

CERTIFICATION OF ENROLLMENT

SENATE BILL 6202

Chapter 15, Laws of 1998

55th Legislature
1998 Regular Session

SECURITIES ACT OF WASHINGTON--CONFORMANCE WITH FEDERAL LAW

EFFECTIVE DATE: 6/11/98

Passed by the Senate February 12, 1998

YEAS 46 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House February 27, 1998

YEAS 95 NAYS 0

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved March 11, 1998

CERTIFICATE

I, Mike O Connell, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 6202** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MIKE O'CONNELL

Secretary

FILED

March 11, 1998 - 4:22 p.m.

GARY LOCKE

Governor of the State of Washington

**Secretary of State
State of Washington**

SENATE BILL 6202

Passed Legislature - 1998 Regular Session

State of Washington

55th Legislature

1998 Regular Session

By Senators Winsley and Prentice; by request of Department of Financial Institutions

Read first time 01/13/98. Referred to Committee on Financial Institutions, Insurance & Housing.

1 AN ACT Relating to the securities act of Washington; amending RCW
2 21.20.005, 21.20.020, 21.20.040, 21.20.050, 21.20.060, 21.20.070,
3 21.20.080, 21.20.090, 21.20.100, 21.20.110, 21.20.140, 21.20.310,
4 21.20.320, 21.20.330, 21.20.340, 21.20.370, 21.20.410, 21.20.430, and
5 21.20.540; adding new sections to chapter 21.20 RCW; and prescribing
6 penalties.

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

8 **Sec. 1.** RCW 21.20.005 and 1994 c 256 s 3 are each amended to read
9 as follows:

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

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

14 (2) "Salesperson" means any individual other than a broker-dealer
15 who represents a broker-dealer or issuer in effecting or attempting to
16 effect sales of securities(~~(, but)~~). "Salesperson" does not include an
17 individual who represents an issuer in (a) effecting a transaction in
18 a security exempted by RCW 21.20.310 (1), (2), (3), (4), (9), (10),
19 (11), (12), or (13), (b) effecting transactions exempted by RCW

1 21.20.320 unless otherwise expressly required by the terms of the
2 exemption, or (c) effecting transactions with existing employees,
3 partners, or directors of the issuer if no commission or other
4 remuneration is paid or given directly or indirectly for soliciting any
5 person in this state.

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

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

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

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

1 "Investment adviser" does not include (a) a bank, savings
2 institution, or trust company, (b) a lawyer, accountant, certified
3 public accountant licensed under chapter 18.04 RCW, engineer, or
4 teacher whose performance of these services is solely incidental to the
5 practice of his or her profession, (c) a broker-dealer or its
6 salesperson whose performance of these services is solely incidental to
7 the conduct of its business as a broker-dealer and who receives no
8 special compensation for them, (d) a publisher of any bona fide
9 newspaper, news magazine, news column, newsletter, or business or
10 financial publication ((of general, regular, and paid circulation)) or
11 service, whether communicated in hard copy form, by electronic means,
12 or otherwise, that does not consist of the rendering of advice on the
13 basis of the specific investment situation of each client, (e) a radio
14 or television station, (f) a person whose advice, analyses, or reports
15 relate only to securities exempted by RCW 21.20.310(1), (g) ~~((a person~~
16 ~~who has no place of business in this state if (i) that person's only~~
17 ~~clients in this state are other investment advisers, broker-dealers,~~
18 ~~banks, savings institutions, trust companies, insurance companies,~~
19 ~~investment companies as defined in the investment company act of 1940,~~
20 ~~pension or profit sharing trust, or other financial institutions or~~
21 ~~institutional buyers, whether acting for themselves or as trustees, or~~
22 ~~(ii) during any period of twelve consecutive months that person does~~
23 ~~not direct business communications into this state in any manner to~~
24 ~~more than five clients other than those specified in clause (i) above))~~
25 an investment adviser representative, or (h) such other persons not
26 within the intent of this paragraph as the director may by rule or
27 order designate.

28 (7) "Issuer" means any person who issues or proposes to issue any
29 security, except that with respect to certificates of deposit, voting
30 trust certificates, or collateral-trust certificates, or with respect
31 to certificates of interest or shares in an unincorporated investment
32 trust not having a board of directors (or persons performing similar
33 functions) or of the fixed, restricted management, or unit type; the
34 term "issuer" means the person or persons performing the acts and
35 assuming the duties of depositor or manager pursuant to the provisions
36 of the trust or other agreement or instrument under which the security
37 is issued.

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

1 (9) "Person" means an individual, a corporation, a partnership, a
2 limited liability company, a limited liability partnership, an
3 association, a joint-stock company, a trust where the interest of the
4 beneficiaries are evidenced by a security, an unincorporated
5 organization, a government, or a political subdivision of a government.

6 (10) "Sale" or "sell" includes every contract of sale of, contract
7 to sell, or disposition of, a security or interest in a security for
8 value. "Offer" or "offer to sell" includes every attempt or offer to
9 dispose of, or solicitation of an offer to buy, a security or interest
10 in a security for value.

11 Any security given or delivered with, or as a bonus on account of,
12 any purchase of securities or any other thing is considered to
13 constitute part of the subject of the purchase and to have been offered
14 and sold for value. A purported gift of assessable stock is considered
15 to involve an offer and sale. Every sale or offer of a warrant or
16 right to purchase or subscribe to another security of the same or
17 another issuer, as well as every sale or offer of a security which
18 gives the holder a present or future right or privilege to convert into
19 another security of the same or another issuer, is considered to
20 include an offer of the other security.

21 (11) "Securities Act of 1933," "Securities Exchange Act of 1934,"
22 "Public Utility Holding Company Act of 1935," ((and)) "Investment
23 Company Act of 1940," and "Investment Advisers Act of 1940" means the
24 federal statutes of those names as amended before or after June 10,
25 1959.

