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**Insurance, Financial Services &  
Consumer Protection Committee**

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**HB 1433**

**Brief Description:** Adopting the uniform securities act of Washington.

**Sponsors:** Representative Kirby; by request of Uniform Legislation Commission.

**Brief Summary of Bill**

- Repeals the existing state securities act, Chapter 21.20 RCW.
- Creates a new state securities act, to be codified as Chapter 21.20A RCW.
- Adds new definitions and alters existing definitions.
- Exempts additional securities and transactions from registration.

**Hearing Date:** 2/21/07

**Staff:** Jon Hedegard (786-7127).

**Background:**

The Department of Financial Institutions (DFI), through its Securities Division, is responsible for the regulation of the securities market in this state. The mission of the Securities Division is to protect Washington residents from dishonest or fraudulent practices by people selling investments. The Securities Division utilizes through a variety of regulatory and enforcement tools, including:

- registration requirements for securities, franchise and business opportunity offerings;
- licensing and examination of broker-dealers and investment advisers; and
- investigations based upon complaints.

The Securities Act of Washington is Chapter 21.20 RCW. The chapter is a comprehensive regulatory structure that includes:

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- registration of broker-dealers, sales agents, investment advisers, and investment adviser representatives;
- registration of securities by one of several methods;
- procedures for denial, suspension and revocation of the registration of securities;
- exemptions for specific securities;
- exemption for specific transactions;
- filings requirements for federally registered securities;
- registration of variable contracts;
- provisions specific to debenture companies;
- service of process procedures;
- fees for registration and required filings;
- penalties for false or misleading filings;
- prohibitions of fraudulent and other unlawful practices;
- investigation procedures;
- subpoena authority;
- receivership provisions;
- injunctive procedures and procedures for other relief;
- criminal penalties;
- civil penalties;
- judicial review;
- administrative procedures;
- an advisory committee; and
- statutory construction.

The DFI participates in the National Conference of Commissioners on Uniform State Laws (NCCUSL), which is involved in the development of model regulations. The first uniform act to address securities was the Uniform Sales of Securities Act of 1930. A second Uniform Securities Act was promulgated by the Uniform Law Commissioners in 1956 to replace the 1930 Act. It was enacted in 37 jurisdictions. The third act was adopted in 1985 but the revised act was enacted in only six states. In 2002, the NCCUSL completed a draft Uniform Securities Act. The Uniform Law Commissioners intend the 2002 Act to replace both the 1956 and 1985 Acts.

Washington adopted the Uniform Securities Act of 1956 as Chapter 21.20 RCW. Chapter 21.20 RCW has been amended on numerous occasions but the state did not adopt the 1985 Act.

### **Summary of Bill:**

The bill repeals the existing State Securities Act, Chapter 21.20 RCW, and creates a new State Securities Act, to be codified as Chapter 21.20A RCW. The structures, processes, and fees in the new chapter are generally consistent or the same as the existing chapter.

The new chapter is a comprehensive regulatory structure that includes:

- definitions
- registration of broker-dealers, salespersons, investment advisers, and investment adviser salespersons;
- registration of securities by one of several methods;
- procedures for denial, suspension and revocation of the registration of securities;
- exemptions for specific securities;

- exemption for specific transactions;
- filings requirements for federally registered securities;
- registration of variable contracts;
- provisions specific to debenture companies;
- service of process procedures;
- fees for registration and required filings;
- penalties for false or misleading filings;
- prohibitions of fraudulent and other unlawful practices;
- investigation procedures;
- subpoena authority;
- injunctive procedures and procedures for other relief;
- criminal penalties;
- civil penalties;
- judicial review;
- administrative procedures;
- an advisory committee; and
- statutory construction.

Selected differences from the existing chapter are noted below:

#### Definitions

The bill modifies existing definitions, including the definition of "security." The definition of "security" is expanded to encompass additional interests, including an interest in limited partnerships, limited liability corporations, viatical settlements, and life settlements.

The following definitions are altered:

- broker-dealer;
- salesperson;
- investment adviser,
- issuer;
- nonissuer;
- person; and
- sale.

The bill adds numerous new definitions, including:

- bank;
- depository institution,
- filing,
- fraud;
- institutional investor;
- insurance company;
- insured;
- international banking institution;
- investment adviser representative;
- non-issuer transaction;
- offer to purchase;
- place of business;
- predecessor act;

- price amendment;
- principal place of business;
- record;
- self-regulatory organization; and
- sign.

Registration of broker-dealers, sales agents, investment advisers, investment adviser representatives

The registration exemptions that exist in current law are modified. Exemptions are created persons who otherwise would have to be registered if they do not have a place of business within Washington and meet other specific conditions.

Securities registration

The existing registration and fee structure is maintained in large part. Federally covered securities are exempt from registration.

Exempt transactions

Additional exemptions for registration of transactions are created including:

- transactions that are approved after a hearing from a court or other agency expressly authorized to approve transactions are exempt from registration whether or not the security or transaction would be otherwise exempt;
- sale or offers made to a limited number of people in the state if other conditions are also met; and
- rescission offers, sales, or purchases.

Civil penalties

The bill builds on the existing concepts of civil liability with regard to securities, including statute of limitations, unenforceability of contracts that violate the law.

A seller is not liable to a purchase if a seller did not know and in the exercise of reasonable care could not have known of an untruth, omission, or violation.

Unregistered investment advisers and investment adviser representatives are liable for violations of registration or fraud provisions of the Chapter.

**Appropriation:** None.

**Fiscal Note:** Requested on February 19, 2007.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.