recover the
20 consideration paid for the security, less the amount of any income
21 received on the security, and interest at eight percent per annum from
22 the date of the purchase, costs, and reasonable attorneys' fees
23 determined by the court, upon the tender of the security, or for actual
24 damages as provided in (b)(iii) of this subsection;

25 (ii) The tender referred to in (b)(i) of this subsection may be
26 made any time before entry of judgment. Tender requires only notice in
27 a record of ownership of the security and willingness to exchange the
28 security for the amount specified. A purchaser that no longer owns the
29 security may recover actual damages as provided in (b)(iii) of this
30 subsection; and

31 (iii) Actual damages in an action arising under this subsection are
32 the amount that would be recoverable upon a tender less the value of
33 the security when the purchaser disposed of it, and interest at eight
34 percent per annum from the date of the purchase, costs, and reasonable
35 attorneys' fees determined by the court.

36 (3) Liability of purchaser to seller. (a) A person is liable to
37 the seller if the person buys a security in violation of section 34 of

1 this act, the seller not knowing of the untruth or omission or
2 violation, and the purchaser not sustaining the burden of proof that
3 the purchaser did not know and, in the exercise of reasonable care,
4 could not have known of the untruth or omission or violation.

5 (b) An action under this subsection is governed by the following:

6 (i) The seller may maintain an action to recover the security, and
7 any income received on the security, costs, and reasonable attorneys'
8 fees determined by the court, upon the tender of the purchase price, or
9 for actual damages as provided in (b)(iii) of this subsection;

10 (ii) The tender referred to in (b)(i) of this subsection may be
11 made any time before entry of judgment. Tender requires only notice in
12 a record of the present ability to pay the amount tendered and
13 willingness to take delivery of the security for the amount specified.
14 If the purchaser no longer owns the security, the seller may recover
15 actual damages as provided in (b)(iii) of this subsection; and

16 (iii) Actual damages in an action arising under this subsection are
17 the difference between the price at which the security was sold and the
18 value the security would have had at the time of the sale in the
19 absence of the purchaser's conduct causing liability, and interest at
20 eight percent per annum from the date of the sale of the security,
21 costs, and reasonable attorneys' fees determined by the court.

22 (4) Liability of unregistered broker-dealer and sales agent. A
23 person acting as a broker-dealer or sales agent that sells or buys a
24 security in violation of section 21(1), 22(1), or 39 of this act is
25 liable to the customer. The customer, if a purchaser, may maintain an
26 action for recovery of actual damages as specified in subsection (2)(b)
27 of this section, or, if a seller, for a remedy as specified in
28 subsection (3)(b) of this section.

29 (5) Liability of unregistered investment adviser and investment
30 adviser representative. A person acting as an investment adviser or
31 investment adviser representative that provides investment advice for
32 compensation in violation of section 23(1), 24(1), or 39 of this act is
33 liable to the client. The client may maintain an action to recover the
34 consideration paid for the advice, interest at eight percent per annum
35 from the date of payment, costs, and reasonable attorneys' fees
36 determined by the court.

37 (6) Liability for investment advice. A person that receives
38 directly or indirectly any consideration for providing investment

1 advice to another person and that employs a device, scheme, or artifice
2 to defraud the other person or engages in an act, practice, or course
3 of business that operates or would operate as a fraud or deceit on the
4 other person is liable to the other person. An action under this
5 subsection is governed by the following:

6 (a) The person defrauded may maintain an action to recover the
7 consideration paid for the advice and the amount of any actual damages
8 caused by the fraudulent conduct, interest at eight percent per annum
9 from the date of the fraudulent conduct, costs, and reasonable
10 attorneys' fees determined by the court, less the amount of any income
11 received as a result of the fraudulent conduct; and

12 (b) This subsection does not apply to a broker-dealer or its sales
13 agents if the investment advice provided is solely incidental to
14 transacting business as a broker-dealer and no special compensation is
15 received for the investment advice.

16 (7) Joint and several liability. The following persons are liable
17 jointly and severally with and to the same extent as persons liable
18 under subsections (2) through (6) of this section:

19 (a) A person that directly or indirectly controls a person liable
20 under subsections (2) through (6) of this section, unless the
21 controlling person sustains the burden of proof that the person did not
22 know and, in the exercise of reasonable care, could not have known of
23 the existence of conduct by reason of which the liability is alleged to
24 exist;

25 (b) An individual who is a managing partner, executive officer, or
26 director of a person liable under subsections (2) through (6) of this
27 section, including an individual having a similar status or performing
28 similar functions, unless the individual sustains the burden of proof
29 that the individual did not know and, in the exercise of reasonable
30 care, could not have known of the existence of conduct by reason of
31 which the liability is alleged to exist;

32 (c) An individual who is an employee of or associated with a person
33 liable under subsections (2) through (6) of this section, and who
34 materially aids the conduct giving rise to the liability, unless the
35 individual sustains the burden of proof that the individual did not
36 know and, in the exercise of reasonable care, could not have known of
37 the existence of conduct by reason of which the liability is alleged to
38 exist; and

1 (d) A person that is a broker-dealer, sales agent, investment
2 adviser, or investment adviser representative that materially aids the
3 conduct giving rise to the liability under subsections (2) through (6)
4 of this section, unless the person sustains the burden of proof that
5 the person did not know and, in the exercise of reasonable care, could
6 not have known of the existence of conduct by reason of which liability
7 is alleged to exist.

8 (8) Right of contribution. A person liable under this section has
9 a right of contribution as in cases of contract against any other
10 person liable under this section for the same conduct.

11 (9) Survival of cause of action. A cause of action under this
12 section survives the death of an individual who might have been a
13 plaintiff or defendant.

14 (10) Statute of limitations. A person may not obtain relief:

15 (a) Under subsection (2) of this section for violation of section
16 13 (2) or (3) of this act, or under subsection (4) or (5) of this
17 section, unless the action is instituted within three years after the
18 violation occurred; or

19 (b) Under subsection (2) of this section, other than for violation
20 of section 13 of this act, or under subsection (3) or (6) of this
21 section, unless the action is instituted within the three years after
22 the facts constituting the violation were either discovered by such
23 person or would have been discovered by him or her in the exercise of
24 reasonable care.

25 (11)(a) No enforcement of violative contract. A person that has
26 made, or has engaged in the performance of, a contract in violation of
27 this chapter or a rule adopted or order issued under this chapter, or
28 that has acquired a purported right under the contract with knowledge
29 of conduct by reason of which its making or performance was in
30 violation of this chapter, may not base an action on the contract.

31 (b) No suit or action may be brought for the collection of a
32 commission for the sale of a security, as defined within this chapter,
33 without alleging and proving that the plaintiff was a duly registered
34 sales agent for an issuer or a broker-dealer, or exempt under section
35 22(2) of this act, or a duly registered broker-dealer, or exempt under
36 section 21(2) of this act in this state or another state at the time
37 the alleged cause of action arose.

1 (12) No contractual waiver. A condition, stipulation, or provision
2 binding a person purchasing or selling a security or receiving
3 investment advice to waive compliance with this chapter or a rule
4 adopted or order issued under this chapter is void.

5 (13) Survival of other rights or remedies. The rights and remedies
6 provided by this chapter are in addition to any other rights or
7 remedies that may exist, but this chapter does not create a cause of
8 action not specified in this section, section 31(5) of this act, or
9 section 70 of this act.

10 Notwithstanding subsections (2), (3), and (7) through (13) of this
11 section, if an initial offer or sale of securities that are exempt from
12 registration under section 8 of this act is made by this state or its
13 agencies, political subdivisions, municipal or quasi-municipal
14 corporations, or other instrumentality of one or more of the foregoing
15 in this subsection, and is in violation of section 34(2) of this act,
16 and any such issuer, member of the governing body, committee member,
17 public officer, director, employee, or agent of such issuer acting on
18 its behalf, or person in control of such issuer, member of the
19 governing body, committee member, public officer, director, employee,
20 or agent of such person acting on its behalf, materially aids in the
21 offer or sale, such person is liable to the purchaser of the security
22 only if the purchaser establishes scienter on the part of the
23 defendant. The word "employee" or the word "agent," as such words are
24 used in this subsection, do not include a bond counsel or an
25 underwriter. Under no circumstances whatsoever shall this subsection
26 be applied to require purchasers to establish scienter on the part of
27 bond counsels or underwriters. The provisions of this subsection are
28 retroactive and apply to any action commenced but not final before July
29 27, 1985. In addition, the provisions of this subsection apply to any
30 action commenced on or after July 27, 1985.

31 NEW SECTION. **Sec. 43.** RESCISSION OFFERS. A purchaser, seller, or
32 recipient of investment advice may not maintain an action under section
33 42 of this act if:

34 (1) The purchaser, seller, or recipient of investment advice
35 receives in a record, before the action is instituted:

36 (a) An offer stating the respect in which liability under section
37 42 of this act may have arisen and fairly advising the purchaser,

1 seller, or recipient of investment advice of that person's rights in
2 connection with the offer, and any financial or other information
3 necessary to correct all material misrepresentations or omissions in
4 the information that was required by this chapter to be furnished to
5 that person at the time of the purchase, sale, or investment advice;
6 and

7 (b) If the basis for relief under this section may have been a
8 violation of section 42(2) of this act, an offer to repurchase the
9 security for cash, payable on delivery of the security, equal to the
10 consideration paid, and interest at eight percent per annum from the
11 date of the purchase, less the amount of any income received on the
12 security, or, if the purchaser no longer owns the security, an offer to
13 pay the purchaser upon acceptance of the offer damages in an amount
14 that would be recoverable upon a tender, less the value of the security
15 when the purchaser disposed of it, and interest at eight percent per
16 annum from the date of the purchase in cash equal to the damages
17 computed in the manner provided in this subsection; or

18 (c) If the basis for relief under this section may have been a
19 violation of section 42(3) of this act, an offer to tender the
20 security, on payment by the seller of an amount equal to the purchase
21 price paid, less income received on the security by the purchaser and
22 interest at eight percent per annum from the date of the sale; or if
23 the purchaser no longer owns the security, an offer to pay the seller
24 upon acceptance of the offer, in cash, damages in the amount of the
25 difference between the price at which the security was purchased and
26 the value the security would have had at the time of the purchase in
27 the absence of the purchaser's conduct that may have caused liability
28 and interest at eight percent per annum from the date of the sale; or

29 (d) If the basis for relief under this section may have been a
30 violation of section 42(4) of this act; and if the customer is a
31 purchaser, an offer to pay as specified in (b) of this subsection; or,
32 if the customer is a seller, an offer to tender or to pay as specified
33 in (c) of this subsection; or

34 (e) If the basis for relief under this section may have been a
35 violation of section 42(5) of this act, an offer to reimburse in cash
36 the consideration paid for the advice and interest at eight percent per
37 annum from the date of payment; or

1 (f) If the basis for relief under this section may have been a
2 violation of section 42(6) of this act, an offer to reimburse in cash
3 the consideration paid for the advice, the amount of any actual damages
4 that may have been caused by the conduct, and interest at eight percent
5 per annum from the date of the violation causing the loss;

6 (2) The offer under subsection (1) of this section states that it
7 must be accepted by the purchaser, seller, or recipient of investment
8 advice within thirty days after the date of its receipt by the
9 purchaser, seller, or recipient of investment advice or any shorter
10 period, of not less than three days, that the director, by order or
11 otherwise, specifies;

12 (3) The offeror has, in a separate account, cash on hand or other
13 liquid assets sufficient to pay the amount offered or the present
14 ability to tender the security under subsection (1) of this section,
15 unless:

16 (a) The filing made pursuant to subsection (6) of this section is
17 made at least ten business days before the offering; and

18 (b) The offer is passed upon by the director;

19 (4) The offer under subsection (1) of this section is delivered to
20 the purchaser, seller, or recipient of investment advice, or sent in a
21 manner that ensures receipt by the purchaser, seller, or recipient of
22 investment advice;

23 (5) The purchaser, seller, or recipient of investment advice that
24 accepts the offer under subsection (1) of this section in a record
25 within the period specified under subsection (2) of this section is
26 paid in accordance with the terms of the offer; and

27 (6) The offer is filed with the director on or before the offering
28 is made and conforms in form and content with a rule prescribed by the
29 director. If the basis for relief under this section may have been a
30 violation of section 13 of this act, the director may require that a
31 filing under this subsection be accompanied by the fee that would have
32 been paid had the offering that is the subject of the potential
33 violation been made in compliance with section 13 of this act.

