

CERTIFICATION OF ENROLLMENT

SENATE BILL 5332

Chapter 46, Laws of 1995

54th Legislature
1995 Regular Session

Securities--Revised provisions

EFFECTIVE DATE: 7/23/95

Passed by the Senate March 7, 1995
YEAS 47 NAYS 0

JOEL PRITCHARD

President of the Senate

Passed by the House April 4, 1995
YEAS 97 NAYS 0

CLYDE BALLARD

**Speaker of the
House of Representatives**

Approved April 17, 1995

MIKE LOWRY

Governor of the State of Washington

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5332** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

Secretary

FILED

April 17, 1995 - 3:46 p.m.

**Secretary of State
State of Washington**

SENATE BILL 5332

Passed Legislature - 1995 Regular Session

State of Washington 54th Legislature 1995 Regular Session

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

Read first time 01/19/95. Referred to Committee on Financial
Institutions & Housing.

1 AN ACT Relating to securities; and amending RCW 21.20.060,
2 21.20.090, 21.20.270, 21.20.310, 21.20.340, 21.20.380, and 21.20.390.

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

4 **Sec. 1.** RCW 21.20.060 and 1994 c 256 s 7 are each amended to read
5 as follows:

6 The application shall contain whatever information the director
7 requires concerning such matters as:

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

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

10 (3) The qualifications and business history of the applicant and in
11 the case of a broker-dealer or investment adviser, any partner,
12 officer, or director;

13 (4) Any injunction or administrative order or conviction of a
14 misdemeanor involving a security or any aspect of the securities
15 business and any conviction of a felony; ((and))

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

17 (6) The address of the principal place of business of the applicant
18 and the addresses of all branch offices of the applicant in this state.

1 The director (~~(of licenses or the duly appointed administrator)~~)
2 may by rule require a minimum capital for registered broker-dealers and
3 investment advisers or prescribe a ratio between net capital and
4 aggregate indebtedness by type or classification and may by rule allow
5 registrants to maintain a surety bond of appropriate amount as an
6 alternative method of compliance with minimum capital or net capital
7 requirements.

8 **Sec. 2.** RCW 21.20.090 and 1994 c 256 s 9 are each amended to read
9 as follows:

10 Registration of a broker-dealer, salesperson, investment adviser
11 representative, or investment adviser may be renewed by filing with the
12 director or his or her authorized agent prior to the expiration thereof
13 an application containing such information as the director may require
14 to indicate any material change in the information contained in the
15 original application or any renewal application for registration as a
16 broker-dealer, salesperson, investment adviser representative, or
17 investment adviser filed with the director or his or her authorized
18 agent by the applicant, payment of the prescribed fee, and, in the case
19 of a broker-dealer(~~(, a financial statement showing the financial~~
20 ~~condition of such broker-dealer as of a date within ninety days)) or~~
21 investment adviser such financial reports as the director may by rule
22 prescribe. A registered broker-dealer or investment adviser may file
23 an application for registration of a successor, and the administrator
24 may at his or her discretion grant or deny the application.

25 **Sec. 3.** RCW 21.20.270 and 1975 1st ex.s. c 84 s 14 are each
26 amended to read as follows:

27 (1) The director may require the person who filed the registration
28 statement to file reports, not more often than quarterly to keep
29 reasonably current the information contained in the registration
30 statement and to disclose the progress of the offering with respect to
31 registered securities which (a) are issued by a face-amount certificate
32 company or a redeemable security issued by an open-end management
33 company or unit investment trust as those terms are defined in the
34 investment company act of 1940, or (b) are being offered and sold
35 directly by or for the account of the issuer. (~~(A ten dollar fee shall~~
36 ~~accompany each such report.)~~)

1 (2) During the period of public offering of securities registered
2 under the provisions of this chapter by qualification financial data or
3 statements corresponding to those required under the provisions of RCW
4 21.20.210 and to the issuer's fiscal year shall be filed with the
5 director annually, not more than one hundred twenty days after the end
6 of each such year. Such statements at the discretion of the director
7 or administrator shall be certified by a certified public accountant
8 who is not an employee of the issuer, and the director may verify them
9 by examining the issuer's books and records. The certificate of such
10 independent certified public accountant shall be based upon an audit of
11 not less in scope or procedures followed than that which independent
12 public accountants would ordinarily make for the purpose of presenting
13 comprehensive and dependable financial statements, and shall contain
14 such information as the director may prescribe, by rules ((and
15 regulations)) in the public interest or for the protection of
16 investors, as to the nature and scope of the audit and the findings and
17 opinions of the accountants. Each such report shall state that such
18 independent certified public accountant has verified securities owned,
19 either by actual examination, or by receipt of a certificate from the
20 custodian, as the director may prescribe by rules ((and regulations)).

