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**HOUSE BILL 2487**

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**State of Washington****57th Legislature****2002 Regular Session**

**By** Representatives McIntire, Benson and Cooper; by request of Department of Financial Institutions

Read first time 01/18/2002. Referred to Committee on Financial Institutions & Insurance.

1       AN ACT Relating to regulating securities; amending RCW 21.20.005,  
2 21.20.020, 21.20.040, 21.20.110, 21.20.310, 21.20.370, and 21.20.380;  
3 and adding a new section to chapter 21.20 RCW.

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

5       **Sec. 1.** RCW 21.20.005 and 1998 c 15 s 1 are each amended to read  
6 as follows:

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

9       (1) "Director" means the director of financial institutions of this  
10 state.

11      (2) "Salesperson" means any individual other than a broker-dealer  
12 who represents a broker-dealer or issuer in effecting or attempting to  
13 effect sales of securities. "Salesperson" does not include an  
14 individual who represents an issuer in (a) effecting a transaction in  
15 a security exempted by RCW 21.20.310 (1), (2), (3), (4), (9), (10),  
16 (11), (12), or (13), (b) effecting transactions exempted by RCW  
17 21.20.320 unless otherwise expressly required by the terms of the  
18 exemption, or (c) effecting transactions with existing employees,  
19 partners, or directors of the issuer if no commission or other

1 remuneration is paid or given directly or indirectly for soliciting any  
2 person in this state.

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

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

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

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

37 "Investment adviser" does not include (a) a bank, savings  
38 institution, or trust company, (b) a lawyer, accountant, certified  
39 public accountant licensed under chapter 18.04 RCW, engineer, or

1 teacher whose performance of these services is solely incidental to the  
2 practice of his or her profession, (c) a broker-dealer or its  
3 salesperson whose performance of these services is solely incidental to  
4 the conduct of its business as a broker-dealer and who receives no  
5 special compensation for them, (d) a publisher of any bona fide  
6 newspaper, news magazine, news column, newsletter, or business or  
7 financial publication or service, whether communicated in hard copy  
8 form, by electronic means, or otherwise, that does not consist of the  
9 rendering of advice on the basis of the specific investment situation  
10 of each client, (e) a radio or television station, (f) a person whose  
11 advice, analyses, or reports relate only to securities exempted by RCW  
12 21.20.310(1), (g) an investment adviser representative, or (h) such  
13 other persons not within the intent of this paragraph as the director  
14 may by rule or order designate.

15 (7) "Issuer" means any person who issues or proposes to issue any  
16 security, except that with respect to certificates of deposit, voting  
17 trust certificates, or collateral-trust certificates, or with respect  
18 to certificates of interest or shares in an unincorporated investment  
19 trust not having a board of directors (or persons performing similar  
20 functions) or of the fixed, restricted management, or unit type; the  
21 term "issuer" means the person or persons performing the acts and  
22 assuming the duties of depositor or manager pursuant to the provisions  
23 of the trust or other agreement or instrument under which the security  
24 is issued.

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

27 (9) "Person" means an individual, a corporation, a partnership, a  
28 limited liability company, a limited liability partnership, an  
29 association, a joint-stock company, a trust where the interest of the  
30 beneficiaries are evidenced by a security, an unincorporated  
31 organization, a government, or a political subdivision of a government.

32 (10) "Sale" or "sell" includes every contract of sale of, contract  
33 to sell, or disposition of, a security or interest in a security for  
34 value. "Offer" or "offer to sell" includes every attempt or offer to  
35 dispose of, or solicitation of an offer to buy, a security or interest  
36 in a security for value.

37 Any security given or delivered with, or as a bonus on account of,  
38 any purchase of securities or any other thing is considered to  
39 constitute part of the subject of the purchase and to have been offered

1 and sold for value. A purported gift of assessable stock is considered  
2 to involve an offer and sale. Every sale or offer of a warrant or  
3 right to purchase or subscribe to another security of the same or  
4 another issuer, as well as every sale or offer of a security which  
5 gives the holder a present or future right or privilege to convert into  
6 another security of the same or another issuer, is considered to  
7 include an offer of the other security.