34 NEW SECTION. **Sec. 44.** Sections 34 through 43 of this act are each
35 added to chapter 21.20A RCW (created in section 115 of this act) and
36 codified with the subchapter heading of "Fraud and Liabilities."

1 NEW SECTION. **Sec. 45.** ADMINISTRATION. (1) Administration. The
2 director shall appoint a competent person to administer this chapter
3 who shall be designated administrator of securities. The director
4 shall delegate to the administrator such powers, subject to the
5 authority of the director, as may be necessary to carry out the
6 provisions of this chapter. The administrator shall hold office at the
7 pleasure of the director. The administrator, and any person employed
8 by the administrator, shall be paid, in addition to regular
9 compensation, travel expenses incurred by each of them in the
10 performance of their duties under this chapter in accordance with RCW
11 43.03.050 and 43.03.060.

12 (2) Unlawful use of records or information. It is unlawful for the
13 director or an officer, employee, or designee of the director to use
14 for personal benefit or the benefit of others records or other
15 information obtained by or filed with the director that are not public
16 under section 51(2) of this act. This chapter does not authorize the
17 director or an officer, employee, or designee of the director to
18 disclose the record or information, except in accordance with section
19 46, 51(3), or 52 of this act.

20 (3) No privilege or exemption created or diminished. This chapter
21 does not create or diminish a privilege or exemption that exists at
22 common law, by statute or rule, or otherwise.

23 (4) Investor education. The director may develop and implement
24 investor education initiatives to inform the public about investing in
25 securities, with particular emphasis on the prevention and detection of
26 securities fraud. In developing and implementing these initiatives,
27 the director may collaborate with public and nonprofit organizations
28 with an interest in investor education. The director may accept a
29 grant or donation from a person that is not affiliated with the
30 securities industry or from a nonprofit organization, regardless of
31 whether the organization is affiliated with the securities industry, to
32 develop and implement investor education initiatives.

33 (5) Advisory committee. There is hereby created a state advisory
34 committee, which shall consist of seven members to be appointed by the
35 governor on the basis of their experience and qualifications. The
36 membership shall be selected, insofar as possible, on the basis of
37 giving both geographic representation and representation to all phases

1 of the securities business including the legal and accounting
2 professions.

3 (a) The committee shall select a chairperson and a secretary from
4 their group.

5 (b) Regular meetings of the advisory committee may be held
6 quarterly, or semiannually, and special meetings may be called by the
7 chairperson upon at least seven days' written notice to each committee
8 member sent by regular mail.

9 (c) The appointment of a member of the committee shall be for four
10 years except in the case of a vacancy, in which event appointment shall
11 be only for the remainder of the unexpired term in which the vacancy
12 occurs.

13 (d) The advisory committee shall:

14 (i) Serve in an advisory capacity to the director on all matters
15 pertaining to this chapter;

16 (ii) Acquaint themselves fully with the operations of the
17 director's office as to the administration of securities, broker-
18 dealer, sales agent, investment adviser, federal covered investment
19 advisor, and investment adviser representative rules and regulations,
20 and periodically recommend to the director such changes in connection
21 therewith as they deem advisable; and

22 (iii) Prepare and publish a report on their recommendations.

23 (e) The advisory committee shall be reimbursed for their travel
24 expenses in accordance with RCW 43.03.050 and 43.03.060.

25 NEW SECTION. **Sec. 46.** INVESTIGATIONS AND SUBPOENAS. (1)

26 Authority to investigate. (a) The director may:

27 (i) Conduct public or private investigations within or outside of
28 this state which the director considers necessary or appropriate to
29 determine whether a person has violated, is violating, or is about to
30 violate this chapter or a rule adopted or order issued under this
31 chapter, or to aid in the enforcement of this chapter or in the
32 adoption of rules and forms under this chapter;

33 (ii) Require or permit a person to testify, file a statement, or
34 produce a record, under oath or otherwise as the director determines,
35 as to all the facts and circumstances concerning a matter to be
36 investigated or about which an action or proceeding is to be
37 instituted;

1 (iii) Publish a record concerning an action, proceeding, or an
2 investigation under, or a violation of, this chapter or a rule adopted
3 or order issued under this chapter if the director determines it is
4 necessary or appropriate in the public interest or for the protection
5 of investors; and

6 (iv) Engage in the investigation, detection, and identification of
7 criminal activities subject to this chapter.

8 (b) The enforcement unit of the securities division of the
9 department of financial institutions may be authorized to receive
10 criminal history record information in connection with the
11 investigation of criminal activities subject to this chapter.

12 (2) Director powers to investigate. For the purpose of an
13 investigation under this chapter, the director or his or her designated
14 officer may administer oaths and affirmations, subpoena witnesses, seek
15 compulsion of attendance, take evidence, require the filing of
16 statements, and require the production of any records that the director
17 considers relevant or material to the investigation. A subpoena issued
18 to a financial institution under this section may, if the director
19 finds it necessary or appropriate in the public interest or for the
20 protection of investors, include a directive that the financial
21 institution subpoenaed shall not disclose to third parties that are not
22 affiliated with the financial institution, other than to the
23 institution's legal counsel, the existence or content of the subpoena.

24 (3) Procedure and remedies for noncompliance. If a person does not
25 appear; refuses to testify, file a statement, or produce records; fails
26 to comply with a nondisclosure directive under subsection (2) of this
27 section; or otherwise does not obey a subpoena as required by the
28 director under this chapter, the director may apply to a court of
29 competent jurisdiction or a court of another state to enforce
30 compliance. The court may:

31 (a) Hold the person in contempt;

32 (b) Order the person to appear before the director;

33 (c) Order the person to testify about the matter under
34 investigation or in question;

35 (d) Order the production of records;

36 (e) Grant injunctive relief, including restricting or prohibiting
37 the offer or sale of securities or the providing of investment advice;

1 (f) Impose a civil penalty for each violation as determined
2 appropriate by the court; and

3 (g) Grant any other necessary or appropriate relief.

4 (4) Application for relief. This section does not preclude a
5 person from applying to a court of competent jurisdiction or a court of
6 another state for relief from a request to appear, testify, file a
7 statement, produce records, or obey a subpoena.

8 (5) Use immunity procedure. An individual is not excused from
9 attending, testifying, filing a statement, producing a record or other
10 evidence, or obeying a subpoena of the director under this chapter or
11 in an action or proceeding instituted by the director under this
12 chapter on the ground that the required testimony, statement, record,
13 or other evidence, directly or indirectly, may tend to incriminate the
14 individual or subject the individual to a criminal fine, penalty, or
15 forfeiture. If the individual refuses to testify, file a statement, or
16 produce a record or other evidence on the basis of the individual's
17 privilege against self-incrimination, the director may apply to a court
18 of competent jurisdiction to compel the testimony, the filing of the
19 statement, the production of the record, or the giving of other
20 evidence. The testimony, record, or other evidence compelled under
21 such an order may not be used, directly or indirectly, against the
22 individual in a criminal case, except in a prosecution for perjury or
23 contempt or otherwise failing to comply with the order.

24 (6) Assistance to securities regulator of another jurisdiction. At
25 the request of the securities regulator of another state or a foreign
26 jurisdiction, the director may provide assistance if the requesting
27 regulator states that it is conducting an investigation to determine
28 whether a person has violated, is violating, or is about to violate a
29 law or rule of the other state or foreign jurisdiction relating to
30 securities matters that the requesting regulator administers or
31 enforces. The director may provide the assistance by using the
32 authority to investigate and the powers conferred by this section as
33 the director determines is necessary or appropriate. The assistance
34 may be provided without regard to whether the conduct described in the
35 request would also constitute a violation of this chapter or other law
36 of this state if occurring in this state. In deciding whether to
37 provide the assistance, the director may consider whether the
38 requesting regulator is permitted and has agreed to provide assistance

1 reciprocally within its state or foreign jurisdiction to the director
2 on securities matters when requested; whether compliance with the
3 request would violate or prejudice the public policy of this state; and
4 the availability of resources and employees of the director to carry
5 out the request for assistance.

6 (7)(a) In addition to the authority conferred elsewhere in this
7 section, the director may, at any time during a public offering,
8 whether registered or not, or one year thereafter or at any time that
9 any debt or equity securities which have been sold to the public
10 pursuant to registration under this chapter are still an outstanding
11 obligation of the issuer:

12 (i) Investigate the issuer for the purpose of ascertaining whether
13 there have been violations of this chapter, rules adopted under this
14 chapter, or any conditions imposed by the director expressed in any
15 permit for a public offering or otherwise;

16 (ii) Visit and examine the issuer for the purpose of assuring
17 compliance with this chapter, rules adopted under this chapter, or any
18 conditions imposed by the director whether expressed in the permit for
19 the public offering or otherwise;

20 (iii) Require or permit any person to file a statement in writing,
21 under oath or otherwise as the director may determine, as to all the
22 facts and circumstances concerning the matter to be investigated; and

23 (iv) Publish information concerning any violation of this chapter,
24 or any rule, order, or condition adopted or imposed under this chapter.

25 (b) The examination or investigation, whether conducted within or
26 without this state, shall include the right to reasonably examine the
27 issuer's books, accounts, records, files, papers, feasibility reports,
28 and other pertinent information and obtain written permission from the
29 issuer to consult with the independent accountant who audited the
30 financial statements of the issuer. The reasonable costs of the
31 examination shall be paid by the issuer to the director. The issuer
32 shall not be liable for the costs of second or subsequent examinations
33 during a calendar year.

34 NEW SECTION. **Sec. 47.** CIVIL ENFORCEMENT. (1) Civil action
35 instituted by director.

36 (a) If the director believes that a person has engaged, is
37 engaging, or is about to engage in an act, practice, or course of

1 business constituting a violation of this chapter or a rule adopted or
2 order issued under this chapter or that a person has, is, or is about
3 to engage in an act, practice, or course of business that materially
4 aids a violation of this chapter or a rule adopted or order issued
5 under this chapter, the director may maintain an action in any court of
6 competent jurisdiction to enjoin the act, practice, or course of
7 business and to enforce compliance with this chapter or a rule adopted
8 or order issued under this chapter.

9 (b) Whenever it appears to the director that any person who has
10 received a permit to issue, sell, or otherwise dispose of securities
11 under this chapter, whether current or otherwise, has become insolvent,
12 the director may petition a court of competent jurisdiction to appoint
13 a receiver or conservator for the defendant or the defendant's assets.

14 (2) Relief available. In an action under this section and on a
15 proper showing, the court may:

16 (a) Issue a permanent or temporary injunction, restraining order,
17 or declaratory judgment;

18 (b) Order other appropriate or ancillary relief, which may include:

19 (i) An asset freeze, accounting, writ of attachment, writ of
20 general or specific execution, and appointment of a receiver or
21 conservator, that may be the director, for the defendant or the
22 defendant's assets;

23 (ii) Ordering the director to take charge and control of a
24 defendant's property, including investment accounts and accounts in a
25 depository institution, rents, and profits; to collect debts; and to
26 acquire and dispose of property;

27 (iii) Imposing a civil penalty; an order of rescission,
28 restitution, or disgorgement directed to a person that has engaged in
29 an act, practice, or course of business constituting a violation of
30 this chapter or chapter 21.20 RCW or a rule adopted or order issued
31 under this chapter or chapter 21.20 RCW;

32 (iv) Ordering the payment of prejudgment and postjudgment interest;
33 and

34 (v) If the director prevails, awarding reasonable attorneys' fees
35 to the director; or

36 (c) Order such other relief as the court considers appropriate.