26 (12) "Security" means any note; stock; treasury stock; bond;
27 debenture; evidence of indebtedness; certificate of interest or
28 participation in any profit-sharing agreement; collateral-trust
29 certificate; preorganization certificate or subscription; transferable
30 share; investment contract; investment of money or other consideration
31 in the risk capital of a venture with the expectation of some valuable
32 benefit to the investor where the investor does not receive the right
33 to exercise practical and actual control over the managerial decisions
34 of the venture; voting-trust certificate; certificate of deposit for
35 a security; certificate of interest or participation in an oil, gas or
36 mining title or lease or in payments out of production under such a
37 title or lease; charitable gift annuity; any put, call, straddle,
38 option, or privilege on any security, certificate of deposit, or group
39 or index of securities, including any interest therein or based on the

1 value thereof; or any put, call, straddle, option, or privilege entered
2 into on a national securities exchange relating to foreign currency;
3 or, in general, any interest or instrument commonly known as a
4 "security," or any certificate of interest or participation in,
5 temporary or interim certificate for, receipt for, guarantee of, or
6 warrant or right to subscribe to or purchase, any of the foregoing; or
7 any sale of or indenture, bond or contract for the conveyance of land
8 or any interest therein where such land is situated outside of the
9 state of Washington and such sale or its offering is not conducted by
10 a real estate broker licensed by the state of Washington. "Security"
11 does not include any insurance or endowment policy or annuity contract
12 under which an insurance company promises to pay money either in a lump
13 sum or periodically for life or some other specified period.

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

16 (14) "Investment adviser representative" means (~~a person retained~~
17 ~~or employed by an investment adviser to solicit clients or offer the~~
18 ~~services of the investment adviser or manage the accounts of said~~
19 ~~clients~~) any partner, officer, director, or a person occupying similar
20 status or performing similar functions, or other individual, who is
21 employed by or associated with an investment adviser, and who does any
22 of the following:

23 (a) Makes any recommendations or otherwise renders advice regarding
24 securities;

25 (b) Manages accounts or portfolios of clients;

26 (c) Determines which recommendation or advice regarding securities
27 should be given;

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

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

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

33 (a) A member's spouse;

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

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

36 (d) Natural or adopted children of the member or the member's
37 spouse;

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

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

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

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

5 (18) "Federal covered adviser" means any person registered as an
6 investment adviser under section 203 of the Investment Advisers Act of
7 1940.

8 **Sec. 2.** RCW 21.20.020 and 1959 c 282 s 2 are each amended to read
9 as follows:

10 It is unlawful for any person who receives any consideration from
11 another party primarily for advising the other person as to the value
12 of securities or their purchase or sale, whether through the issuance
13 of analyses or reports or otherwise:

14 (1) To employ any device, scheme, or artifice to defraud the other
15 person; ~~((or))~~

16 (2) To engage in any act, practice, or course of business which
17 operates or would operate as a fraud or deceit upon the other person;

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

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

27 **Sec. 3.** RCW 21.20.040 and 1994 c 256 s 5 are each amended to read
28 as follows:

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

1 15(h)(2) of the Securities Exchange Act of 1934 and effects in this
2 state no transactions other than those described by section 15(h)(3) of
3 the Securities Exchange Act of 1934; or (d) the person is a salesperson
4 effecting transactions in open-end investment company securities sold
5 at net asset value without any sales charges.

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

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

33 ~~((+2))~~ (4) It is unlawful for any person, other than a federal
34 covered adviser, to hold himself or herself out as, or otherwise
35 represent that he or she is a "financial planner", "investment
36 counselor", or other similar term, as may be specified in rules adopted
37 by the director, unless the person is registered as an investment
38 adviser or investment adviser representative, is exempt from

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

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

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

14 **Sec. 4.** RCW 21.20.050 and 1994 c 256 s 6 are each amended to read
15 as follows:

16 (1) A broker-dealer, salesperson, investment adviser, or investment
17 adviser representative may apply for registration by filing with the
18 director or his authorized agent an application together with a consent
19 to service of process in such form as the director shall prescribe and
20 payment of the fee prescribed in RCW 21.20.340.

21 (2) A federal covered adviser shall file such documents as the
22 director may, by rule or otherwise, require together with a consent to
23 service of process and the payment of the fee prescribed in RCW
24 21.20.340.

25 **Sec. 5.** RCW 21.20.060 and 1995 c 46 s 1 are each amended to read
26 as follows:

27 The application shall contain whatever information the director
28 requires concerning such matters as:

29 (1) The applicant's form and place of organization;

30 (2) The applicant's proposed method of doing business;

31 (3) The qualifications and business history of the applicant and in
32 the case of a broker-dealer or investment adviser(~~(7)~~); any partner,
33 officer, or director, or any person occupying a similar status or
34 performing similar functions; or any person directly or indirectly
35 controlling the broker-dealer or investment adviser;

1 (4) Any injunction or administrative order or conviction of a
2 misdemeanor involving a security or any aspect of the securities
3 business and any conviction of a felony;

4 (5) The applicant's financial condition and history; ~~((and))~~

5 (6) The address of the principal place of business of the applicant
6 and the addresses of all branch offices of the applicant in this state;
7 and

8 (7) Any information to be furnished or disseminated to any client
9 or prospective client, if the applicant is an investment adviser.

10 The director may by rule or otherwise require a minimum capital for
11 registered broker-dealers ~~((and investment advisers or prescribe a~~
12 ~~ratio between net capital and aggregate indebtedness by type or~~
13 ~~classification))~~, not to exceed the limitations provided in section 15
14 of the Securities Exchange Act of 1934, and establish minimum financial
15 requirements for investment advisers, not to exceed the limitations
16 provided in section 222 of the Investment Advisers Act of 1940, which
17 may include different requirements for investment advisers who maintain
18 custody of clients' funds or securities or who have discretionary
19 authority over those funds or securities, and may ~~((by rule))~~ allow
20 registrants to maintain a surety bond of appropriate amount as an
21 alternative method of compliance with minimum capital or ~~((net~~
22 ~~capital))~~ financial requirements.