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

12 (12)(a) "Security" means any note; stock; treasury stock; bond;  
13 debenture; evidence of indebtedness; certificate of interest or  
14 participation in any profit-sharing agreement; collateral-trust  
15 certificate; preorganization certificate or subscription; transferable  
16 share; investment contract; investment of money or other consideration  
17 in the risk capital of a venture with the expectation of some valuable  
18 benefit to the investor where the investor does not receive the right  
19 to exercise practical and actual control over the managerial decisions  
20 of the venture; voting-trust certificate; certificate of deposit for a  
21 security; ((certificate of)) fractional undivided interest ((or  
22 participation)) in an oil, gas, or ((mining title or)) mineral lease or  
23 in payments out of production under ((such)) a ((title or)) lease,  
24 right, or royalty; charitable gift annuity; any put, call, straddle,  
25 option, or privilege on any security, certificate of deposit, or group  
26 or index of securities, including any interest therein or based on the  
27 value thereof; or any put, call, straddle, option, or privilege entered  
28 into on a national securities exchange relating to foreign currency;  
29 or, in general, any interest or instrument commonly known as a  
30 "security," or any certificate of interest or participation in,  
31 temporary or interim certificate for, receipt for, guarantee of, or  
32 warrant or right to subscribe to or purchase, any ((of the foregoing;  
33 or any sale of or indenture, bond or contract for the conveyance of  
34 land or any interest therein where such land is situated outside of the  
35 state of Washington and such sale or its offering is not conducted by  
36 a real estate broker licensed by the state of Washington)) security  
37 under this subsection. This subsection applies whether or not the  
38 security is evidenced by a written document.

1       (b) "Security" does not include: (i) Any insurance or endowment  
2 policy or annuity contract under which an insurance company promises to  
3 pay a fixed sum of money either in a lump sum or periodically for life  
4 or some other specified period; or (ii) an interest in a contributory  
5 or noncontributory pension or welfare plan subject to the Employee  
6 Retirement Income Security Act of 1974.

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

9       (14) "Investment adviser representative" means any partner,  
10 officer, director, or a person occupying similar status or performing  
11 similar functions, or other individual, who is employed by or  
12 associated with an investment adviser, and who does any of the  
13 following:

14       (a) Makes any recommendations or otherwise renders advice regarding  
15 securities;

16       (b) Manages accounts or portfolios of clients;

17       (c) Determines which recommendation or advice regarding securities  
18 should be given;

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

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

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

24       (a) A member's spouse;

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

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

27       (d) Natural or adopted children of the member or the member's  
28 spouse;

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

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

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

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

35       (18) "Federal covered adviser" means any person registered as an  
36 investment adviser under section 203 of the Investment Advisers Act of  
37 1940.

1       **Sec. 2.** RCW 21.20.020 and 1998 c 15 s 2 are each amended to read  
2 as follows:

3           (1) It is unlawful for any person who receives any consideration  
4 from another party primarily for advising the other person as to the  
5 value of securities or their purchase or sale, whether through the  
6 issuance of analyses or reports or otherwise:

7           ((+1)) (a) To employ any device, scheme, or artifice to defraud  
8 the other person;

9           ((+2)) (b) To engage in any act, practice, or course of business  
10 which operates or would operate as a fraud or deceit upon the other  
11 person; or

12           (c) To engage in any dishonest or unethical practice as the  
13 director may define by rule.

14           This subsection (1) applies whether or not the person is an  
15 investment adviser, federal covered adviser, or investment adviser  
16 under this chapter or the Investment Advisers Act of 1940.

17           ((+3) To act)) (2) It is unlawful for an investment adviser, acting  
18 as principal for his or her own account, knowingly to sell any security  
19 to or purchase any security from a client, or act as a broker for a  
20 person other than such client, knowingly to effect any sale or purchase  
21 of any security for the account of such client, without disclosing to  
22 such client in writing before the execution of such transaction the  
23 capacity in which he or she is acting and obtaining the consent of the  
24 client to such transaction((; or

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

27           This subsection (2) does not apply to a transaction with a customer  
28 of a broker-dealer if the broker-dealer is not acting as an investment  
29 adviser in relation to the transaction.

30       **Sec. 3.** RCW 21.20.040 and 1998 c 15 s 3 are each amended to read  
31 as follows:

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

1 person is a salesperson who satisfies the requirements of section  
2 15(h)(2) of the Securities Exchange Act of 1934 and effects in this  
3 state no transactions other than those described by section 15(h)(3) of  
4 the Securities Exchange Act of 1934; ((or)) (d) the person is a  
5 salesperson effecting transactions in open-end investment company  
6 securities sold at net asset value without any sales charges; or (e)  
7 the person participates only in the sale or offering for sale of  
8 variable contracts which fund corporate plans meeting the requirements  
9 for qualification under section 401 or 403 of the United States  
10 Internal Revenue Code as set forth in RCW 48.18A.060.