37 (3) No bond required. The director may not be required to post a
38 bond in an action or proceeding under this chapter.

1 NEW SECTION. **Sec. 48.** ADMINISTRATIVE ENFORCEMENT. (1) Issuance
2 of an order or notice. If the director determines that a person has
3 engaged, is engaging, or is about to engage in an act, practice, or
4 course of business constituting a violation of this chapter or a rule
5 adopted or order issued under this chapter or that a person has
6 materially aided, is materially aiding, or is about to materially aid
7 an act, practice, or course of business constituting a violation of
8 this chapter or a rule adopted or order issued under this chapter, the
9 director may:

10 (a) Issue an order directing the person to cease and desist from
11 engaging in the act, practice, or course of business or to take other
12 appropriate action within a reasonable time, as prescribed by the
13 director, to correct conditions resulting from the act, practice, or
14 course of business including, without limitation, a requirement to
15 provide restitution;

16 (b) Issue an order denying, suspending, revoking, or conditioning
17 the exemptions for a broker-dealer under section 21(2)(a) (iv) or (vi)
18 of this act or an investment adviser under section 23(2)(a)(iii) of
19 this act;

20 (c) Issue an order under section 11 of this act; or

21 (d) Issue an order requiring an accounting, restitution, and
22 disgorgement, including interest at the legal rate under RCW
23 4.56.110(4). The director may by rule or order provide for payments to
24 investors, interest rates, periods of accrual, and other matters the
25 director deems appropriate to implement this subsection.

26 (2) Summary process.

27 (a) An order under subsection (1) of this section is effective on
28 the date of issuance. Upon issuance of the order, the director shall
29 give such notice of the order and of the opportunity for a hearing
30 pursuant to chapter 34.05 RCW as is practicable to persons who are
31 required to comply with the order. The order must comply with the
32 adjudicative proceedings provisions of chapter 34.05 RCW.

33 (b) If a person subject to the order does not request a hearing and
34 none is ordered by the director within twenty days after the date of
35 service of the order, the order, including the imposition of a civil
36 penalty or requirement for payment of the costs of investigation sought
37 in a statement in the order, becomes final as to that person by
38 operation of law. If a hearing is requested or ordered, the director,

1 after notice of and opportunity for hearing to each person subject to
2 the order, may modify or vacate the order or extend it until final
3 determination.

4 (3) Procedure for final order. If a hearing is requested or
5 ordered pursuant to subsection (2) of this section, a hearing must be
6 held pursuant to the adjudicative proceedings provisions of chapter
7 34.05 RCW. A final order may not be issued unless the director makes
8 findings of fact and conclusions of law in a record in accordance with
9 the adjudicative proceedings provisions of chapter 34.05 RCW. The
10 final order may make final, vacate, or modify the order issued under
11 subsection (1) of this section.

12 (4) Civil penalty. In a final order under subsection (3) of this
13 section, the director may impose a civil penalty up to ten thousand
14 dollars for each violation. A person who, in an administrative action
15 by the director, is found to have knowingly or recklessly violated an
16 administrative order issued under subsection (3) of this section or
17 section 32 of this act shall pay an administrative fine in an amount
18 not to exceed twenty-five thousand dollars for each violation.

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

24 (6) Filing of certified final order with court; effect of filing.
25 If a petition for judicial review of a final order is not filed in
26 accordance with section 53 of this act, the director may file a
27 certified copy of the final order with the clerk of a court of
28 competent jurisdiction. The order so filed has the same effect as a
29 judgment of the court and may be recorded, enforced, or satisfied in
30 the same manner as a judgment of the court.

31 (7) Enforcement by court; further civil penalty. If a person does
32 not comply with an order under this section, the director may petition
33 a court of competent jurisdiction to enforce the order. The court may
34 not require the director to post a bond in an action or proceeding
35 under this section. If the court finds, after service and opportunity
36 for hearing, that the person was not in compliance with the order, the
37 court may adjudge the person in civil contempt of the order. The court
38 may impose a further civil penalty against the person for contempt in

1 an amount determined by the court for each violation and may grant any
2 other relief the court determines is just and proper in the
3 circumstances.

4 NEW SECTION. **Sec. 49.** RULES, FORMS, ORDERS, INTERPRETIVE
5 OPINIONS, AND HEARINGS. (1) Issuance and adoption of forms, orders,
6 and rules. The director may:

7 (a) Issue forms and orders and, in accordance with chapter 34.05
8 RCW, adopt or amend rules necessary or appropriate to carry out this
9 chapter and repeal rules, including rules and forms governing
10 registration statements, applications, notice filings, reports, and
11 other records;

12 (b) By rule, define terms, whether or not used in this chapter, but
13 those definitions may not be inconsistent with this chapter; and

14 (c) By rule, classify securities, persons, and transactions and
15 adopt different requirements for different classes.

16 (2) Findings and cooperation. Under this chapter, a rule or form
17 may not be adopted or amended, or an order issued or amended, unless
18 the director finds that the rule, form, order, or amendment is
19 necessary or appropriate in the public interest or for the protection
20 of investors and is consistent with the purposes intended by this
21 chapter. In adopting, amending, and repealing rules and forms, section
22 52 of this act applies in order to achieve uniformity among the states
23 and coordination with federal laws in the form and content of
24 registration statements, applications, reports, and other records,
25 including the adoption of uniform rules, forms, and procedures.

26 (3) Financial statements. Subject to Section 15(h) of the
27 Securities Exchange Act and Section 222 of the Investment Advisers Act
28 of 1940, the director may require that a financial statement filed
29 under this chapter be prepared in accordance with generally accepted
30 accounting principles in the United States, or other recognized method
31 of accounting, and comply with other requirements specified by rule
32 adopted or order issued under this chapter. A rule adopted or order
33 issued under this chapter may establish:

34 (a) Subject to Section 15(h) of the Securities Exchange Act and
35 Section 222 of the Investment Advisers Act of 1940, the form and
36 content of financial statements required under this chapter;

37 (b) Whether unconsolidated financial statements must be filed; and

1 (c) Whether required financial statements must be audited by an
2 independent certified public accountant.

3 (4) Interpretive opinions. The director, in his or her discretion,
4 may provide interpretive opinions or issue determinations that the
5 director will not institute a proceeding or an action under this
6 chapter against a specified person for engaging in a specified act,
7 practice, or course of business if the determination is consistent with
8 this chapter. The fee for requesting an interpretive opinion or
9 determination under this section shall be thirty-five dollars. A rule
10 adopted or order issued under this chapter may establish procedures for
11 requesting interpretive opinions or determinations that the director
12 will not institute an action or a proceeding under this chapter.

13 (5) Effect of compliance. A penalty under this chapter may not be
14 imposed for, and liability does not arise from, conduct that is engaged
15 in or omitted in good faith in conformity with a rule, form, or order
16 of the director under this chapter.

17 (6) Presumption for public hearings. A hearing in an
18 administrative proceeding under this chapter must be conducted in
19 public unless the director for good cause consistent with this chapter
20 determines that the hearing will not be so conducted.

21 NEW SECTION. **Sec. 50.** ADMINISTRATIVE FILES AND OPINIONS. (1)
22 Public register of filings. The director shall maintain, or designate
23 a person to maintain, a register of applications for registration of
24 securities; registration statements; notice filings; applications for
25 registration of broker-dealers, sales agents, investment advisers, and
26 investment adviser representatives; notice filings by federal covered
27 investment advisers that are or have been effective under this chapter
28 or chapter 21.20 RCW; notices of claims of exemption from registration
29 or notice filing requirements contained in a record; orders issued
30 under this chapter or chapter 21.20 RCW; and interpretive opinions or
31 no action determinations issued under this chapter.

32 (2) Public availability. The director shall make all rules, forms,
33 interpretive opinions, and orders available to the public.

34 (3) Copies of public records. (a) The director, in response to a
35 request from a person, shall:

36 (i) Furnish a copy of a record that is a public record;

37 (ii) Certify the records furnished under (a)(i) of this subsection;

1 (iii) Certify that records have been searched and that a requested
2 record was not located; or

3 (iv) Certify whether, according to records maintained by the
4 director, a person is or was registered under this chapter and the
5 dates of such registration.

6 (b) A rule adopted under this chapter may establish a reasonable
7 charge for furnishing the record or certification.

8 (c) A copy of the record certified by the director under (a)(ii) of
9 this subsection is prima facie evidence of a record. A certificate by
10 the director under (a)(iii) of this subsection is prima facie evidence
11 that the requested record was not located within the director's records
12 as of the date of the certification. A certificate by the director
13 under (a)(iv) of this subsection is prima facie evidence of the
14 person's registration status as of the dates stated on the certificate.

15 NEW SECTION. **Sec. 51.** PUBLIC RECORDS; CONFIDENTIALITY. (1)

16 Public records. Except as otherwise provided in subsection (2) of this
17 section, records obtained by the director or filed under this chapter,
18 including a record contained in or filed with a registration statement,
19 application, notice filing, or report, are public records subject to
20 chapter 42.56 RCW and are available for public inspection and copying.

21 (2) Exempt records. The following records and information are
22 exempt from public inspection and copying under chapter 42.56 RCW:

23 (a) Reports, working papers, documents, materials, or information
24 produced by, obtained by, or disclosed to the director in connection
25 with an audit or inspection under section 31(4) of this act or an
26 examination under section 46(7) of this act;

27 (b) Documents, materials, or information, which is either
28 confidential, privileged, or both, which has been provided to the
29 director by a person specified in section 52(1) of this act, if the
30 documents, materials, or information is protected from disclosure by
31 the applicable laws of the jurisdiction that is the source of the
32 document, material, or information; and

33 (c) Any social security number, residential address unless used as
34 a business address, residential telephone number unless used as a
35 business telephone number, or other sensitive personal and financial
36 identifying numbers contained in a record that is filed.

1 (3) Director discretion to disclose. The director may disclose a
2 record otherwise exempt under this section if disclosure is necessary
3 or appropriate in the public interest or for the protection of
4 investors.

5 NEW SECTION. **Sec. 52.** UNIFORMITY AND COOPERATION WITH OTHER
6 AGENCIES. (1) Objective of uniformity. The director shall, in his or
7 her discretion, cooperate, coordinate, consult, and, subject to section
8 51 of this act, share records and information with the securities
9 regulator of another state, Canada, a Canadian province or territory,
10 a foreign jurisdiction, the Securities and Exchange Commission, the
11 United States Department of Justice, the Commodity Futures Trading
12 Commission, the Federal Trade Commission, the Securities Investor
13 Protection Corporation, a self-regulatory organization, a national or
14 international organization of securities regulators, a federal or state
15 banking and insurance regulator, and a governmental law enforcement
16 agency to effectuate greater uniformity in securities matters among the
17 federal government, self-regulatory organizations, states, and foreign
18 governments.

19 (2) Policies to consider. In cooperating, coordinating,
20 consulting, and sharing records and information under this section and
21 in acting by rule, order, or waiver under this chapter, the director
22 may, in his or her discretion in carrying out the public interest, take
23 into consideration the following general policies:

24 (a) Maximizing effectiveness of regulation for the protection of
25 investors;

26 (b) Maximizing uniformity in federal and state regulatory
27 standards, without materially adversely affecting investor protection;
28 and

29 (c) Minimizing burdens on the business of capital formation,
30 without materially adversely affecting investor protection.