23 **Sec. 6.** RCW 21.20.070 and 1981 c 272 s 2 are each amended to read
24 as follows:

25 If the application meets the requirements for registration, as the
26 director may by rule or otherwise determine, and no denial order is in
27 effect and no proceeding is pending under RCW 21.20.110, the director
28 shall make the registration ~~((becomes))~~ effective ~~((when the applicant~~
29 ~~has successfully passed a written examination as prescribed by rule or~~
30 ~~order of the director with the advice of the advisory committee, or has~~
31 ~~satisfactorily demonstrated that the applicant is exempt from the~~
32 ~~written examination requirements of this section))~~.

33 **Sec. 7.** RCW 21.20.080 and 1994 c 256 s 8 are each amended to read
34 as follows:

35 Registration of a broker-dealer, salesperson, investment adviser
36 representative, or investment adviser shall be effective for a one-year
37 period unless the director by rule or order provides otherwise. The

1 director by rule or order may schedule registration or renewal so that
2 all registrations and renewals expire December 31st. The director may
3 adjust the fee for registration or renewal proportionately. The
4 registration of a salesperson or investment adviser representative is
5 not effective during any period when the salesperson is not employed by
6 or associated with an issuer or a registered broker-dealer or when the
7 investment adviser representative is not employed by or associated with
8 ~~((a registered))~~ an investment adviser registered under this chapter or
9 a federal covered adviser who has made a notice filing pursuant to RCW
10 21.20.050. To be employed by or associated with an issuer, broker-
11 dealer, federal covered adviser, or investment adviser within the
12 meaning of this section ~~((written))~~ notice, either in writing or in
13 some other format as the director may by rule or otherwise specify,
14 must be given to the director. When a salesperson begins or terminates
15 ~~((an))~~ employment or association with an issuer or registered broker-
16 dealer, the salesperson and the issuer or broker-dealer shall promptly
17 notify the director. When an investment adviser representative
18 registered under this chapter begins or terminates ~~((an))~~ employment or
19 association with ~~((a registered))~~ an investment adviser~~((r))~~ registered
20 under this chapter or a federal covered adviser required to make a
21 notice filing pursuant to RCW 21.20.050, the investment adviser
22 representative and ~~((registered))~~ investment adviser or federal covered
23 adviser shall promptly notify the director.

24 Notwithstanding any provision of law to the contrary, the director
25 may, from time to time, extend the duration of a licensing period for
26 the purpose of staggering renewal periods. Such extension of a
27 licensing period shall be by rule ~~((or regulation))~~ adopted in
28 accordance with the provisions of chapter 34.05 RCW. Such rules ~~((and~~
29 ~~regulations))~~ may provide a method for imposing and collecting such
30 additional proportional fee as may be required for the extended period.

31 **Sec. 8.** RCW 21.20.090 and 1995 c 46 s 2 are each amended to read
32 as follows:

33 Registration of a broker-dealer, salesperson, investment adviser
34 representative, or investment adviser may be renewed by filing with the
35 director or his or her authorized agent prior to the expiration thereof
36 an application containing such information as the director may require
37 to indicate any material change in the information contained in the
38 original application or any renewal application for registration as a

1 broker-dealer, salesperson, investment adviser representative, or
2 investment adviser filed with the director or his or her authorized
3 agent by the applicant, payment of the prescribed fee, and, in the case
4 of a broker-dealer or investment adviser such financial reports as the
5 director may ~~((by rule))~~ prescribe by rule or otherwise. The reporting
6 requirements so prescribed for a broker-dealer may not exceed the
7 limitations provided in section 15 of the Securities Exchange Act of
8 1934. A registered broker-dealer or investment adviser may file an
9 application for registration of a successor, and the ~~((administrator))~~
10 director may at his or her discretion grant or deny the application.

11 **Sec. 9.** RCW 21.20.100 and 1959 c 282 s 10 are each amended to read
12 as follows:

13 (1) Every registered broker-dealer and investment adviser shall
14 make and keep such accounts, correspondence, memoranda, papers, books,
15 and other records, except with respect to securities exempt under RCW
16 21.20.310(1), which ~~((accounts))~~ books and other records shall be
17 prescribed by the director by rule or otherwise. ~~((All records so~~
18 required shall be preserved for three years unless the director
19 prescribes otherwise for particular types of records.)) The
20 recordmaking and recordkeeping requirements prescribed for a broker-
21 dealer shall not exceed the limitations provided in section 15 of the
22 Securities Exchange Act of 1934. The recordmaking and recordkeeping
23 requirements prescribed for a registered investment adviser shall not
24 exceed the limitations provided in section 222 of the Investment
25 Advisers Act of 1940. All records required to be made and kept by a
26 registered investment adviser shall be preserved for such a period as
27 the director prescribes by rule or otherwise.

28 (2) With respect to investment advisers, the director may require
29 that certain information be furnished or disseminated as necessary or
30 appropriate in the public interest or for the protection of investors
31 and advisory clients.

32 (3) If the information contained in any document filed with the
33 director is or becomes inaccurate or incomplete in any material
34 respect, the registrant shall promptly file a correcting amendment
35 unless notification of the correction has been given under RCW
36 21.20.090.

37 (4) All the records of a registered broker-dealer or investment
38 adviser are subject at any time or from time to time to such reasonable

1 periodic, special or other examinations by representatives of the
2 director, within or without this state, as the director deems necessary
3 or appropriate in the public interest or for the protection of
4 investors.