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

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

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

1 21.20.040(1), or is excluded from the definition of investment adviser  
2 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 21.20.110 and 1998 c 15 s 10 are each amended to read  
15 as follows:

16 (1) The director may by order deny, suspend, ((or)) revoke,  
17 restrict, condition, or limit any application or registration of any  
18 broker-dealer, salesperson, investment adviser representative, or  
19 investment adviser; or censure or fine the registrant or an officer,  
20 director, partner, or person occupying similar functions for a  
21 registrant; ~~((or restrict or limit a registrant's function or activity~~  
~~of business for which registration is required in this state;))~~ if the  
23 director finds that the order is in the public interest and that the  
24 applicant or registrant or, in the case of a broker-dealer or  
25 investment adviser, any partner, officer, ((or)) director, or person  
occupying similar functions:

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

33 (b) Has willfully violated or willfully failed to comply with any  
34 provision of this chapter or a predecessor act or any rule or order  
35 under this chapter or a predecessor act, or any provision of chapter  
36 21.30 RCW or any rule or order thereunder;

37 (c) Has been convicted, within the past ((five)) ten years, of any  
38 misdemeanor involving a security, or a commodity contract or commodity

1 option as defined in RCW 21.30.010, or any aspect of the securities  
2 ((or investment)), commodities ((business)), business investments,  
3 franchises, business opportunities, insurance, banking, or finance  
4 business, or any felony involving moral turpitude;

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

12 (e) Is the subject of an order ((of the director denying,  
13 suspending, or revoking registration as a broker-dealer, salesperson,  
14 investment adviser, or investment adviser representative)) entered  
15 after notice and opportunity for hearing:

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

20 (ii) By the securities administrator of a state or by the  
21 Securities and Exchange Commission sanctioning against a broker-dealer  
22 or an investment adviser;

23 (iii) By the Securities and Exchange Commission suspending or  
24 expelling the registrant from membership in a self-regulatory  
25 organization; or

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

32 (f) Is the subject of an order ((entered within the past five years  
33 by the securities administrator of any other state or by the federal  
34 securities and exchange commission denying or revoking registration as  
35 a broker-dealer or salesperson, or a commodity broker-dealer or sales  
36 representative, or the substantial equivalent of those terms as defined  
37 in this chapter or by the commodity futures trading commission denying  
38 or revoking registration as a commodity merchant as defined in RCW  
39 21.30.010, or is the subject of an order of suspension or expulsion

1 from membership in or association with a self regulatory organization  
2 registered under the securities exchange act of 1934 or the federal  
3 commodity exchange act, or is the subject of a United States post  
4 office fraud order; but (i) the director may not institute a revocation  
5 or suspension proceeding under this clause more than one year from the  
6 date of the order relied on, and (ii) the director may not enter any  
7 order under this clause on the basis of an order unless that order was  
8 based on facts which would currently constitute a ground for an order  
9 under this section)), adjudication, or determination, after notice and  
10 opportunity for hearing, by the Securities and Exchange Commission, the  
11 Commodities Futures Trading Commission, the Federal Trade Commission,  
12 or a securities or insurance regulator of any state that the person has  
13 willfully violated the Securities Act of 1933, the Securities Exchange  
14 Act of 1934, the Investment Advisers Act of 1940, the Investment  
15 Company Act of 1940, the Commodities Exchange Act, the securities,  
16 insurance, or commodities law of any state, or a federal or state law  
17 under which a business involving investments, franchises, business  
18 opportunities, insurance, banking, or finance is regulated;

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

21 (h) Is insolvent, either in the sense that his or her liabilities  
22 exceed his or her assets or in the sense that he or she cannot meet his  
23 or her obligations as they mature; but the director may not enter an  
24 order against ((a broker dealer or investment adviser)) an applicant or  
25 registrant under this ((clause)) subsection(1)(h) without a finding of  
26 insolvency as to the ((broker dealer or investment adviser)) applicant  
27 or registrant;

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

32 (j) Has failed to supervise reasonably a salesperson or an  
33 investment adviser representative, or employee, if the salesperson,  
34 investment adviser representative, or employee was subject to the  
35 person's supervision and committed a violation of this chapter or a  
36 rule adopted or order issued under this chapter. For the purposes of  
37 this subsection, no person fails to supervise reasonably another  
38 person, if:

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

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

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

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

15       (i) Willfully violated the law of a foreign jurisdiction governing  
16 or regulating the business of securities, commodities, insurance, or  
17 banking;

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

22       (iii) Been suspended or expelled from membership by a securities  
23 exchange or securities association operating under the authority of the  
24 securities regulator of a foreign jurisdiction;

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

28       (n) Refuses to allow or otherwise impedes the director from  
29 conducting an audit, examination, or inspection, or refuses access to  
30 any branch office or business location to conduct an audit,  
31 examination, or inspection.