31 (3) Subjects for cooperation. The cooperation, coordination,
32 consultation, and sharing of records and information authorized by this
33 section includes:

34 (a) Establishing or employing one or more designees as a central
35 depository for registration and notice filings under this chapter and
36 for records required or allowed to be maintained under this chapter;

37 (b) Developing and maintaining uniform forms;

- 1 (c) Conducting a joint examination or investigation;
2 (d) Holding a joint administrative hearing;
3 (e) Instituting and prosecuting a joint civil or administrative
4 proceeding;
5 (f) Sharing and exchanging personnel;
6 (g) Coordinating registrations under sections 13 and 21 through 24
7 of this act and exemptions under section 10 of this act;
8 (h) Sharing and exchanging records, subject to section 51 of this
9 act;
10 (i) Formulating rules, statements of policy, guidelines, forms, and
11 interpretive opinions and releases;
12 (j) Formulating common systems and procedures;
13 (k) Notifying the public of proposed rules, forms, statements of
14 policy, and guidelines;
15 (l) Attending conferences and other meetings among securities
16 regulators, which may include representatives of governmental and
17 private sector organizations involved in capital formation, deemed
18 necessary or appropriate to promote or achieve uniformity; and
19 (m) Developing and maintaining a uniform exemption from
20 registration for small issuers, and taking other steps to reduce the
21 burden of raising investment capital by small businesses.

22 NEW SECTION. **Sec. 53.** JUDICIAL REVIEW OF ORDERS. A final order
23 issued by the director under this chapter is subject to judicial review
24 in accordance with chapter 34.05 RCW.

25 NEW SECTION. **Sec. 54.** SERVICE OF PROCESS. (1) Signed consent to
26 service of process. A consent to service of process required by this
27 chapter must comply with this section and be signed and filed in a form
28 required by the director. The consent may be included in a form
29 promulgated by the Securities and Exchange Commission or other federal
30 or state agency or self-regulatory organization. The consent shall
31 appoint the director as the person's agent for service of process in a
32 noncriminal action or proceeding under this chapter brought against the
33 person, or the person's successor or personal representative, after the
34 consent is filed. Service on the director pursuant to the consent has
35 the same force and validity as if the service were made personally on
36 the person filing the consent. Service on the director pursuant to the

1 consent is not the exclusive means of service on the person filing the
2 consent. A person that has filed a consent complying with this
3 subsection in connection with a previous application for registration
4 or notice filing need not file an additional consent.

5 (2) Conduct constituting appointment of agent for service. If a
6 person, including a nonresident of this state, engages in an act,
7 practice, or course of business prohibited or made actionable by this
8 chapter or a rule adopted or order issued under this chapter and the
9 person has not filed a consent to service of process under subsection
10 (1) of this section, the act, practice, or course of business
11 constitutes the appointment of the director as the person's agent for
12 service of process in a noncriminal action or proceeding against the
13 person or the person's successor or personal representative.

14 (3) Procedure for service of process. Service under subsection (1)
15 or (2) of this section may be made by providing a copy of the process
16 to the office of the director, but it is not effective unless:

17 (a) The plaintiff, which may be the director, promptly sends notice
18 of the service and a copy of the process, return receipt requested, to
19 the defendant or respondent at the address set forth in the consent to
20 service of process or, if a consent to service of process has not been
21 filed, at the last known address, or takes other reasonable steps to
22 give notice; and

23 (b) The plaintiff files an affidavit of compliance with this
24 subsection in the action or proceeding on or before the return day of
25 the process, if any, or within the time that the court, or the director
26 in a proceeding before the director, allows.

27 (4) Service in administrative proceedings or civil actions by
28 director. Service pursuant to subsection (3) of this section may be
29 used in a proceeding before the director or by the director in a civil
30 action in which the director is the moving party.

31 (5) Opportunity to defend. If process is served under subsection
32 (3) of this section, the court, or the director in a proceeding before
33 the director, shall order continuances as are necessary or appropriate
34 to afford the defendant or respondent reasonable opportunity to defend.

35 NEW SECTION. **Sec. 55.** FEES SHALL BE PAID IN ADVANCE--
36 REFUNDABILITY--TERMINATION OF PENDING REGISTRATIONS. (1) The fees

1 required by this chapter shall be paid in advance and are not
2 refundable except as may be expressly provided by other sections of
3 this chapter.

4 (2) The director may in his or her discretion send notice to the
5 applicant in any pending registration in which no action has been taken
6 for six months immediately prior to the sending of such notice,
7 advising such registrant that the pending registration will be
8 terminated thirty days from the date of sending unless on or before the
9 termination date the applicant makes application in writing to the
10 director showing good cause why it should be continued as a pending
11 registration. If such application is not made or good cause is not
12 shown, the director shall terminate the pending registration.

13 NEW SECTION. **Sec. 56.** Sections 45 through 55 of this act are each
14 added to chapter 21.20A RCW (created in section 115 of this act) and
15 codified with the subchapter heading of "Administration and Judicial
16 Review."

17 NEW SECTION. **Sec. 57.** APPLICATION OF CHAPTER TO EXISTING
18 PROCEEDINGS, EXISTING RIGHTS AND DUTIES, AND RCW 48.06.030. (1)
19 Applicability of chapter 21.20 RCW to pending proceedings and existing
20 rights. Chapter 21.20 RCW exclusively governs all actions or
21 proceedings that are pending on the effective date of this section or
22 may be instituted on the basis of conduct occurring before the
23 effective date of this section, but a civil action may not be
24 maintained to enforce any liability under chapter 21.20 RCW unless
25 instituted within any period of limitation that applied when the cause
26 of action accrued or within five years after the effective date of this
27 section, whichever is earlier.

28 (2) Continued effectiveness under chapter 21.20 RCW. All effective
29 registrations under chapter 21.20 RCW, all administrative orders
30 relating to the registrations, rules, statements of policy,
31 interpretive opinions, declaratory rulings, no action determinations,
32 and conditions imposed on the registrations under chapter 21.20 RCW
33 remain in effect while they would have remained in effect if this
34 chapter had not been enacted. They are considered to have been filed,
35 issued, or imposed under this chapter, but are exclusively governed by
36 chapter 21.20 RCW.

1 (3) Applicability of chapter 21.20 RCW to offers or sales. Chapter
2 21.20 RCW exclusively applies to an offer or sale made within one year
3 after the effective date of this section pursuant to an offering made
4 in good faith before the effective date of this section on the basis of
5 an exemption available under chapter 21.20 RCW.

6 (4) Applicability to RCW 48.06.030. Nothing in this chapter shall
7 limit the provisions of RCW 48.06.030.

8 NEW SECTION. **Sec. 58.** Section 57 of this act is added to chapter
9 21.20A RCW (created in section 115 of this act) and codified with the
10 subchapter heading of "Transition."

11 NEW SECTION. **Sec. 59.** DEBENTURE COMPANIES--DEFINITIONS. The
12 definitions in this section apply throughout this subchapter, unless
13 the context otherwise requires:

14 (1)(a) "Debenture company" means an issuer of any note, debenture,
15 or other debt obligation for money used or to be used as capital or
16 operating funds of the issuer, which is offered or sold in this state,
17 and which issuer is engaged or proposes to engage in the business of
18 investing, reinvesting, owning, holding, or trading in:

19 (i) Notes or other debt obligations, whether or not secured by real
20 or personal property;

21 (ii) Vendors' interests in real estate contracts;

22 (iii) Real or personal property to be leased to third parties; or

23 (iv) Real or personal property.

24 (b) "Debenture company" does not include an issuer by reason of any
25 of its securities which are:

26 (i) Exempt from registration under section 8 of this act;

27 (ii) Offered or sold in transactions exempt from registration under
28 section 9 (13), (20), or (25) of this act; or

29 (iii) Federal covered securities under Section 18(b)(4)(D) of the
30 Securities Act of 1933 for which the issuer has made the filing and
31 paid the fee required under section 14 of this act.

32 (c) An issuer that the director finds is not primarily engaged in
33 the activities described in (a)(i) through (iv) of this subsection is
34 not a debenture company.

35 (2) "Acquiring party" means any person becoming or attempting to
36 become a controlling person under section 62 of this act.

1 (3) A "director" of a debenture company means any director of a
2 debenture company that is organized as a corporation or any other
3 person performing similar functions with respect to any other
4 organization constituting a debenture company.

5 (4) An "officer" of a debenture company means its president; any
6 vice president in charge of a principal business unit, division, or
7 function (such as sales, administration, or finance); any other officer
8 who performs a policy-making function; or any other person who performs
9 similar policy-making functions for the debenture company. Executive
10 officers of subsidiaries may be deemed executive officers of the
11 debenture company if they perform such policy-making functions for the
12 debenture company.

13 NEW SECTION. **Sec. 60.** DEBENTURE COMPANIES--CAPITAL REQUIREMENTS.

14 A debenture company shall not offer for sale any security other than
15 equity securities if such sale would result in the violation of the
16 following capital requirements:

17 (1) For outstanding securities other than equity securities
18 totaling from one dollar to one million dollars, a debenture company
19 shall have a net worth of at least two hundred thousand dollars;

20 (2) In addition to the requirement set forth in subsection (1) of
21 this section:

22 (a) A debenture company with outstanding securities other than
23 equity securities totaling in excess of one million dollars but not
24 over one hundred million dollars shall have additional net worth equal
25 to at least ten percent of the outstanding securities in excess of one
26 million dollars but not over one hundred million dollars; and

27 (b) A debenture company with outstanding securities other than
28 equity securities totaling in excess of one hundred million dollars
29 shall have additional net worth equal to at least five percent of the
30 outstanding securities in excess of one hundred million dollars; and

31 (3) Every debenture company shall hold at least one-half the amount
32 of its required net worth in cash or comparable liquid assets as
33 defined by rule, or shall demonstrate comparable liquidity to the
34 satisfaction of the director.

35 NEW SECTION. **Sec. 61.** DEBENTURE COMPANIES--MATURITY DATE

1 REQUIREMENTS. (1) Any debenture company offering debt securities to
2 the public shall provide that at least fifty percent of the amount of
3 those securities outstanding have maturity dates of two years or more.

4 (2) If good cause is shown, the director may, in his or her
5 discretion, waive or modify the requirements of this section. In
6 determining whether to make such a waiver or modification, the director
7 may take into consideration the impact of the waiver or modification on
8 the protection of investors and the safety and soundness of the
9 debenture company and other appropriate factors.

10 NEW SECTION. **Sec. 62.** DEBENTURE COMPANIES--CONTROLLING PERSON--
11 EXCEPTIONS. (1) For purposes of this subchapter, a person shall be
12 deemed a controlling person if:

13 (a) Such person directly or indirectly, or acting through one or
14 more other persons owns, controls, or has power to vote twenty-five
15 percent or more of any class of voting securities of a debenture
16 company;

17 (b) Such person controls in any manner the election of a majority
18 of the board of directors, board of trustees, or other managing body of
19 a debenture company; or

20 (c) The director determines, after notice and opportunity for
21 hearing, that such person, directly or indirectly, exercises a
22 controlling influence over the management or policies of a debenture
23 company.

24 (2) The director may except, by order, for good cause shown, any
25 person from subsection (1) of this section if the director finds the
26 exception to be in the public interest and that the exception does not
27 threaten the protection of investors.

28 NEW SECTION. **Sec. 63.** DEBENTURE COMPANIES--PROHIBITED ACTIVITIES
29 BY DIRECTORS, OFFICERS, OR CONTROLLING PERSONS. (1) A director,
30 officer, or controlling person of a debenture company shall not:

31 (a) Have any interest, direct or indirect, in the gains or profits
32 of the debenture company, except to receive dividends upon the amounts
33 contributed by him or her, the same as any other investor or
34 shareholder and under the same regulations and conditions. However,
35 this subsection shall not be construed to prohibit salaries as may be
36 approved by the debenture company's board of directors; or

1 (b) Become a member of the board of directors or a controlling
2 equity owner of another debenture company or a bank, trust company, or
3 national banking association, of which board enough other directors or
4 officers of the debenture company are members so as to constitute with
5 him or her a majority of the board of directors.