5 **Sec. 10.** RCW 21.20.110 and 1997 c 58 s 856 are each amended to
6 read as follows:

7 (1) The director may by order deny, suspend, or revoke registration
8 of any broker-dealer, salesperson, investment adviser representative,
9 or investment adviser; censure or fine the registrant or an officer,
10 director, partner, or person occupying similar functions for a
11 registrant; or restrict or limit a registrant's function or activity of
12 business for which registration is required in this state; if the
13 director finds that the order is in the public interest and that the
14 applicant or registrant or, in the case of a broker-dealer or
15 investment adviser, any partner, officer, or director:

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

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

26 ~~((+3))~~ (c) Has been convicted, within the past five years, of any
27 misdemeanor involving a security, or a commodity contract or commodity
28 option as defined in RCW 21.30.010, or any aspect of the securities or
29 investment commodities business, or any felony involving moral
30 turpitude;

31 ~~((+4))~~ (d) Is permanently or temporarily enjoined by any court of
32 competent jurisdiction from engaging in or continuing any conduct or
33 practice involving any aspect of the securities or investment
34 commodities business;

35 ~~((+5))~~ (e) Is the subject of an order of the director denying,
36 suspending, or revoking registration as a broker-dealer, salesperson,
37 investment adviser, or investment adviser representative;

1 (~~(6)~~) (f) Is the subject of an order entered within the past five
2 years by the securities administrator of any other state or by the
3 federal securities and exchange commission denying or revoking
4 registration as a broker-dealer or salesperson, or a commodity broker-
5 dealer or sales representative, or the substantial equivalent of those
6 terms as defined in this chapter or by the commodity futures trading
7 commission denying or revoking registration as a commodity merchant as
8 defined in RCW 21.30.010, or is the subject of an order of suspension
9 or expulsion from membership in or association with a self-regulatory
10 organization registered under the securities exchange act of 1934 or
11 the federal commodity exchange act, or is the subject of a United
12 States post office fraud order; but (~~(a)~~) (i) the director may not
13 institute a revocation or suspension proceeding under this clause more
14 than one year from the date of the order relied on, and (~~(b)~~) (ii)
15 the director may not enter any order under this clause on the basis of
16 an order unless that order was based on facts which would currently
17 constitute a ground for an order under this section;

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

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

26 (~~(9)~~) (i) Has not complied with a condition imposed by the
27 director under RCW 21.20.100, or is not qualified on the basis of such
28 factors as training, experience, or knowledge of the securities
29 business; or

30 (~~(10)(a)~~) (j) Has failed to supervise reasonably a salesperson or
31 an investment adviser representative. For the purposes of this
32 subsection, no person fails to supervise reasonably another person, if:

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

37 (ii) The supervising person has reasonably discharged the duties
38 and obligations required by these procedures and system without

1 reasonable cause to believe that another person was violating this
2 chapter or rules or orders under this chapter.

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

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

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

27 **Sec. 11.** RCW 21.20.140 and 1975 1st ex.s. c 84 s 10 are each
28 amended to read as follows:

29 It is unlawful for any person to offer or sell any security in this
30 state(~~(, except securities exempt under RCW 21.20.310 or when sold in~~
31 ~~transactions exempt under RCW 21.20.320,)~~) unless ~~((such))~~: (1) The
32 security is registered by coordination or qualification under this
33 chapter; (2) the security or transaction is exempted under RCW
34 21.20.310 or 21.20.320; or (3) the security is a federal covered
35 security, and, if required, the filing is made and a fee is paid in
36 accordance with section 12 of this act.

1 NEW SECTION. **Sec. 12.** A new section is added to chapter 21.20 RCW
2 to read as follows:

3 (1) The director, by rule or otherwise, may require the filing of
4 any or all of the following documents and the payment of the following
5 fees with respect to a federal covered security under section 18(b)(2)
6 of the Securities Act of 1933:

7 (a) Prior to the initial offer of such a federal covered security
8 in this state, all documents that are part of the current federal
9 registration statement filed with the U.S. Securities and Exchange
10 Commission under the Securities Act of 1933, together with a consent to
11 service of process signed by the issuer and the fee prescribed by RCW
12 21.20.340;

13 (b) After the initial offer of such a federal covered security in
14 this state, all documents that are part of an amendment to a current
15 federal registration statement filed with the U.S. Securities and
16 Exchange Commission under the Securities Act of 1933 and all fees
17 prescribed by RCW 21.20.340; and

18 (c) An annual or periodic report of the value of such federal
19 covered securities offered in this state, together with the fee
20 prescribed by RCW 21.20.340.

21 (2) With respect to any security that is a federal covered security
22 under section 18(b)(4)(D) of the Securities Act of 1933, the director,
23 by rule or otherwise, may require the issuer to file a notice on SEC
24 Form D, together with a consent to service of process signed by the
25 issuer and the fee prescribed pursuant to RCW 21.20.340, no later than
26 fifteen days after the first sale of such a federal covered security in
27 this state.

28 (3) The director, by rule or otherwise, may require the filing of
29 any document filed with the U.S. Securities and Exchange Commission
30 under the Securities Act of 1933, with respect to a federal covered
31 security under section 18(b) (3) or (4) of the Securities Act of 1933
32 and/or the payment of the fee prescribed pursuant to RCW 21.20.340.

33 (4) The director may issue a stop order suspending the offer and
34 sale of a federal covered security, except a federal covered security
35 under section 18(b)(1) of the Securities Act of 1933, if the director
36 finds that there is a failure to comply with any requirement
37 established under this section.

38 (5) The director, by rule or otherwise, may waive any or all of the
39 provisions of this section.

1 **Sec. 13.** RCW 21.20.310 and 1995 c 46 s 4 are each amended to read
2 as follows:

3 RCW 21.20.140 through 21.20.300, inclusive, and section 12 of this
4 act do not apply to any of the following securities:

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

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

30 (3) Any security issued by and representing an interest in or a
31 debt of, or guaranteed by, any bank organized under the laws of the
32 United States, or any bank or trust company organized or supervised
33 under the laws of any state.

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

38 (5) Any security issued by and representing an interest in or a
39 debt of, or guaranteed by, any insurance company organized under the

1 laws of this state and authorized to do and actually doing business in
2 this state.

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

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

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

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

30 (10) Any security issued in connection with an employee's stock
31 purchase, savings, pension, profit-sharing, or similar benefit plan if:
32 (a) The plan meets the requirements for qualification as a pension,
33 profit sharing, or stock bonus plan under section 401 of the internal
34 revenue code, as an incentive stock option plan under section 422 of
35 the internal revenue code, as a nonqualified incentive stock option
36 plan adopted with or as a supplement to an incentive stock option plan
37 under section 422 of the internal revenue code, or as an employee stock
38 purchase plan under section 423 of the internal revenue code; or (b)
39 the director is notified in writing with a copy of the plan thirty days

1 before offering the plan to employees in this state. In the event of
2 late filing of notification the director may upon application, for good
3 cause excuse such late filing if he or she finds it in the public
4 interest to grant such relief.