32       (2) The director, by rule or order, may require that an  
33 examination, including an examination developed or approved by an  
34 organization of securities administrators, be taken by any class of or  
35 all applicants. The director, by rule or order, may waive the  
36 examination as to a person or class of persons if the administrator  
37 determines that the examination is not necessary or appropriate in the  
38 public interest or for the protection of investors.

1       ((+2))) (3) The director may issue a summary order pending final  
2 determination of a proceeding under this section upon a finding that it  
3 is in the public interest and necessary or appropriate for the  
4 protection of investors.

5       ((+3))) (4) The director may not impose a fine under this section  
6 except after notice and opportunity for hearing. The fine imposed  
7 under this section may not exceed five thousand dollars for each act or  
8 omission that constitutes the basis for issuing the order. If a  
9 petition for judicial review has not been timely filed under RCW  
10 34.05.542(2), a certified copy of the director's order requiring  
11 payment of the fine may be filed in the office of the clerk of the  
12 superior court in any county of this state. The clerk shall treat the  
13 order of the director in the same manner as a judgment of the superior  
14 court. The director's order so filed has the same effect as a judgment  
15 of the superior court and may be recorded, enforced, or satisfied in  
16 like manner.

17       (5) Withdrawal from registration as a broker-dealer, salesperson,  
18 investment adviser, or investment adviser representative becomes  
19 effective thirty days after receipt of an application to withdraw or  
20 within such shorter period as the administrator determines, unless a  
21 revocation or suspension proceeding is pending when the application is  
22 filed. If a proceeding is pending, withdrawal becomes effective upon  
23 such conditions as the director, by order, determines. If no  
24 proceeding is pending or commenced and withdrawal automatically becomes  
25 effective, the administrator may nevertheless commence a revocation or  
26 suspension proceeding under subsection (1)(b) of this section within  
27 one year after withdrawal became effective and enter a revocation or  
28 suspension order as of the last date on which registration was  
29 effective.

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

35       (7) The director shall immediately suspend the license or  
36 certificate of a person who has been certified pursuant to RCW  
37 74.20A.320 by the department of social and health services as a person  
38 who is not in compliance with a support order ((or a residential or  
39 visitation order)). If the person has continued to meet all other

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

5       **Sec. 5.** RCW 21.20.310 and 1998 c 15 s 13 are each amended to read  
6 as follows:

7           RCW 21.20.140 through 21.20.300, inclusive, and 21.20.327 do not  
8 apply to any of the following securities:

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

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

34           (3) Any security issued by and representing an interest in or a  
35 debt of, or guaranteed by, any bank organized under the laws of the  
36 United States, or any bank or trust company organized or supervised  
37 under the laws of any state.

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

5       (5) Any security issued by and representing an interest in or a  
6 debt of, or insured or guaranteed by, any insurance company ((organized  
7 under the laws of this state and)) authorized to do ((and actually  
8 doing)) business in this state.

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

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

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

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

37       (10) Any security issued in connection with an employee's stock  
38 purchase, savings, pension, profit-sharing, or similar benefit plan if:  
39       (a) The plan meets the requirements for qualification as a pension,

1 profit sharing, or stock bonus plan under section 401 of the internal  
2 revenue code, as an incentive stock option plan under section 422 of  
3 the internal revenue code, as a nonqualified incentive stock option  
4 plan adopted with or as a supplement to an incentive stock option plan  
5 under section 422 of the internal revenue code, or as an employee stock  
6 purchase plan under section 423 of the internal revenue code; or (b)  
7 the director is notified in writing with a copy of the plan thirty days  
8 before offering the plan to employees in this state. In the event of  
9 late filing of notification the director may upon application, for good  
10 cause excuse such late filing if he or she finds it in the public  
11 interest to grant such relief.