6 (2) A director, an officer, or controlling person shall not:

7 (a) For himself or herself or as agent or partner of another,
8 directly or indirectly use any of the funds held by the debenture
9 company, except to make such current and necessary payments as are
10 authorized by the board of directors;

11 (b) Receive directly or indirectly and retain for his or her own
12 use any commission on or benefit from any loan made by the debenture
13 company, or any pay or emolument for services rendered to any borrower
14 from the debenture company in connection with such loan;

15 (c) Become an indorser, surety, or guarantor, or in any manner an
16 obligor, for any loan made from the debenture company and except when
17 approval has been given by the director or the director's administrator
18 of securities upon recommendation by the company's board of directors;
19 or

20 (d) For himself or herself or as agent or partner of another,
21 directly or indirectly borrow any of the funds held by the debenture
22 company, or become the owner of real or personal property upon which
23 the debenture company holds a mortgage, deed of trust, or property
24 contract. A loan to or a purchase by an entity in which he or she is
25 an equity holder to the amount of fifteen percent of the total
26 outstanding equity securities, or in which he or she and other
27 directors, officers, or controlling persons of the debenture company
28 hold stock to the amount of twenty-five percent of the total
29 outstanding equity securities, shall be deemed a loan to or a purchase
30 by such director or officer within the meaning of this section, except
31 when the loan to or purchase by such entity occurred without his or her
32 knowledge or against his or her protest.

33 (3) A debenture company may not have as a director, officer, or
34 controlling person any person who is currently the subject of an order,
35 judgment, adjudication, determination, or conviction that would
36 constitute grounds for discipline under section 32(4) (a) through (f),
37 (h), or (k) through (m) of this act.

1 NEW SECTION. **Sec. 64.** DEBENTURE COMPANIES--DEBENTURES PAYABLE ON
2 DEMAND--INTEREST CERTIFICATES OF DEBENTURE. (1) A debenture company
3 shall redeem each debenture on its maturity date. A debenture company
4 shall not issue any debenture payable on demand nor pay or accrue
5 interest beyond the maturity date of any debenture.

6 (2) Debenture companies shall not issue certificates of debentures
7 in passbook form, or in any other form that suggests to the holder that
8 such moneys may be withdrawn on demand.

9 (3) Each certificate of debenture or an application for a
10 certificate shall specify on the face of the certificate or application
11 therefore, in twelve-point bold face type or larger, that such
12 debenture is not guaranteed or insured by the United States government,
13 the state of Washington, or any other government, governmental agency,
14 or instrumentality thereof.

15 NEW SECTION. **Sec. 65.** DEBENTURE COMPANIES--ACQUISITION OF
16 CONTROL--REQUIREMENTS--VIOLATION--PENALTY. (1) It is unlawful for any
17 person to acquire control of a debenture company until thirty days
18 after filing with the director a copy of the notice of change of
19 control on the form specified by the director. The notice or
20 application shall be under oath and contain substantially all of the
21 following information plus any additional information that the director
22 may prescribe as necessary or appropriate in the particular instance
23 for the protection of investors, borrowers, or shareholders and the
24 public interest:

25 (a) The identity and business experience of each person by whom or
26 on whose behalf acquisition is to be made;

27 (b) The financial and managerial resources and future prospects of
28 each person involved in the acquisition;

29 (c) The terms and conditions of any proposed acquisition and the
30 manner in which the acquisition is to be made;

31 (d) The source and amount of the funds or other consideration used
32 or to be used in making the acquisition, and a description of the
33 transaction and the names of the parties if any part of these funds or
34 other consideration has been or is to be borrowed or otherwise obtained
35 for the purpose of making the acquisition;

36 (e) Any plan or proposal which any person making the acquisition

1 may have to liquidate the debenture company, to sell its assets, to
2 merge it with any other company, or to make any other major change in
3 its business or corporate structure or management;

4 (f) The identification of any person employed, retained, or to be
5 compensated by the acquiring party, or by any person on its behalf, who
6 makes solicitations or recommendations to shareholders for the purpose
7 of assisting in the acquisition and a brief description of the terms of
8 the employment, retainer, or arrangement for compensation; and

9 (g) Copies of all invitations for tenders or advertisements making
10 a tender offer to shareholders for the purchase of their stock to be
11 used in connection with the proposed acquisition.

12 (2) When a person, other than an individual or corporation, is
13 required to file an application under this section, the director may
14 require that the information required by subsection (1)(a), (b), and
15 (f) of this section be given with respect to each person who has an
16 interest in or controls a person filing an application under this
17 subsection.

18 (3) When a corporation is required to file an application under
19 this section, the director may require that the information required by
20 subsection (1)(a), (b), and (f) of this section be given for the
21 company, each officer and director of the company, and each person who
22 is directly or indirectly the beneficial owner of twenty-five percent
23 or more of the outstanding voting securities of the company.

24 (4) If any tender offer, request, or invitation for tenders or
25 other agreements to acquire control is proposed to be made by means of
26 a registration statement under the Securities Act of 1933 (48 Stat. 74;
27 15 U.S.C. Sec. 77(a)), as amended, or in circumstances requiring the
28 disclosure of similar information under the Securities Exchange Act of
29 1934 (48 Stat. 881; 15 U.S.C. Sec. 78(a)), as amended, the registration
30 statement or application may be filed with the director in lieu of the
31 requirements of this section.

32 (5) Any acquiring party shall also deliver a copy of any notice or
33 application required by this section to the debenture company proposed
34 to be acquired within two days after the notice or application is filed
35 with the director.

36 (6) Any acquisition of control in violation of this section shall
37 be ineffective and void.

1 (7) Any person who willfully or intentionally violates this section
2 or any rule adopted under this section is guilty of a gross misdemeanor
3 and shall be punished pursuant to chapter 9A.20 RCW. Each day's
4 violation shall be considered a separate violation.

5 NEW SECTION. **Sec. 66.** DEBENTURE COMPANIES--ACQUISITION OF
6 CONTROL--GROUNDS FOR DISAPPROVAL. The director may disapprove the
7 acquisition of a debenture company within thirty days after the filing
8 of a complete application under section 65 of this act or an extended
9 period not exceeding an additional fifteen days if:

10 (1) The poor financial condition of any acquiring party might
11 jeopardize the financial stability of the debenture company or might
12 prejudice the interests of the investors, borrowers, or shareholders;

13 (2) The plan or proposal of the acquiring party to liquidate the
14 debenture company, to sell its assets, to merge it with any person, or
15 to make any other major change in its business or corporate structure
16 or management is not fair and reasonable to the debenture company's
17 investors, borrowers, or stockholders or is not in the public interest;

18 (3) The business experience and integrity of any acquiring party
19 who would control the operation of the debenture company indicates that
20 approval would not be in the interest of the debenture company's
21 investors, borrowers, or shareholders;

22 (4) The information provided by the application is insufficient for
23 the director to make a determination or there has been insufficient
24 time to verify the information provided and conduct an examination of
25 the qualification of the acquiring party;

26 (5) The acquiring party, an employee, associate, partner, officer,
27 or director, of the acquiring party or a person having a similar status
28 or performing similar functions, or a person directly or indirectly in
29 control of the acquiring party, is currently the subject of an order,
30 judgment, adjudication, determination, or conviction that would
31 constitute grounds for discipline under section 32(4) (a) through (f),
32 (h), or (k) through (m) of this act; or

33 (6) The acquisition would not be in the public interest.

34 NEW SECTION. **Sec. 67.** DEBENTURE COMPANIES--NOTICE OF CHARGES--
35 HEARING--CEASE AND DESIST ORDERS. (1) The director may issue and serve

1 upon a debenture company a notice of charges if it appears to the
2 director any debenture company:

3 (a) Is engaging or has engaged in an unsafe or unsound practice in
4 conducting the business of the debenture company;

5 (b) Is violating or has violated section 73, 74, or 76 of this act,
6 or any rule, order, or condition adopted or imposed thereunder; or

7 (c) Is about to do the acts prohibited in (a) or (b) of this
8 subsection when the appearance that the threat exists is based upon
9 reasonable cause.

10 (2) The notice shall contain a statement of the facts constituting
11 the alleged violation, act, or practice and shall fix a time and place
12 at which a hearing will be held to determine whether an order to cease
13 and desist should issue against the debenture company. The hearing
14 shall be set in accordance with chapter 34.05 RCW.

15 Unless the debenture company appears at the hearing by a duly
16 authorized representative, it shall be considered to have consented to
17 the issuance of the cease and desist order. If the debenture company
18 is deemed to have consented or if upon the record made at the hearing
19 the director finds that any violation, act, or practice specified in
20 the notice of charges has been established, the director may issue and
21 serve upon the debenture company an order to cease and desist from the
22 violation, act, or practice. The order may require the debenture
23 company and its directors, officers, controlling persons, employees,
24 and agents to cease and desist from the violation, act, or practice and
25 may require the debenture company to take affirmative action to correct
26 the conditions resulting from the violation, act, or practice.

27 (3) A cease and desist order shall become effective at the
28 expiration of ten days after the service of the order upon the
29 debenture company concerned except that a cease and desist order issued
30 upon consent shall become effective at the time specified in the order
31 and shall remain effective as provided therein unless it is stayed,
32 modified, terminated, or set aside by action of the director or a
33 reviewing court.

34 NEW SECTION. **Sec. 68.** DEBENTURE COMPANIES--TEMPORARY CEASE AND
35 DESIST ORDERS. Whenever the director determines that any violation,
36 act, or practice specified in section 67 of this act or its
37 continuation is likely to cause insolvency or substantial dissipation

1 of assets or earnings of the debenture company or to otherwise
2 seriously prejudice the interests of its security holders, the director
3 may also issue a temporary order requiring the debenture company and
4 its directors, officers, controlling persons, employees, and agents to
5 cease and desist from the violation, act, or practice. The order shall
6 become effective upon service on the debenture company and shall remain
7 effective pending the completion of the administrative proceedings
8 under the notice and until such time as the director dismisses the
9 charges specified in the notice or until the effective date of a cease
10 and desist order issued against the debenture company under section 67
11 of this act.

12 NEW SECTION. **Sec. 69.** REPORTS--REQUIREMENTS. (1) Every issuer
13 that has registered securities under Washington state securities law
14 shall file with the director reports described in subsection (2) of
15 this section. Such reports shall be filed with the director not more
16 than one hundred twenty days after the end of the issuer's fiscal year,
17 unless an extension of time is granted by the director.

18 (2) The reports required by subsection (1) of this section shall
19 contain such information, statements, and documents regarding the
20 financial and business conditions of the issuer and the number and
21 description of securities of the issuer held by its officers,
22 directors, and controlling equity owners and shall be in such form and
23 filed at such annual times as the director may require by rule or
24 order. For the purposes of sections 63, 69, and 70 of this act, a
25 "controlling equity owner" means a person who is directly or indirectly
26 the beneficial holder of more than ten percent of the outstanding
27 voting securities of an issuer.

28 (3)(a) The reports described in subsection (2) of this section
29 shall include financial statements corresponding to those required
30 under the provisions of section 16 of this act and to the issuer's
31 fiscal year setting forth in comparative form the corresponding
32 information for the preceding year and such financial statements shall
33 be furnished to all equity owners within one hundred twenty days after
34 the end of such year, unless an extension of time is granted by the
35 director, but at least twenty days prior to the date of the annual
36 meeting of equity owners.

1 (b) Such financial statements shall be prepared as to form and
2 content in accordance with rules prescribed by the director and shall
3 be audited by an independent certified public accountant who is not an
4 employee, officer, or member of the board of directors of the issuer or
5 a holder of securities of the issuer. The report of such independent
6 certified public accountant shall be based upon an audit made in
7 accordance with generally accepted auditing standards with no
8 limitations on its scope.

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

14 (5) For the purposes of this section and section 70 of this act,
15 "issuer" does not include issuers of:

16 (a) Securities registered by the issuer pursuant to Section 12 of
17 the Securities and Exchange Act of 1934 as now or hereafter amended or
18 exempted from registration under that act on a basis other than the
19 number of shareholders and total assets; or

20 (b) Securities which are held of record by less than two hundred
21 persons or whose total assets are less than five hundred thousand
22 dollars at the close of the issuer's fiscal year.