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

20 The notice shall consist of the following:

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

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

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

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

28 (e) A statement of the proposed use of the proceeds of the sale of
29 the security; and

30 (f) A statement that the issuer shall provide to a prospective
31 purchaser written information regarding the securities offered prior to
32 consummation of any sale, which information shall include the following
33 statements: (i) "ANY PROSPECTIVE PURCHASER IS ENTITLED TO REVIEW
34 FINANCIAL STATEMENTS OF THE ISSUER WHICH SHALL BE FURNISHED UPON
35 REQUEST."; (ii) "RECEIPT OF NOTICE OF EXEMPTION BY THE WASHINGTON
36 ADMINISTRATOR OF SECURITIES DOES NOT SIGNIFY THAT THE ADMINISTRATOR HAS
37 APPROVED OR RECOMMENDED THESE SECURITIES, NOR HAS THE ADMINISTRATOR
38 PASSED UPON THE OFFERING. ANY REPRESENTATION TO THE CONTRARY IS A

1 CRIMINAL OFFENSE."; and (iii) "THE RETURN OF THE FUNDS OF THE PURCHASER
2 IS DEPENDENT UPON THE FINANCIAL CONDITION OF THE ORGANIZATION."

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

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

7 **Sec. 14.** RCW 21.20.320 and 1989 c 307 s 34 are each amended to
8 read as follows:

9 The following transactions are exempt from RCW 21.20.040 through
10 21.20.300 and section 12 of this act except as expressly provided:

11 (1) Any isolated transaction, or sales not involving a public
12 offering, whether effected through a broker-dealer or not; or any
13 transaction effected in accordance with any rule by the director
14 establishing a nonpublic offering exemption pursuant to this subsection
15 where registration is not necessary or appropriate in the public
16 interest or for the protection of investors.

17 (2) Any nonissuer (~~(distribution of an outstanding security by a~~
18 ~~registered broker-dealer if (a) a recognized securities manual contains~~
19 ~~the names of the issuer's officers and directors, a balance sheet of~~
20 ~~the issuer as of a date within eighteen months, and a profit and loss~~
21 ~~statement for either the fiscal year preceding that date or the most~~
22 ~~recent year of operations, or (b) the security has a fixed maturity or~~
23 ~~a fixed interest or dividend provision and there has been no default~~
24 ~~during the current fiscal year or within the three preceding fiscal~~
25 ~~years, or during the existence of the issuer and any predecessors if~~
26 ~~less than three years, in the payment of principal, interest, or~~
27 ~~dividends on the security)) transaction by a registered salesperson of
28 a registered broker-dealer, and any resale transaction by a sponsor of
29 a unit investment trust registered under the Investment Company Act of
30 1940 pursuant to any rule adopted by the director.~~

31 (3) Any nonissuer transaction effected by or through a registered
32 broker-dealer pursuant to an unsolicited order or offer to buy; but the
33 director may by rule require that the customer acknowledge upon a
34 specified form that the sale was unsolicited, and that a signed copy of
35 each such form be preserved by the broker-dealer for a specified
36 period.

37 (4) Any transaction between the issuer or other person on whose
38 behalf the offering is made and an underwriter, or among underwriters.

1 (5) Any transaction in a bond or other evidence of indebtedness
2 secured by a real or chattel mortgage or deed of trust, or by an
3 agreement for the sale of real estate or chattels, if the entire
4 mortgage, deed of trust, or agreement, together with all the bonds or
5 other evidences of indebtedness secured thereby, is offered and sold as
6 a unit. A bond or other evidence of indebtedness is not offered and
7 sold as a unit if the transaction involves:

8 (a) A partial interest in one or more bonds or other evidences of
9 indebtedness secured by a real or chattel mortgage or deed of trust, or
10 by an agreement for the sale of real estate or chattels; or

11 (b) One of multiple bonds or other evidences of indebtedness
12 secured by one or more real or chattel mortgages or deeds of trust, or
13 agreements for the sale of real estate or chattels, sold to more than
14 one purchaser as part of a single plan of financing; or

15 (c) A security including an investment contract other than the bond
16 or other evidence of indebtedness.

17 (6) Any transaction by an executor, administrator, sheriff,
18 marshal, receiver, trustee in bankruptcy, guardian, or conservator.

19 (7) Any transaction executed by a bona fide pledgee without any
20 purpose of evading this chapter.

21 (8) Any offer or sale to a bank, savings institution, trust
22 company, insurance company, investment company as defined in the
23 Investment Company Act of 1940, pension or profit-sharing trust, or
24 other financial institution or institutional buyer, or to a broker-
25 dealer, whether the purchaser is acting for itself or in some fiduciary
26 capacity.

27 (9) Any transaction (~~pursuant to an offering not exceeding five~~
28 ~~hundred thousand dollars~~) effected in accordance with the terms and
29 conditions of any rule adopted by the director if:

30 (a) The aggregate offering amount does not exceed five million
31 dollars; and

32 (b) The director finds that registration is not necessary in the
33 public interest and for the protection of investors.

34 (10) Any offer or sale of a preorganization certificate or
35 subscription if (a) no commission or other remuneration is paid or
36 given directly or indirectly for soliciting any prospective subscriber,
37 (b) the number of subscribers does not exceed ten, and (c) no payment
38 is made by any subscriber.

1 (11) Any transaction pursuant to an offer to existing security
2 holders of the issuer, including persons who at the time of the
3 transaction are holders of convertible securities, nontransferable
4 warrants, or transferable warrants exercisable within not more than
5 ninety days of their issuance, if (a) no commission or other
6 remuneration (other than a standby commission) is paid or given
7 directly or indirectly for soliciting any security holder in this
8 state, or (b) the issuer first files a notice specifying the terms of
9 the offer and the director does not by order disallow the exemption
10 within the next five full business days.

11 (12) Any offer (but not a sale) of a security for which
12 registration statements have been filed under both this chapter and the
13 Securities Act of 1933 if no stop order or refusal order is in effect
14 and no public proceeding or examination looking toward such an order is
15 pending under either act.