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

27 The notice shall consist of the following:

28 (a) The name and address of the issuer;  
29 (b) The names, addresses, and telephone numbers of the current  
30 officers and directors of the issuer;

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

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

35 (e) A statement of the proposed use of the proceeds of the sale of  
36 the security; and

37 (f) A statement that the issuer shall provide to a prospective  
38 purchaser written information regarding the securities offered prior to  
39 consummation of any sale, which information shall include the following

1 statements: (i) "ANY PROSPECTIVE PURCHASER IS ENTITLED TO REVIEW  
2 FINANCIAL STATEMENTS OF THE ISSUER WHICH SHALL BE FURNISHED UPON  
3 REQUEST."; (ii) "RECEIPT OF NOTICE OF EXEMPTION BY THE WASHINGTON  
4 ADMINISTRATOR OF SECURITIES DOES NOT SIGNIFY THAT THE ADMINISTRATOR HAS  
5 APPROVED OR RECOMMENDED THESE SECURITIES, NOR HAS THE ADMINISTRATOR  
6 PASSED UPON THE OFFERING. ANY REPRESENTATION TO THE CONTRARY IS A  
7 CRIMINAL OFFENSE."; and (iii) "THE RETURN OF THE FUNDS OF THE PURCHASER  
8 IS DEPENDENT UPON THE FINANCIAL CONDITION OF THE ORGANIZATION."

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

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

13 **Sec. 6.** RCW 21.20.370 and 1998 c 15 s 17 are each amended to read  
14 as follows:

15 (1) The director in his or her discretion ((+1)) (a) may annually,  
16 or more frequently, make such public or private investigations within  
17 or without this state as the director deems necessary to determine  
18 whether any registration should be granted, denied or revoked or  
19 whether any person has violated, is violating, or is about to violate  
20 any provision of this chapter or any rule or order ((hereunder)) under  
21 this chapter, or to aid in the enforcement of this chapter or in the  
22 ((prescribing)) adoption of rules and forms ((hereunder, (2))) under  
23 this chapter, (b) may engage in the detection and identification of  
24 criminal activities subject to this chapter, ((+3)) (c) may require or  
25 permit any person to testify or to file a statement in writing, under  
26 oath or otherwise as the director may determine, as to all the facts  
27 and circumstances concerning the matter to be investigated, and ((+4))  
28 (d) may publish information concerning a proceeding, an investigation,  
29 or any violation of this chapter or any rule or order ((hereunder))  
30 under this chapter, if the director determines it is necessary or  
31 appropriate in the public interest or for the protection of investors.

32 (2) The enforcement unit of the securities division of the  
33 department of financial institutions may be authorized to receive  
34 criminal history record information in connection with the  
35 investigation of criminal activities subject to this chapter.

36 **Sec. 7.** RCW 21.20.380 and 1995 c 46 s 6 are each amended to read  
37 as follows:

1       (1) For the purpose of any investigation or proceeding under this  
2 chapter, the director or any officer designated by the director may  
3 administer oaths and affirmations, subpoena witnesses, compel their  
4 attendance, take evidence, and require the production of any books,  
5 papers, correspondence, memoranda, agreements, or other documents or  
6 records which the director deems relevant or material to the inquiry.

7       (2) If the activities constituting an alleged violation for which  
8 the information is sought would be a violation of this chapter had the  
9 activities occurred in this state, the director may issue and apply to  
10 enforce subpoenas in this state at the request of a securities agency  
11 or administrator of another state.

12       (3) A subpoena issued to a financial institution under this section  
13 may, if the director finds it necessary or appropriate in the public  
14 interest or for the protection of investors, include a directive that  
15 the financial institution subpoenaed shall not disclose to third  
16 parties that are not affiliated with the financial institution, other  
17 than to the institution's legal counsel, the existence or content of  
18 the subpoena.

19       (4) In case of disobedience on the part of any person to comply  
20 with any subpoena lawfully issued by the director, ((or on)) the  
21 refusal of any witness to testify to any matters regarding which the  
22 witness may be lawfully interrogated, or the failure to comply with a  
23 nondisclosure directive under subsection (3) of this section, a court  
24 of competent jurisdiction of any county or the judge thereof, on  
25 application of the director, and after satisfactory evidence of willful  
26 disobedience, may compel obedience by proceedings for contempt, as in  
27 the case of disobedience of the requirements of a subpoena issued from  
28 such a court on a refusal to testify therein.

29       NEW SECTION. **Sec. 8.** A new section is added to chapter 21.20 RCW  
30 to read as follows:

31       As required by chapter 48.18A RCW, a person selling variable  
32 contracts shall be registered as a broker-dealer or securities  
33 salesperson as required by this chapter. This chapter, and any rules  
34 or orders adopted under this chapter, applies to any person engaged in  
35 the offer, sale, or purchase of a variable contract. "Variable  
36 contract" means the same as set forth under chapter 48.18A RCW.

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