23 (6) Any issuer who has been required to file under this section and
24 who subsequently becomes excluded from the definition of "issuer" by
25 subsection (5) of this section must file a certification setting forth
26 the basis on which they claim to no longer be an issuer within the
27 meaning of this chapter.

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

32 (8) Filing of reports pursuant to this section shall not constitute
33 an approval thereof by the director or a finding by the director that
34 the report is true, complete, and not misleading. It shall be unlawful
35 to make, or cause to be made, to any prospective purchaser, seller,
36 customer, or client, any representation inconsistent with this
37 subsection.

1 NEW SECTION. **Sec. 70.** REPORTS--VIOLATIONS OF REPORTING
2 REQUIREMENTS--PENALTIES--CONTRIBUTION. (1) It is unlawful for any
3 person, including the officers and directors of any issuer, to fail to
4 file a report required by section 69 of this act or to file any such
5 report which contains an untrue statement of a material fact or an
6 omission to state a material fact necessary in order to make the
7 statements made, in light of the circumstances under which they are
8 made, not misleading, unless the person sustains burden of proof that
9 the person did not know and, in the exercise of reasonable care, could
10 not have known of the failure, untruth, or omission. In addition to
11 any other penalties or remedies provided by this chapter, each officer
12 and director of an issuer which violates this subsection shall be
13 personally liable for damages as provided in subsection (2) of this
14 section if such officer or director:

15 (a) Had actual notice of the issuer's duty to file reports;
16 (b) Knew, or in the exercise of reasonable care could have known,
17 of the violation; and

18 (c) Could have prevented the violation.

19 (2) Any issuer and other person who violate subsection (1) of this
20 section shall be liable jointly and severally for the damages
21 occasioned by such violation, together with reasonable attorneys' fees
22 and costs to any person who, during the continuation of the violation
23 and without actual notice of the violation, purchases or sells any
24 securities of the issuer within six months following the date the
25 violation commenced.

26 (3) No suit or action may be commenced under subsection (2) of this
27 section more than one year after the purchase or sale.

28 (4) Any person held liable under this section shall be entitled to
29 contribution from those jointly and severally liable with that person.

30 NEW SECTION. **Sec. 71.** REPORTS--SUSPENSION OF SALE OF SECURITIES
31 UNTIL REPORTING REQUIREMENTS COMPLIED WITH. In case of a violation of
32 sections 69 and 70 of this act, the director may suspend sale or
33 trading by or through a broker-dealer of the securities of the issuer
34 until the failure to file a report or statement or the inaccuracy or
35 omissions in any report or statement are remedied as determined by the
36 director.

1 NEW SECTION. **Sec. 72.** Application of chapter not limited.
2 Nothing in sections 46(7), 59 through 71, and 73 through 111 of this
3 act limits the application of other provisions of this chapter.

4 NEW SECTION. **Sec. 73.** DEBENTURE COMPANIES--EQUITY INVESTMENTS.

5 (1) A debenture company shall not, without prior written consent of the
6 director:

7 (a) Make equity investments in a single project or subsidiary of
8 more than ten percent of its assets or of more than its net worth,
9 whichever is greater; or

10 (b) Make equity investments, including investments in subsidiaries,
11 other than investments in income-producing real property, which in the
12 aggregate exceed twenty percent of its assets.

13 (2) For the purposes of this section, an equity investment does not
14 include any real property, held by the debenture company for not more
15 than three years, or such longer period as permitted by the director,
16 which was acquired in satisfaction or on account of debts previously
17 contracted in the regular course of the debenture company's business,
18 judgments, vendors' interests in real property contracts, or liens.

19 (3) If good cause is shown, the director may, in his or her
20 discretion, waive or modify the requirements of this section. In
21 determining whether to make such a waiver or modification, the director
22 may take into consideration the impact of the waiver or modification on
23 the protection of investors and the safety and soundness of the
24 debenture company and other appropriate factors.

25 NEW SECTION. **Sec. 74.** DEBENTURE COMPANIES--LOANS TO ANY ONE

26 BORROWER--LIMITATIONS. (1) Except as provided in subsection (3) of
27 this section, a debenture company shall not loan or invest in a loan or
28 loans to any one borrower more than two and one-half percent of the
29 debenture company's assets without prior written consent of the
30 director.

31 (2) For the purpose of this section, loans made to affiliates of
32 the borrower are deemed to have been made to the borrower.

33 (3)(a) If good cause is shown, the director may, in his or her
34 discretion, waive or modify subsection (1) of this section. In
35 determining whether to make such a waiver or modification, the director

1 may take into consideration the impact of the waiver or modification on
2 the protection of investors and the safety and soundness of the
3 debenture company and other appropriate factors.

4 (b) A loan or obligation shall not be subject to the limitation in
5 subsection (1) of this section to the extent that the loan is secured
6 or covered by guarantee, or by commitment or agreement to take over or
7 to purchase the loan, made by any federal reserve bank or by the United
8 States or any department, bureau, board, commission, or establishment
9 of the United States, including any corporation wholly owned directly
10 or indirectly by the United States.

11 NEW SECTION. **Sec. 75.** DEBENTURE COMPANIES--BAD DEBTS. (1) Any
12 debt due a debenture company on which interest is one year or more past
13 due and unpaid shall be considered a bad debt and shall be charged off
14 the books of the debenture company unless:

15 (a) Such debt is well-secured and in the course of collection by
16 legal process or probate proceedings; or

17 (b) Such debt is represented or secured by bonds having a
18 determinable market value currently quoted on a national securities
19 exchange, provided that in such case, such bonds shall be carried on
20 the books of the debenture company at such value as the director may
21 from time to time direct, but in no event may such carrying value
22 exceed the market value thereof.

23 (2) A final judgment held by a debenture company shall not be
24 considered an asset of the debenture company after two years from the
25 date of its entry excluding any time for appeal unless extended by the
26 director in writing for a specified period.

27 (3) If good cause is shown, the director may, in his or her
28 discretion, waive or modify the requirements of this section. In
29 determining whether to make such a waiver or modification, the director
30 may take into consideration the impact of the waiver or modification on
31 the protection of investors and the safety and soundness of the
32 debenture company and other appropriate factors.

33 NEW SECTION. **Sec. 76.** DEBENTURE COMPANIES--INVESTMENTS IN
34 UNSECURED LOANS. (1) A debenture company shall not invest more than
35 twenty percent of its assets in unsecured loans.

1 (2)(a) Except as provided in (b) of this subsection, a loan shall
2 be deemed unsecured if the ascertained market value of the collateral
3 securing the loan does not exceed one hundred twenty-five percent of
4 the loan and all senior indebtedness.

5 (b) A loan shall not be deemed unsecured to the extent that the
6 loan is guaranteed or insured by the federal housing administration,
7 the administrator of veterans' affairs, the farmers home
8 administration, or an insurer authorized to do business in this state,
9 or any other guarantor or insurer approved by the director.

10 (3) If good cause is shown, the director may, in his or her
11 discretion, waive or modify the requirements of this section. In
12 determining whether to make such a waiver or modification, the director
13 may take into consideration the impact of the waiver or modification on
14 the protection of investors and the safety and soundness of the
15 debenture company and other appropriate factors.

16 NEW SECTION. **Sec. 77.** DEBENTURE COMPANIES--DEBENTURE HOLDERS--
17 NOTICE OF MATURITY DATE OF DEBENTURE. Every debenture company shall
18 notify each of its debenture holders of the maturity date of the
19 holder's debenture by sending a notice to the holder not more than
20 forty-five days nor less than fifteen days prior to the maturity date
21 of the debenture at the holder's last known address.

22 NEW SECTION. **Sec. 78.** DEBENTURE COMPANIES--ANNUAL FINANCIAL
23 STATEMENT. A debenture company shall send annually and in a timely
24 manner either a copy of its annual financial statements or a summary of
25 its financial statements for the most recent fiscal year to each
26 debenture holder at the debenture holder's last known address. If a
27 summary is sent, the debenture company shall make available to any
28 debenture holder upon request a copy of its complete annual financial
29 statements for its most recent fiscal year.

30 NEW SECTION. **Sec. 79.** DEBENTURE COMPANIES--RULES. The director
31 may adopt rules to govern examinations and reports of debenture
32 companies and to otherwise govern the administration of debenture
33 companies under this chapter.

1 NEW SECTION. **Sec. 80.** DEBENTURE COMPANIES--RECORD MAINTENANCE AND
2 PRESERVATION--EXAMINATION. Every debenture company shall make and keep
3 such accounts and other records as shall be prescribed by the director.
4 All records so required shall be preserved for three years unless the
5 director prescribes otherwise for particular types of records. All the
6 records of a debenture company are subject at any time or from time to
7 time to such reasonable periodic, special, or other examinations by
8 representatives of the director, within or without this state, as the
9 director deems necessary or appropriate in the public interest or for
10 protection of investors.

11 NEW SECTION. **Sec. 81.** DEBENTURE COMPANIES--EXAMINATION REPORTS
12 AND INFORMATION--EXEMPT FROM PUBLIC DISCLOSURE--USE IN CIVIL ACTIONS.
13 (1) Reports, working papers, documents, materials, or information
14 produced by, obtained by, or disclosed to the director or the
15 director's representatives in connection with an examination pursuant
16 to section 46(7) of this act shall not be subject to public disclosure
17 under chapter 42.56 RCW.

18 (2) In any civil action in which the reports are sought to be
19 discovered or used as evidence, any party may, upon notice to the
20 director, petition the court for an in camera review of the report.
21 The court may permit discovery and introduction of only those portions
22 of the report that are relevant and otherwise unobtainable by the
23 requesting party. This subsection shall not apply to an action brought
24 or defended by the director.

25 NEW SECTION. **Sec. 82.** REMOVAL OR PROHIBITION ORDERS--DIRECTOR'S
26 AUTHORITY--NOTICE. The director may issue and serve a debenture
27 company director, officer, or employee with written notice of intent to
28 remove the person from office or employment or to prohibit the person
29 from participating in the conduct of the affairs of the debenture
30 company or any debenture company whenever it appears to the director:

31 (1) The person has committed a material violation of law or an
32 unsafe or unsound practice;

33 (2)(a) The debenture company has suffered or is likely to suffer
34 substantial financial loss or other damage as a result of the violation
35 or practice; or

1 (b) The interests of the debenture holders could be seriously
2 prejudiced by reason of the violation or practice; and

3 (3) The violation or practice involves personal dishonesty,
4 recklessness, or incompetence.

5 NEW SECTION. **Sec. 83.** AUTHORITY OF DIRECTOR TO CALL SPECIAL
6 MEETING OF BOARD. (1) The director may request a special meeting of
7 the board of a debenture company if the director believes that a
8 special meeting is necessary for the welfare of the debenture company
9 or the purposes of this chapter. The director's request for a special
10 board meeting must be made in writing to the secretary of the board or
11 other appropriate officer.

12 (2) Upon receipt of a request for a meeting pursuant to subsection
13 (1) of this section, the secretary or other appropriate officer of the
14 debenture company shall designate the time and place at which the
15 special meeting will be held. The designated place of the meeting must
16 be a reasonable location within the county in which the principal place
17 of business of the debenture company is located, unless provided
18 otherwise by the bylaws. The designated time of the meeting must be no
19 sooner than twenty, and no later than thirty days after the request is
20 received by the secretary or other appropriate officer.

21 (3) The secretary or other appropriate officer shall give notice of
22 the meeting within ten days of receipt of the request or within such
23 other reasonable time period as may be provided by the bylaws or other
24 organization documents of the debenture company. The notice must
25 include the purpose or purposes for which the meeting is called, as
26 provided in the bylaws or other organization documents of the debenture
27 company. The director may require the attendance of all of the
28 directors at the special board meeting, and an absence unexcused by the
29 director constitutes a violation of this chapter.