16 (13) The issuance of any stock dividend, whether the corporation
17 distributing the dividend is the issuer of the stock or not, if nothing
18 of value is given by stockholders for the distribution other than the
19 surrender of a right to a cash dividend where the stockholder can elect
20 to take a dividend in cash or stock.

21 (14) Any transaction incident to a right of conversion or a
22 statutory or judicially approved reclassification, recapitalization,
23 reorganization, quasi reorganization, stock split, reverse stock split,
24 merger, consolidation, or sale of assets.

25 (15) The offer or sale by a registered broker-dealer, or a person
26 exempted from the registration requirements pursuant to RCW 21.20.040,
27 acting either as principal or agent, of securities previously sold and
28 distributed to the public: PROVIDED, That:

29 (a) Such securities are sold at prices reasonably related to the
30 current market price thereof at the time of sale, and, if such broker-
31 dealer is acting as agent, the commission collected by such broker-
32 dealer on account of the sale thereof is not in excess of usual and
33 customary commissions collected with respect to securities and
34 transactions having comparable characteristics;

35 (b) Such securities do not constitute the whole or a part of an
36 unsold allotment to or subscription or participation by such broker-
37 dealer as an underwriter of such securities or as a participant in the
38 distribution of such securities by the issuer, by an underwriter or by

1 a person or group of persons in substantial control of the issuer or of
2 the outstanding securities of the class being distributed; and

3 (c) The security has been lawfully sold and distributed in this
4 state or any other state of the United States under this or any act
5 regulating the sale of such securities.

6 (16) Any transaction by a mutual or cooperative association meeting
7 the requirements of (a) and (b) of this subsection:

8 (a) The transaction:

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

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

11 (A) The association first files a notice of claim of exemption on
12 a form prescribed by the director specifying the terms of the offer and
13 the director does not by order deny the exemption within the next ten
14 full business days; or

15 (B) The association is an employee cooperative and identifies
16 itself as an employee cooperative in advertising or public
17 solicitation.

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

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

21 (B) Represents a contribution of capital to the association by a
22 person who is or intends to become a member or patron of the
23 association;

24 (C) Represents a patronage dividend or other patronage allocation;
25 or

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

29 (ii) Is nontransferable except in the case of death, operation of
30 law, bona fide transfer for security purposes only to the association,
31 a bank, or other financial institution, intrafamily transfer, or
32 transfer to an existing member or person who will become a member and,
33 in the case of an instrument, so states conspicuously on its face.

34 (17) Any transaction effected in accordance with any rule adopted
35 by the director establishing a limited offering exemption which
36 furthers objectives of compatibility with federal exemptions and
37 uniformity among the states, provided that in adopting any such rule
38 the director may require that no commission or other remuneration be
39 paid or given to any person, directly or indirectly, for effecting

1 sales unless the person is registered under this chapter as a broker-
2 dealer or salesperson.

3 **Sec. 15.** RCW 21.20.330 and 1994 c 256 s 19 are each amended to
4 read as follows:

5 Every applicant for registration as a broker-dealer, investment
6 adviser, investment adviser representative, or salesperson under this
7 chapter ((and)), every issuer that files an application to register or
8 files a claim of exemption from registration to offer a security in
9 this state through any person acting on an agency basis in the common
10 law sense, and every person filing pursuant to RCW 21.20.050 or section
11 12 of this act shall file with the director or with such person as the
12 director may by rule or order designate, in such form as the director
13 by rule prescribes, an irrevocable consent appointing the director or
14 the director's successor in office to be the attorney of the applicant
15 to receive service of any lawful process in any noncriminal suit,
16 action, or proceeding against the applicant or the applicant's
17 successor, executor or administrator which arises under this chapter or
18 any rule or order hereunder after the consent has been filed, with the
19 same force and validity as if served personally on the person filing
20 the consent. A person who has filed such a consent in connection with
21 a previous registration, or notice filing pursuant to RCW 21.20.050 or
22 section 12 of this act, need not file another. Service may be made by
23 leaving a copy of the process in the office of the director, but it is
24 not effective unless (1) the plaintiff, who may be the director in a
25 suit, action, or proceeding instituted by him or her, forthwith sends
26 notice of the service and a copy of the process by registered mail to
27 the defendant or respondent at the last address of the respondent or
28 defendant on file with the director, and (2) the plaintiff's affidavit
29 of compliance with this section is filed in the case on or before the
30 return day of the process, if any, or within such further time as the
31 court allows.

32 **Sec. 16.** RCW 21.20.340 and 1995 c 46 s 5 are each amended to read
33 as follows:

34 The following fees shall be paid in advance under the provisions of
35 this chapter:

36 (1)(a) For registration of securities by qualification, the fee
37 shall be one hundred dollars for the first one hundred thousand dollars

1 of initial issue, or portion thereof in this state, based on offering
2 price, plus one-twentieth of one percent for any excess over one
3 hundred thousand dollars which are to be offered during that year:
4 PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty-
5 dollar fee renew for one additional twelve-month period only the unsold
6 portion for which the registration fee has been paid.

7 (b) For the offer of a federal covered security that (i) is an
8 exempt security pursuant to section 3(2) of the Securities Act of 1933,
9 and (ii) would not qualify for the exemption or a discretionary order
10 of exemption pursuant to RCW 21.20.310(1), the fee shall be one hundred
11 dollars for the first one hundred thousand dollars of initial issue, or
12 portion thereof in this state, based on offering price, plus one-
13 twentieth of one percent for any excess over one hundred thousand
14 dollars which are to be offered during that year: PROVIDED, HOWEVER,
15 That an issuer may upon the payment of a fifty-dollar fee renew for one
16 additional twelve-month period only the unsold portion for which the
17 filing fee has been paid.

18 (2)(a) For registration by coordination of securities issued by an
19 investment company, other than a closed-end company, as those terms are
20 defined in the Investment Company Act of 1940, the fee shall be one
21 hundred dollars for the first one hundred thousand dollars of initial
22 issue, or portion thereof in this state, based on offering price, plus
23 one-twentieth of one percent for any excess over one hundred thousand
24 dollars which are to be offered in this state during that year:
25 PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty-
26 dollar fee renew for ~~((an))~~ one additional twelve-month period the
27 unsold portion for which the registration fee has been paid.