21 **Sec. 4.** RCW 21.20.310 and 1994 c 256 s 18 are each amended to read
22 as follows:

23 RCW 21.20.140 through 21.20.300, inclusive, do not apply to any of
24 the following securities:

25 (1) Any security (including a revenue obligation) issued or
26 guaranteed by the United States, any state, any political subdivision
27 of a state, or any agency or corporate or other instrumentality of one
28 or more of the foregoing; or any certificate of deposit for any of the
29 foregoing; but this exemption does not include any security payable
30 solely from revenues to be received from a nongovernmental industrial
31 or commercial enterprise unless such payments are made or
32 unconditionally guaranteed by a person whose securities are exempt from
33 registration by subsections (7) or (8) of this section: PROVIDED, That
34 the director, by rule or order, may exempt any security payable solely
35 from revenues to be received from a nongovernmental industrial or
36 commercial enterprise if the director finds that registration with
37 respect to such securities is not necessary in the public interest and
38 for the protection of investors.

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

12 (3) Any security issued by and representing an interest in or a
13 debt of, or guaranteed by, any bank organized under the laws of the
14 United States, or any bank or trust company organized or supervised
15 under the laws of any state.

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

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

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

27 (7) Any security issued or guaranteed by any railroad, other common
28 carrier, public utility, or holding company which is (a) subject to the
29 jurisdiction of the interstate commerce commission; (b) a registered
30 holding company under the public utility holding company act of 1935 or
31 a subsidiary of such a company within the meaning of that act; (c)
32 regulated in respect of its rates and charges by a governmental
33 authority of the United States or any state or municipality; or (d)
34 regulated in respect of the issuance or guarantee of the security by a
35 governmental authority of the United States, any state, Canada, or any
36 Canadian province; also equipment trust certificates in respect of
37 equipment conditionally sold or leased to a railroad or public utility,
38 if other securities issued by such railroad or public utility would be
39 exempt under this subsection.

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

3 (9) Any prime quality negotiable commercial paper not intended to
4 be marketed to the general public and not advertised for sale to the
5 general public that is of a type eligible for discounting by federal
6 reserve banks, that arises out of a current transaction or the proceeds
7 of which have been or are to be used for a current transaction, and
8 that evidences an obligation to pay cash within nine months of the date
9 of issuance, exclusive of days of grace, or any renewal of such paper
10 which is likewise limited, or any guarantee of such paper or of any
11 such renewal.

12 (10) Any (~~investment contract~~) security issued in connection with
13 an employee's stock purchase, savings, pension, profit-sharing, or
14 similar benefit plan if: (a) The plan meets the requirements for
15 qualification as a pension, profit sharing, or stock bonus plan under
16 section 401 of the internal revenue code, as an incentive stock option
17 plan under section 422 of the internal revenue code, or as an employee
18 stock purchase plan under section 423 of the internal revenue code; or
19 (b) the director is notified in writing with a copy of the plan thirty
20 days before offering the plan to employees in this state. In the event
21 of late filing of notification the director may upon application, for
22 good cause excuse such late filing if he or she finds it in the public
23 interest to grant such relief.