30 NEW SECTION. **Sec. 84.** AUTHORITY OF DIRECTOR TO ATTEND MEETINGS OF
31 THE BOARD. The director may attend a meeting of the board of a
32 debenture company if the director believes that attendance at the
33 meeting is necessary for the welfare of the debenture company, or the
34 purposes of this chapter, or if the board has requested the director's
35 attendance. The director shall provide reasonable notice to the board
36 before attending a meeting.

1 NEW SECTION. **Sec. 85.** INTERVENTION BY DIRECTOR--CONDITIONS. The
2 director may place a debenture company under supervisory direction in
3 accordance with sections 86 through 88 of this act, appoint a
4 conservator for a debenture company in accordance with sections 89
5 through 92 of this act, appoint a liquidating agent for a debenture
6 company in accordance with sections 93 and 94 of this act, or appoint
7 a receiver for a debenture company in accordance with sections 95
8 through 110 of this act, if the debenture company:

9 (1) Consents to the action;

10 (2) Has failed to comply with the requirements of the director
11 while the debenture company is under supervisory direction;

12 (3) Has committed or is about to commit a material violation of law
13 or an unsafe or unsound practice, and such violation or practice has
14 caused or is likely to cause an unsafe or unsound condition at the
15 debenture company; or

16 (4) Is in an unsafe or unsound condition.

17 NEW SECTION. **Sec. 86.** SUPERVISION BY DIRECTOR--NOTICE--
18 COMPLIANCE--COSTS. (1) As authorized by section 85 of this act, the
19 director may determine to place a debenture company under supervisory
20 direction. Upon such a determination, the director shall notify the
21 debenture company in writing of:

22 (a) The director's determination; and

23 (b) Any requirements that must be satisfied before the director
24 shall terminate the supervisory direction.

25 (2) The debenture company must comply with the requirements of the
26 director as provided in the notice. If the debenture company fails to
27 comply with the requirements, the director may appoint a conservator,
28 liquidating agent, or receiver for the debenture company, in accordance
29 with this chapter. The director may appoint a representative to
30 supervise the debenture company during the period of supervisory
31 direction.

32 (3) All costs incident to supervisory direction will be a charge
33 against the assets of the debenture company to be allowed and paid as
34 the director may determine.

35 NEW SECTION. **Sec. 87.** SUPERVISION BY DIRECTOR--CERTAIN ACTS

1 PROHIBITED. During the period of supervisory direction, the director
2 may prohibit the debenture company from engaging in any of the
3 following acts without prior approval:

4 (1) Disposing of, conveying, or encumbering any of its assets;

5 (2) Withdrawing any of its accounts at other financial
6 institutions;

7 (3) Lending any of its funds;

8 (4) Investing any of its funds;

9 (5) Transferring any of its property; or

10 (6) Incurring any debt, obligation, or liability.

11 NEW SECTION. **Sec. 88.** SUPERVISION BY DIRECTOR--DEBENTURE COMPANY
12 REQUEST FOR REVIEW. During the period of supervisory direction, the
13 debenture company may request the director to review an action taken or
14 proposed to be taken by the representative, specifying how the action
15 is not in the best interests of the debenture company. The request
16 stays the action, pending the director's review of the request.

17 NEW SECTION. **Sec. 89.** CONSERVATOR--AUTHORIZED ACTIONS--COSTS.

18 (1) As authorized by section 85 of this act, the director may, upon due
19 notice and hearing, appoint a conservator for a debenture company. The
20 director may appoint himself or herself or another qualified party as
21 conservator of the debenture company. The conservator shall
22 immediately take charge of the debenture company and all of its
23 property, books, records, and effects.

24 (2) The conservator shall conduct the business of the debenture
25 company and take such steps toward the removal of the causes and
26 conditions that have necessitated the appointment of a conservator, as
27 the director may direct. The conservator is authorized to, without
28 limitation:

29 (a) Take all necessary measures to preserve, protect, and recover
30 any assets or property of the debenture company, including any claim or
31 cause of action belonging to or which may be asserted by the debenture
32 company, and administer the same in his or her own name as conservator;
33 and

34 (b) File, prosecute, and defend any suit that has been filed or may
35 be filed by or against the debenture company that is deemed by the

1 conservator to be necessary to protect all of the interested parties or
2 a property affected thereby.

3 The conservator shall make such reports to the director from time
4 to time as may be required by the director.

5 (3) All costs incident to conservatorship will be a charge against
6 the assets of the debenture company to be allowed and paid as the
7 director may determine.

8 (4) If at any time the director determines that the debenture
9 company is not in condition to continue business under the conservator
10 in the interest of its debenture holders, equity owners, or creditors,
11 and grounds exist under section 85 of this act, the director may
12 proceed with appointment of a liquidating agent or receiver in
13 accordance with this chapter.

14 NEW SECTION. **Sec. 90.** ACTIONS BY CONSERVATOR--REVIEW. During the
15 period of conservatorship, the debenture company may request the
16 director to review an action taken or proposed to be taken by the
17 conservator, specifying how the action is not in the best interest of
18 the debenture company. The request stays the action, pending the
19 director's review of the request.

20 NEW SECTION. **Sec. 91.** LAWSUITS DURING PERIOD OF CONSERVATORSHIP.
21 Any suit filed against a debenture company or its conservator, during
22 the period of conservatorship, must be brought in the superior court of
23 Thurston county. A conservator for a debenture company may file suit
24 in any superior court or other court of competent jurisdiction against
25 any person for the purpose of preserving, protecting, or recovering any
26 asset or property of the debenture company, including, but not limited
27 to, any claims or causes of action belonging to or asserted by the
28 debenture company.

29 NEW SECTION. **Sec. 92.** CONSERVATOR SERVES UNTIL PURPOSES ARE
30 ACCOMPLISHED. The conservator shall serve until the purposes of the
31 conservatorship have been accomplished. If rehabilitated, the
32 debenture company must be returned to management or new management
33 under such conditions as the director may determine.

1 NEW SECTION. **Sec. 93.** LIQUIDATION--SUSPENSION OR REVOCATION OF
2 ARTICLES--PLACEMENT IN INVOLUNTARY LIQUIDATION--APPOINTMENT OF
3 LIQUIDATING AGENT--NOTICE--PROCEDURE--EFFECT. (1) As authorized by
4 section 85 of this act, the director may appoint a liquidating agent
5 for a debenture company. Before appointing a liquidating agent, the
6 director shall issue, in accordance with chapter 34.05 RCW, an order
7 directing the debenture company to show cause why its articles of
8 incorporation, certificate of limited partnership, certificate of
9 formation, or similar charter document should not be suspended or
10 revoked.

11 (2) If the debenture company fails to adequately show cause, the
12 director shall serve the debenture company with an order directing the
13 suspension or revocation of the articles of incorporation, certificate
14 of limited partnership, certificate of formation, or similar charter
15 document; placing the debenture company in involuntary liquidation;
16 appointing a liquidating agent under this section and section 94 of
17 this act; and providing a statement of the findings on which the order
18 is based.

19 (3) The suspension or revocation must be immediate and complete.
20 Once the articles of incorporation, certificate of limited partnership,
21 certificate of formation, or similar charter document is suspended or
22 revoked, the debenture company shall cease conducting business. The
23 debenture company may not grant or pay out any new or previously
24 approved loans, may not invest any of its assets, and may not declare
25 or pay out any previously declared dividends. The liquidating agent of
26 a debenture company whose articles or certificate has been suspended or
27 revoked may accept payments on loans previously paid out and may accept
28 income from investments already made.

29 NEW SECTION. **Sec. 94.** ORDER DIRECTING INVOLUNTARY LIQUIDATION--
30 PROCEDURE. (1) On receipt of the order placing the debenture company
31 in involuntary liquidation, the officers and directors of the debenture
32 company shall deliver to the liquidating agent possession and control
33 of all books, records, assets, and property of the debenture company.

34 (2) The liquidating agent shall proceed to convert the assets to
35 cash, collect all debts due to the debenture company, and wind up its
36 affairs in accordance with any instructions and procedures issued by

1 the director. If a liquidating agent agrees to absorb the debenture
2 company, the director may approve a pooling of assets and liabilities
3 rather than a distribution of assets.

4 (3) Each equity owner of a debenture company is entitled to a
5 proportionate allocation of the assets in liquidation after all debts
6 have been paid. The proportionate allocation shall be based on account
7 balances as of a date determined by the board.

8 (4) The liquidating agent shall cause a notice of liquidation to be
9 published once a week for three consecutive weeks in a newspaper of
10 general circulation in the county in which the principal place of
11 business of the debenture company is located. The notice of
12 liquidation must inform creditors of the debenture company on how to
13 make a claim upon the liquidating agent, and that if a claim is not
14 made upon the liquidating agent within thirty days of the last date of
15 publication, the creditor's claim is barred. The liquidating agent
16 shall provide personal notice of liquidation to the creditors of
17 record, informing them that if they fail to make a claim upon the
18 liquidating agent within thirty days of the service of the notice, the
19 creditor's claim is barred. If a creditor fails to make a claim upon
20 the liquidating agent within the times required to be specified in the
21 notices of liquidation, the creditor's claim is barred. All contingent
22 liabilities of the debenture company are discharged upon the director's
23 order to liquidate the debenture company. The liquidating agent shall,
24 upon completion, certify to the director that the distribution or
25 pooling of assets of the debenture company is complete.

26 NEW SECTION. **Sec. 95.** RECEIVERSHIP--APPOINTMENT OF RECEIVER BY
27 DIRECTOR--NOTICE--ACT WITHOUT BOND. As authorized by section 85 of
28 this act, the director may without prior notice appoint a receiver to
29 take possession of a debenture company. The director may appoint any
30 qualified party as receiver. Upon appointment, the receiver is
31 authorized to act without bond. Upon acceptance of the appointment,
32 the receiver may have and possess all the powers and privileges
33 provided by the laws of this state with respect to the receivership of
34 a debenture company, and be subject to all the duties of and
35 restrictions applicable to such a receiver.

36 Upon taking possession of the debenture company, the receiver shall
37 give written notice to the directors of the debenture company and to

1 all persons having possession of any assets of the debenture company.
2 No person with knowledge of the taking of possession by the receiver
3 may have a lien or charge for any payment advanced, clearance made, or
4 liability incurred against any of the assets of the debenture company,
5 after the receiver takes possession, unless approved by the receiver.

6 NEW SECTION. **Sec. 96.** RECEIVER MAY BE REQUIRED TO SHOW CAUSE--
7 SUPERIOR COURT. Within ten days after the receiver takes possession of
8 a debenture company's assets, the debenture company may serve notice
9 upon the receiver to appear before the superior court of the county in
10 which the principal place of business of the debenture company is
11 located and at a time to be fixed by the court, which may not be less
12 than five or more than fifteen days from the date of the service of the
13 notice, to show cause why the debenture company should not be restored
14 to the possession of its assets.

15 The court shall summarily hear and dismiss the complaint if it
16 finds that the receiver was appointed for cause. However, if the court
17 finds that no cause existed for appointment of the receiver, the court
18 shall require the receiver to restore the debenture company to
19 possession of its assets and enjoin the director from further
20 appointment of a receiver for the debenture company without cause.

21 NEW SECTION. **Sec. 97.** POWERS AND DUTIES OF RECEIVER. Upon taking
22 possession of a debenture company, the receiver shall proceed to
23 collect the assets of the debenture company and preserve, administer,
24 and liquidate its business and assets.

25 With the approval of the Thurston county superior court or the
26 superior court of the county in which the principal place of business
27 of the debenture company is located, the receiver may sell, compound,
28 or compromise bad or doubtful debts; and upon such terms as the court
29 may direct, the receiver may borrow, mortgage, pledge, or sell all or
30 any part of the real and personal property of the debenture company.
31 The receiver may deliver to each purchaser or lender an appropriate
32 deed, mortgage, agreement of pledge, or other instrument of title or
33 security. The receiver may employ an attorney or other assistants to
34 assist in carrying out the receivership, subject to such surety bond as
35 the director may require. The premium for any such bond must be paid
36 out of the assets of the debenture company.