28 (b) For each offering by an investment company, other than a
29 closed-end company, as those terms are defined in the Investment
30 Company Act of 1940, making a notice filing pursuant to section 12(1)
31 of this act, the initial filing fee shall be one hundred dollars for
32 the first one hundred thousand dollars of initial issue, or portion
33 thereof in this state, based on offering price, plus one-twentieth of
34 one percent for any excess over one hundred thousand dollars which are
35 to be offered in this state during that year. The amount offered in
36 this state during the year may be increased by paying one-twentieth of
37 one percent of the desired increase, based on offering price, prior to
38 the sale of securities to be covered by the fee: PROVIDED, HOWEVER,
39 That an issuer may upon the payment of a fifty-dollar fee renew for one

1 additional twelve-month period the unsold portion for which the filing
2 fee has been paid.

3 (3)(a) For registration by coordination of securities not covered
4 by subsection (2) of this section, the initial filing fee shall be one
5 hundred dollars for the first one hundred thousand dollars of initial
6 issue, or portion thereof in this state, based on offering price, plus
7 one-fortieth of one percent for any excess over one hundred thousand
8 dollars for the first twelve-month period plus one hundred dollars for
9 each additional twelve months in which the same offering is continued.
10 The amount offered in this state during the year may be increased by
11 paying one-fortieth of one percent of the desired increase, based on
12 offering price, prior to the sale of securities to be covered by the
13 fee.

14 (b) For each offering by a closed-end investment company, making a
15 notice filing pursuant to section 12(1) of this act, the initial filing
16 fee shall be one hundred dollars for the first one hundred thousand
17 dollars of initial issue, or portion thereof in this state, based on
18 offering price, plus one-fortieth of one percent for any excess over
19 one hundred thousand dollars for the first twelve-month period plus one
20 hundred dollars for each additional twelve months in which the same
21 offering is continued. The amount offered in this state during the
22 year may be increased by paying one-fortieth of one percent of the
23 desired increase, based on offering price, prior to the sale of
24 securities to be covered by the fee.

25 (4) For filing annual financial statements, the fee shall be
26 twenty-five dollars.

27 (5)(a) For filing an amended offering circular after the initial
28 registration permit has been granted or pursuant to section 12(1)(b) of
29 this act, the fee shall be ten dollars.

30 (b) For filing a report under RCW 21.20.270(1) or section 12(1)(c)
31 of this act, the fee shall be ten dollars.

32 (6)(a) For registration of a broker-dealer or investment adviser,
33 the fee shall be one hundred fifty dollars for original registration
34 and seventy-five dollars for each annual renewal. When an application
35 is denied or withdrawn the director shall retain one-half of the fee.

36 (b) For a federal covered adviser filing pursuant to RCW 21.20.050,
37 the fee shall be one hundred fifty dollars for original notification
38 and seventy-five dollars for each annual renewal. A fee shall not be
39 assessed in connection with converting an investment adviser

1 registration to a notice filing when the investment adviser becomes a
2 federal covered adviser.

3 (7) For registration of a salesperson or investment adviser
4 representative, the fee shall be forty dollars for original
5 registration with each employer and twenty dollars for each annual
6 renewal. When an application is denied or withdrawn the director shall
7 retain one-half of the fee.

8 (8) If a registration, or filing pursuant to RCW 21.20.050, of a
9 broker-dealer, salesperson, investment adviser, federal covered
10 adviser, or investment adviser representative is not renewed on or
11 before December 31st of each year the renewal is delinquent. The
12 director by rule or order may set and assess a fee for delinquency not
13 to exceed two hundred dollars. Acceptance by the director of an
14 application for renewal after December 31st is not a waiver of
15 delinquency. A delinquent application for renewal will not be accepted
16 for filing after March 1st.

17 (9)(a) For the transfer of a broker-dealer license to a successor,
18 the fee shall be fifty dollars.

19 (b) For the transfer of a salesperson license from a broker-dealer
20 or issuer to another broker-dealer or issuer, the transfer fee shall be
21 twenty-five dollars.

22 (c) For the transfer of an investment adviser representative
23 license from an investment adviser to another investment adviser, the
24 transfer fee shall be twenty-five dollars.

25 (d) For the transfer of an investment adviser license to a
26 successor, the fee shall be fifty dollars.

27 (10)(a) The director may provide by rule for the filing of notice
28 of claim of exemption under RCW 21.20.320 (1), (9), and (17) and set
29 fees accordingly not to exceed three hundred dollars.

30 (b) For the filing required by section 12(2) of this act, the fee
31 shall be three hundred dollars.

32 (11) For filing of notification of claim of exemption from
33 registration pursuant to RCW 21.20.310(11), as now or hereafter
34 amended, the fee shall be fifty dollars for each filing.

35 (12) For rendering interpretative opinions, the fee shall be
36 thirty-five dollars.

37 (13) For certified copies of any documents filed with the director,
38 the fee shall be the cost to the department.

39 (14) For a duplicate license the fee shall be five dollars.

1 All fees collected under this chapter shall be turned in to the
2 state treasury and are not refundable, except as herein provided.

3 **Sec. 17.** RCW 21.20.370 and 1994 c 256 s 21 are each amended to
4 read as follows:

5 The director in his or her discretion (1) may annually, or more
6 frequently, make such public or private investigations within or
7 without this state as the director deems necessary to determine whether
8 any registration should be granted, denied or revoked or whether any
9 person has violated or is about to violate any provision of this
10 chapter or any rule or order hereunder, or to aid in the enforcement of
11 this chapter or in the prescribing of rules and forms hereunder, (2) may
12 engage in the detection and identification of criminal activities
13 subject to this chapter, (3) may require or permit any person to file
14 a statement in writing, under oath or otherwise as the director may
15 determine, as to all the facts and circumstances concerning the matter
16 to be investigated, and ((+3+)) (4) may publish information concerning
17 any violation of this chapter or any rule or order hereunder.