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

39 The notice shall consist of the following:

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

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

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

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

8 (e) A statement of the proposed use of the proceeds of the sale of
9 the security; and

10 (f) A statement that the issuer shall provide to a prospective
11 purchaser written information regarding the securities offered prior to
12 consummation of any sale, which information shall include the following
13 statements: (i) "ANY PROSPECTIVE PURCHASER IS ENTITLED TO REVIEW
14 FINANCIAL STATEMENTS OF THE ISSUER WHICH SHALL BE FURNISHED UPON
15 REQUEST."; (ii) "RECEIPT OF NOTICE OF EXEMPTION BY THE WASHINGTON
16 ADMINISTRATOR OF SECURITIES DOES NOT SIGNIFY THAT THE ADMINISTRATOR HAS
17 APPROVED OR RECOMMENDED THESE SECURITIES, NOR HAS THE ADMINISTRATOR
18 PASSED UPON THE OFFERING. ANY REPRESENTATION TO THE CONTRARY IS A
19 CRIMINAL OFFENSE."; and (iii) "THE RETURN OF THE FUNDS OF THE PURCHASER
20 IS DEPENDENT UPON THE FINANCIAL CONDITION OF THE ORGANIZATION."

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

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

25 **Sec. 5.** RCW 21.20.340 and 1994 c 256 s 20 are each amended to read
26 as follows:

27 The following fees shall be paid in advance under the provisions of
28 this chapter:

29 (1) For registration of securities by qualification, the fee shall
30 be one hundred dollars for the first one hundred thousand dollars of
31 initial issue, or portion thereof in this state, based on offering
32 price, plus one-twentieth of one percent for any excess over one
33 hundred thousand dollars which are to be offered during that year:
34 PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty
35 dollar fee renew for one additional twelve-month period only the unsold
36 portion for which the registration fee has been paid.

37 (2) For registration by coordination of securities issued by an
38 investment company, other than a closed-end company, as those terms are

1 defined in the Investment Company Act of 1940, the fee shall be one
2 hundred dollars for the first one hundred thousand dollars of initial
3 issue, or portion thereof in this state, based on offering price, plus
4 one-twentieth of one percent for any excess over one hundred thousand
5 dollars which are to be offered in this state during that year:
6 PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty
7 dollar fee renew for an additional twelve-month period the unsold
8 portion for which the registration fee has been paid.

9 (3) For registration by coordination of securities not covered by
10 subsection (2) of this section, the initial filing fee shall be one
11 hundred dollars for the first one hundred thousand dollars of initial
12 issue, or portion thereof in this state, based on offering price, plus
13 one-fortieth of one percent for any excess over one hundred thousand
14 dollars for the first twelve-month period plus one hundred dollars for
15 each additional twelve months in which the same offering is continued.

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

18 (5)(a) For filing an amended offering circular after the initial
19 registration permit has been granted the fee shall be ten dollars.

20 (b) For filing a report under RCW 21.20.270(1) the fee shall be ten
21 dollars.

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

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

31 (8) If a registration of a broker-dealer, salesperson, investment
32 adviser, or investment adviser representative is not renewed on or
33 before December 31st of each year the renewal is delinquent. The
34 director by rule or order may set and assess a fee for delinquency not
35 to exceed two hundred dollars. Acceptance by the director of an
36 application for renewal after December 31st is not a waiver of
37 delinquency. A delinquent application for renewal will not be accepted
38 for filing after March 1st.

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

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

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

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

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

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

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

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

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

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

24 **Sec. 6.** RCW 21.20.380 and 1994 c 256 s 22 are each amended to read
25 as follows:

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

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

37 (3) In case of disobedience on the part of any person to comply
38 with any subpoena lawfully issued by the director, or on the refusal of

1 any witness to testify to any matters regarding which the witness may
2 be lawfully interrogated, a court of competent jurisdiction of any
3 county or the judge thereof, on application of the director, and after
4 satisfactory evidence of wilful disobedience, may compel obedience by
5 proceedings for contempt, as in the case of disobedience of the
6 requirements of a subpoena issued from such a court on a refusal to
7 testify therein.

8 **Sec. 7.** RCW 21.20.390 and 1994 c 256 s 23 are each amended to read
9 as follows:

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

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

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

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

1 a receiver or conservator for the defendant or the defendant's assets.
2 The director may not be required to post a bond.
3 (4) The director may bring an action for restitution or damages on
4 behalf of the persons injured by a violation of this chapter, if the
5 court finds that private civil action would be so burdensome or
6 expensive as to be impractical.

Passed the Senate March 7, 1995.

Passed the House April 4, 1995.

Approved by the Governor April 17, 1995.

Filed in Office of Secretary of State April 17, 1995.

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