1 In carrying out the receivership, the receiver may, subject to the
2 requirements of section 65 of this act, arrange for the merger or
3 consolidation of the debenture company in receivership with another
4 debenture company, or may arrange for the purchase of the debenture
5 company's assets and the assumption of its liabilities by another
6 debenture company, in whole or in part, or may arrange for such a
7 transaction with another entity as may be otherwise permitted by law.

8 NEW SECTION. **Sec. 98.** CLAIMS AGAINST DEBENTURE COMPANY IN
9 RECEIVERSHIP--NOTICE. The receiver shall publish once a week for four
10 consecutive weeks in a newspaper of general circulation in the county
11 where the debenture company's principal place of business is located,
12 a notice requiring all persons having claims against the debenture
13 company to file proof of claim not later than ninety days from the date
14 of the first publication of the notice. The receiver shall mail
15 similar notices to all persons whose names appear as creditors upon the
16 books of the debenture company. The assets of the debenture company
17 are not subject to contingent claims.

18 After the expiration of the time fixed in the notice, the receiver
19 has no power to accept any claim. The receiver may approve or reject
20 any claim, but shall serve notice of rejection upon the claimant by
21 mail or personally. An affidavit of service of the notice of rejection
22 will serve as prima facie evidence that notice was given. No action
23 may be brought on any claim after three months from the date of service
24 of the notice of rejection.

25 NEW SECTION. **Sec. 99.** RECEIVER SHALL INVENTORY ASSETS--FILE LISTS
26 OF ASSETS AND CLAIMS--OBJECTIONS TO APPROVED CLAIMS. Upon taking
27 possession of the debenture company, the receiver shall make an
28 inventory of the assets and file the list in the office of the county
29 clerk. Upon the expiration of the time fixed for the presentation of
30 claims, the receiver shall make a list of claims presented, segregating
31 those approved and those rejected, to be filed in the office of the
32 county clerk. The receiver shall also make and file with the office of
33 the county clerk a supplemental list of claims at least fifteen days
34 before the declaration of any liquidation dividend, and in any event at
35 least every six months.

1 Objection may be made by any interested person to any claim
2 approved by the receiver. Objections to claims approved by the
3 receiver will be resolved by the court after providing notice to both
4 the claimant and objector, as the court may prescribe.

5 NEW SECTION. **Sec. 100.** EXPENSES INCURRED BY RECEIVER. All
6 expenses incurred by the receiver in relation to the receivership of a
7 debenture company, including, but not limited to, reasonable attorneys'
8 fees, become a first charge upon the assets of the debenture company.
9 The charges shall be fixed and determined by the receiver, subject to
10 the approval of the court.

11 NEW SECTION. **Sec. 101.** LIQUIDATION DIVIDENDS--APPROVAL OF COURT.
12 At any time after the expiration of the date fixed for the presentation
13 of claims, the receiver, subject to the approval of the court, may
14 declare one or more liquidation dividends out of the funds remaining
15 after the payment of expenses.

16 NEW SECTION. **Sec. 102.** REMAINING ASSETS--DISTRIBUTION. When all
17 expenses of the receivership have been paid, as well as all proper
18 claims of debenture holders and other creditors, and proper provision
19 has been made for unclaimed or unpaid debts and liquidation dividends,
20 and assets of the debenture company still remain, the receiver shall
21 wind up the affairs of the debenture company and distribute its assets
22 to those entitled to them.

23 NEW SECTION. **Sec. 103.** UNCLAIMED LIQUIDATION DIVIDENDS. Any
24 liquidation dividends under section 102 of this act remaining uncalled
25 for and unpaid in the hands of the receiver for six months after the
26 order of final distribution must be deposited and held in trust for the
27 benefit of the persons entitled to the funds and, subject to the
28 supervision of the court, must be paid by the receiver to them upon
29 presentation of satisfactory evidence of their right to the funds.

30 NEW SECTION. **Sec. 104.** PERSONAL PROPERTY--RECEIVER'S DUTIES. (1)
31 The receiver shall inventory, package, and seal uncalled for and
32 unclaimed personal property left with the debenture company and arrange
33 for the packages to be held in safekeeping. The debenture company, its

1 directors and officers, and the receiver shall be relieved of
2 responsibility and liability for the property held in safekeeping. The
3 receiver shall promptly send to each person in whose name the property
4 stood on the books of the debenture company, at the person's last known
5 address, a registered letter notifying the person that the property
6 will be held in the person's name for a period of not less than two
7 years.

8 (2) After the expiration of two years from the date of mailing the
9 notice, the receiver shall promptly send to each person in whose name
10 the property stood on the books of the debenture company, at the
11 person's last known address, a registered letter providing notice of
12 sale. The letter must indicate that the receiver will sell the
13 property set out in the notice, at a public auction at a specified time
14 and place, not less than thirty days after the date of mailing the
15 letter. The receiver may sell the property unless the person, prior to
16 the sale, presents satisfactory evidence of the person's right to the
17 property. A notice of the time and place of the sale must be published
18 once within ten days prior to the sale in a newspaper of general
19 circulation in the county where the sale is to be held.

20 (3) Any property, for which the address of the owner or owners is
21 not known, may be sold at public auction after it has been held by the
22 receiver for two years. A notice of the time and place of the sale
23 must be published once within ten days prior to the sale in a newspaper
24 of general circulation in the county where the sale is to be held.

25 (4) Whenever the personal property left with the debenture company
26 consists either wholly or in part of documents, letters, or other
27 papers of a private nature, the documents, letters, or papers may not
28 be sold, but must be retained by the receiver and may be destroyed
29 after a period of five years.

30 NEW SECTION. **Sec. 105.** PROCEEDS OF SALE--DEPOSIT OR PAYMENT BY
31 RECEIVER. The proceeds of the sale less any amounts for costs and
32 charges incurred in safekeeping and sale must be deposited by the
33 receiver in a financial institution, in trust for the benefit of the
34 person entitled to the property. The sale proceeds must be paid by the
35 receiver to the person upon presentation of satisfactory evidence of
36 the person's right to the funds.

1 NEW SECTION. **Sec. 106.** COMPLETION OF RECEIVERSHIP--MERGER,
2 PURCHASE, OR LIQUIDATION--SECRETARY OF STATE. Upon the completion of
3 a receivership through merger, purchase of assets and assumption of
4 liabilities, or liquidation, the director shall terminate the debenture
5 company's authority to conduct business and certify that fact to the
6 secretary of state. Upon certification, the debenture company shall
7 cease to exist and the secretary of state shall note that fact upon his
8 or her records.

9 NEW SECTION. **Sec. 107.** DIRECTOR MAY TERMINATE RECEIVERSHIP--
10 EXPENSES. If at any time after a receiver is appointed, the director
11 determines that all material deficiencies at the debenture company have
12 been corrected, and that the debenture company is in a safe and sound
13 condition to resume conducting business, the director may terminate the
14 receivership and permit the debenture company to reopen upon such terms
15 and conditions as the director may prescribe. Before being permitted
16 to reopen, the debenture company must pay all of the expenses of the
17 receiver.

18 NEW SECTION. **Sec. 108.** RECEIVERSHIP FILES. The receiver or
19 director, as appropriate, may at any time after the expiration of one
20 year from the order of final distribution, or from the date when the
21 receivership has been completed, destroy any of the remaining files,
22 records, documents, books of account, or other papers of the debenture
23 company that appear to be obsolete or unnecessary for future reference
24 as part of the receivership files.

25 NEW SECTION. **Sec. 109.** APPOINTMENT BY COURT OF TEMPORARY
26 RECEIVER--NOTICE TO DIRECTOR. No receiver may be appointed by any
27 court for any debenture company, except that a court otherwise having
28 jurisdiction may in case of imminent necessity appoint a temporary
29 receiver to take possession of and preserve the assets of the debenture
30 company. Immediately upon appointment, the clerk of the court shall
31 notify the director in writing of the appointment and the director
32 shall appoint a receiver to take possession of the debenture company
33 and the temporary receiver shall upon demand surrender possession of
34 the assets of the debenture company to the receiver. The receiver may

1 in due course pay the temporary receiver out of the assets of the
2 debenture company, subject to the approval of the court.

3 NEW SECTION. **Sec. 110.** ACTIONS THAT ARE VOID--FELONIOUS CONDUCT--
4 PENALTIES. (1) Every transfer of a debenture company's property or
5 assets, and every assignment by a debenture company for the benefit of
6 creditors, made in contemplation of insolvency, or after it has become
7 insolvent, to intentionally prefer one creditor over another, or to
8 intentionally prevent the equal distribution of its property and assets
9 among its creditors, is void.

10 (2) Every debenture company director, officer, or employee making
11 any transfer described in subsection (1) of this section is guilty of
12 a class B felony punishable according to chapter 9A.20 RCW.

13 (3) An officer, director, or employee of a debenture company who
14 fraudulently sells a debenture on behalf of the debenture company,
15 knowing that the debenture company is insolvent, is guilty of a class
16 B felony punishable according to chapter 9A.20 RCW.

17 NEW SECTION. **Sec. 111.** APPLICABILITY OF GENERAL RECEIVERSHIP LAW.
18 Except in cases in which a receiver is appointed by a court on a
19 temporary basis under section 109 of this act, the provisions of Title
20 7 RCW generally applicable to receivers and receiverships do not apply
21 to receivers elected or appointed under this chapter.

22 **Sec. 112.** RCW 42.56.400 and 2005 c 274 s 420 are each amended to
23 read as follows:

24 The following information relating to insurance and financial
25 institutions is exempt from disclosure under this chapter:

26 (1) Records maintained by the board of industrial insurance appeals
27 that are related to appeals of crime victims' compensation claims filed
28 with the board under RCW 7.68.110;

29 (2) Information obtained and exempted or withheld from public
30 inspection by the health care authority under RCW 41.05.026, whether
31 retained by the authority, transferred to another state purchased
32 health care program by the authority, or transferred by the authority
33 to a technical review committee created to facilitate the development,
34 acquisition, or implementation of state purchased health care under
35 chapter 41.05 RCW;

1 (3) The names and individual identification data of all viators
2 regulated by the insurance commissioner under chapter 48.102 RCW;

3 (4) Information provided under RCW 48.30A.045 through 48.30A.060;

4 (5) Information provided under RCW 48.05.510 through 48.05.535,
5 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600
6 through 48.46.625;

7 (6) Information gathered under chapter 19.85 RCW or RCW 34.05.328
8 that can be identified to a particular business;

9 (7) Examination reports and information obtained by the department
10 of financial institutions from banks under RCW 30.04.075, from savings
11 banks under RCW 32.04.220, from savings and loan associations under RCW
12 33.04.110, from credit unions under RCW 31.12.565, from check cashers
13 and sellers under RCW 31.45.030(3), from debenture companies under
14 section 81 of this act, and from securities (~~(brokers and)~~) broker-
15 dealers, investment advisers (~~(under RCW 21.20.100)~~), and issuers under
16 section 51 of this act, all of which is confidential and privileged
17 information;

18 (8) Information provided to the insurance commissioner under RCW
19 48.110.040(3);

20 (9) Documents, materials, or information obtained by the insurance
21 commissioner under RCW 48.02.065, all of which are confidential and
22 privileged; and

23 (10) Confidential proprietary and trade secret information provided
24 to the commissioner under RCW 48.31C.020 through 48.31C.050 and
25 48.31C.070.

26 NEW SECTION. Sec. 113. If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. Sec. 114. Captions used in this act are not any part
31 of the law.

32 NEW SECTION. Sec. 115. Sections 59 through 68 and 71 through 111
33 of this act are each added to chapter 21.20A RCW (created in section
34 116 of this act) and codified with the subchapter heading of "Debenture
35 Companies."

1 NEW SECTION. **Sec. 116.** Sections 1 through 111, 113, 114, and 117
2 of this act constitute a new chapter in Title 21 RCW to be codified as
3 chapter 21.20A RCW.

4 NEW SECTION. **Sec. 117.** This act takes effect January 1, 2007.

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