18 NEW SECTION. **Sec. 18.** A new section is added to chapter 21.20 RCW
19 to read as follows:

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

25 (2) If a petition for judicial review has not been timely filed
26 under RCW 34.05.542(2), a certified copy of the director's order
27 requiring payment of the fine may be filed in the office of the clerk
28 of the superior court in any county of this state. The clerk shall
29 treat the order of the director in the same manner as a judgment of the
30 superior court. The director's order so filed has the same effect as
31 a judgment of the superior court and may be recorded, enforced, or
32 satisfied in like manner.

33 **Sec. 19.** RCW 21.20.410 and 1979 ex.s. c 68 s 29 are each amended
34 to read as follows:

35 (1) The director may refer such evidence as may be available
36 concerning violations of this chapter or of any rule or order hereunder

1 to the attorney general or the proper prosecuting attorney, who may in
2 his or her discretion, with or without such a reference, institute the
3 appropriate criminal proceedings under this chapter.

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

6 **Sec. 20.** RCW 21.20.430 and 1986 c 304 s 1 are each amended to read
7 as follows:

8 (1) Any person, who offers or sells a security in violation of any
9 provisions of RCW 21.20.010 (~~(or)~~), 21.20.140 (1) or (2), or 21.20.180
10 through 21.20.230, is liable to the person buying the security from him
11 or her, who may sue either at law or in equity to recover the
12 consideration paid for the security, together with interest at eight
13 percent per annum from the date of payment, costs, and reasonable
14 attorneys' fees, less the amount of any income received on the
15 security, upon the tender of the security, or for damages if he or she
16 no longer owns the security. Damages are the amount that would be
17 recoverable upon a tender less (a) the value of the security when the
18 buyer disposed of it and (b) interest at eight percent per annum from
19 the date of disposition.

20 (2) Any person who buys a security in violation of the provisions
21 of RCW 21.20.010 is liable to the person selling the security to him or
22 her, who may sue either at law or in equity to recover the security,
23 together with any income received on the security, upon tender of the
24 consideration received, costs, and reasonable attorneys' fees, or if
25 the security cannot be recovered, for damages. Damages are the value
26 of the security when the buyer disposed of it, and any income received
27 on the security, less the consideration received for the security, plus
28 interest at eight percent per annum from the date of disposition,
29 costs, and reasonable attorneys' fees.

30 (3) Every person who directly or indirectly controls a seller or
31 buyer liable under subsection (1) or (2) above, every partner, officer,
32 director or person who occupies a similar status or performs a similar
33 function of such seller or buyer, every employee of such a seller or
34 buyer who materially aids in the transaction, and every broker-dealer,
35 salesperson, or person exempt under the provisions of RCW 21.20.040 who
36 materially aids in the transaction is also liable jointly and severally
37 with and to the same extent as the seller or buyer, unless such person
38 sustains the burden of proof that he or she did not know, and in the

1 exercise of reasonable care could not have known, of the existence of
2 the facts by reason of which the liability is alleged to exist. There
3 is contribution as in cases of contract among the several persons so
4 liable.

5 (4)(a) Every cause of action under this statute survives the death
6 of any person who might have been a plaintiff or defendant.

7 (b) No person may sue under this section more than three years
8 after the contract of sale for any violation of the provisions of RCW
9 21.20.140 (1) or (2) or 21.20.180 through 21.20.230, or more than three
10 years after a violation of the provisions of RCW 21.20.010, either was
11 discovered by such person or would have been discovered by him or her
12 in the exercise of reasonable care. No person may sue under this
13 section if the buyer or seller receives a written rescission offer,
14 which has been passed upon by the director before suit and at a time
15 when he or she owned the security, to refund the consideration paid
16 together with interest at eight percent per annum from the date of
17 payment, less the amount of any income received on the security in the
18 case of a buyer, or plus the amount of income received on the security
19 in the case of a seller.

20 (5) No person who has made or engaged in the performance of any
21 contract in violation of any provision of this chapter or any rule or
22 order hereunder, or who has acquired any purported right under any such
23 contract with knowledge of the facts by reason of which its making or
24 performance was in violation, may base any suit on the contract. Any
25 condition, stipulation, or provision binding any person acquiring any
26 security to waive compliance with any provision of this chapter or any
27 rule or order hereunder is void.

28 (6) Any tender specified in this section may be made at any time
29 before entry of judgment.

30 (7) Notwithstanding subsections (1) through (6) of this section, if
31 an initial offer or sale of securities that are exempt from
32 registration under RCW 21.20.310 is made by this state or its agencies,
33 political subdivisions, municipal or quasi-municipal corporations, or
34 other instrumentality of one or more of the foregoing and is in
35 violation of RCW 21.20.010(2), and any such issuer, member of the
36 governing body, committee member, public officer, director, employee,
37 or agent of such issuer acting on its behalf, or person in control of
38 such issuer, member of the governing body, committee member, public
39 officer, director, employee, or agent of such person acting on its

1 behalf, materially aids in the offer or sale, such person is liable to
2 the purchaser of the security only if the purchaser establishes
3 scienter on the part of the defendant. The word "employee" or the word
4 "agent," as such words are used in this subsection, do not include a
5 bond counsel or an underwriter. Under no circumstances whatsoever
6 shall this subsection be applied to require purchasers to establish
7 scienter on the part of bond counsels or underwriters. The provisions
8 of this subsection are retroactive and apply to any action commenced
9 but not final before July 27, 1985. In addition, the provisions of
10 this subsection apply to any action commenced on or after July 27,
11 1985.

12 **Sec. 21.** RCW 21.20.540 and 1959 c 282 s 54 are each amended to
13 read as follows:

14 In any proceeding under this chapter, the burden of proving an
15 exemption ((or)), an exception from a definition, or a preemption of a
16 provision of this chapter is upon the person claiming it.

Passed the Senate February 12, 1998.

Passed the House February 27, 1998.

Approved by the Governor March 11, 1998.

Filed in Office of Secretary of State March 11, 1998.