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HOUSE BILL 2975

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State of Washington                      59th Legislature                      2006 Regular Session

By Representatives Newhouse, Kirby and Dunn

Read first time 01/17/2006.      Referred to Committee on Financial Institutions & Insurance.

1            AN ACT Relating to exempt transactions under the securities act of  
2 Washington; and amending RCW 21.20.320.

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

4            **Sec. 1.** RCW 21.20.320 and 1998 c 15 s 14 are each amended to read  
5 as follows:

6            The following transactions are exempt from RCW 21.20.040 through  
7 21.20.300 and 21.20.327 except as expressly provided:

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

14            (2) Any nonissuer transaction by a registered salesperson of a  
15 registered broker-dealer, and any resale transaction by a sponsor of a  
16 unit investment trust registered under the Investment Company Act of  
17 1940 pursuant to any rule adopted by the director.

18            (3) Any nonissuer transaction effected by or through a registered  
19 broker-dealer pursuant to an unsolicited order or offer to buy; but the

1 director may by rule require that the customer acknowledge upon a  
2 specified form that the sale was unsolicited, and that a signed copy of  
3 each such form be preserved by the broker-dealer for a specified  
4 period.

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

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

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

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

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

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

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

27 (8) Any offer or sale to a bank, savings institution, trust  
28 company, insurance company, investment company as defined in the  
29 Investment Company Act of 1940, pension or profit-sharing trust, or  
30 other financial institution or institutional buyer, or to a broker-  
31 dealer, whether the purchaser is acting for itself or in some fiduciary  
32 capacity.

33 (9) Any transaction effected in accordance with the terms and  
34 conditions of any rule adopted by the director if:

35 (a) The aggregate offering amount does not exceed five million  
36 dollars; and

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

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

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

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

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

26 (14) Any transaction incident to a right of conversion or a  
27 statutory or judicially approved reclassification, recapitalization,  
28 reorganization, quasi reorganization, stock split, reverse stock split,  
29 merger, consolidation, or sale of assets.

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

34 (a) Such securities are sold at prices reasonably related to the  
35 current market price thereof at the time of sale, and, if such broker-  
36 dealer is acting as agent, the commission collected by such broker-  
37 dealer on account of the sale thereof is not in excess of usual and

1 customary commissions collected with respect to securities and  
2 transactions having comparable characteristics;

3 (b) Such securities do not constitute the whole or a part of an  
4 unsold allotment to or subscription or participation by such broker-  
5 dealer as an underwriter of such securities or as a participant in the  
6 distribution of such securities by the issuer, by an underwriter or by  
7 a person or group of persons in substantial control of the issuer or of  
8 the outstanding securities of the class being distributed; and

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

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

- 14 (a) The transaction:
- 15 (i) Does not involve advertising or public solicitation; or
  - 16 (ii) Involves advertising or public solicitation, and:
    - 17 (A) The association first files a notice of claim of exemption on
    - 18 a form prescribed by the director specifying the terms of the offer and
    - 19 the director does not by order deny the exemption within the next ten
    - 20 full business days; or

21 (B) The association is an employee cooperative and identifies  
22 itself as an employee cooperative in advertising or public  
23 solicitation.

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

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

27 (B) Represents a contribution of capital to the association by a  
28 person who is or intends to become a member or patron of the  
29 association;

30 (C) Represents a patronage dividend or other patronage allocation;  
31 or

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

35 (ii) Is nontransferable except in the case of death, operation of  
36 law, bona fide transfer for security purposes only to the association,  
37 a bank, or other financial institution, intrafamily transfer, ((or))

1 transfer to an existing member or person who will become a member, or  
2 transfer by gift to a nonprofit entity and, in the case of an  
3 instrument, so states conspicuously on its face.

4 (17) Any transaction effected in accordance with any rule adopted  
5 by the director establishing a limited offering exemption which  
6 furthers objectives of compatibility with federal exemptions and  
7 uniformity among the states, provided that in adopting any such rule  
8 the director may require that no commission or other remuneration be  
9 paid or given to any person, directly or indirectly, for effecting  
10 sales unless the person is registered under this chapter as a broker-  
11 dealer or salesperson.

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