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**HOUSE BILL 2316**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Kirby and Stanford; by request of Department of Financial Institutions

AN ACT Relating to clarifying, and making department of financial institutions technical regulatory changes to, the securities act of Washington; amending RCW 21.20.040, 21.20.110, 21.20.120, 21.20.140, 21.20.270, 21.20.275, 21.20.280, 21.20.300, 21.20.325, 21.20.340, 21.20.360, 21.20.390, 21.20.710, 21.20.727, and 21.20.883; and reenacting RCW 21.20.400.

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

**Sec.**  RCW 21.20.040 and 2002 c 65 s 3 are each amended to read as follows:

(1) It is unlawful for any person to transact business in this state as a broker-dealer or salesperson, unless: (a) The person is registered under this chapter; (b) the person is exempted from registration as a broker-dealer or salesperson to sell or resell condominium units sold in conjunction with an investment contract as may be provided by rule or order of the director as to persons who are licensed pursuant to the provisions of chapter 18.85 RCW; (c) the person is a salesperson who satisfies the requirements of section 15((~~(h)(2)~~)) (i)(3) of the Securities Exchange Act of 1934 and effects in this state no transactions other than those described by section 15((~~(h)(3)~~)) (i)(4) of the Securities Exchange Act of 1934; (d) the person is a salesperson effecting transactions in open-end investment company securities sold at net asset value without any sales charges; or (e) the person participates only in the sale or offering for sale of variable contracts which fund corporate plans meeting the requirements for qualification under section 401 or 403 of the United States Internal Revenue Code as set forth in RCW 48.18A.060.

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

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

(4) It is unlawful for any person, other than a federal covered adviser, to hold himself or herself out as, or otherwise represent that he or she is a "financial planner", "investment counselor", or other similar term, as may be specified in rules adopted by the director, unless the person is registered as an investment adviser or investment adviser representative, is exempt from registration as an investment adviser or investment adviser representative under RCW 21.20.040((~~(1)~~)), or is excluded from the definition of investment adviser under RCW 21.20.005((~~(6)~~)).

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

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

**Sec.**  RCW 21.20.110 and 2003 c 288 s 4 are each amended to read as follows:

(1) The director may by order deny, suspend, revoke, restrict, condition, or limit any application or registration of any broker-dealer, salesperson, investment adviser representative, or investment adviser; or censure or fine the registrant or an officer, director, partner, or person performing similar functions for a registrant; if the director finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, director, or person performing similar functions:

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

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

(c) Has been convicted, within the past ten years, of any misdemeanor involving a security, or a commodity contract or commodity option as defined in RCW 21.30.010, or any aspect of the securities, commodities, business investments, franchises, business opportunities, insurance, banking, or finance business, or any felony involving moral turpitude;

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

(e) Is the subject of an order entered after notice and opportunity for hearing:

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

(ii) By the securities administrator of a state or by the Securities and Exchange Commission against a broker-dealer, salesperson, investment adviser, or an investment adviser representative;

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

(iv) By a court adjudicating a United States Postal Service fraud;

The director may not commence a revocation or suspension proceeding more than one year after the date of the order relied on. The director may not enter an order on the basis of an order under another state securities act unless that order was based on facts that would constitute a ground for an order under this section;

(f) Is the subject of an order, adjudication, or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodities Futures Trading Commission, the Federal Trade Commission, or a securities or insurance regulator of any state that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodities Exchange Act, the securities, insurance, or commodities law of any state, or a federal or state law under which a business involving investments, franchises, business opportunities, insurance, banking, or finance is regulated;

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

(h) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature; but the director may not enter an order against an applicant or registrant under this subsection (1)(h) without a finding of insolvency as to the applicant or registrant;

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

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

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

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

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

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

(i) Violated the law of a foreign jurisdiction governing or regulating the business of securities, commodities, insurance, or banking;

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

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

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

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

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

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

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

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

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

(7) In any action under subsection (1) of this section, the director may charge the costs, fees, and other expenses incurred by the director in the conduct of any administrative investigation, hearing, or court proceeding against any person found to be in violation of any provision of this section or any rule or order adopted under this section.

(8) In any action under subsection (1) of this section, the director may enter an order requiring an accounting, restitution, and disgorgement, including interest at the legal rate under RCW 4.56.110((~~(3)~~)). The director may by rule or order provide for payments to investors, rates of interest, periods of accrual, and other matters the director deems appropriate to implement this subsection.

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

**Sec.**  RCW 21.20.120 and 1994 c 256 s 11 are each amended to read as follows:

Upon the entry of an order under RCW 21.20.110, the director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesperson or investment adviser representative, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within ((~~fifteen~~)) twenty days after the receipt of the director's notification the matter will be promptly set down for hearing. If no hearing is requested and none is ordered by the director, the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination. No order may be entered under RCW 21.20.110 denying or revoking registration without appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is a salesperson or an investment adviser representative), opportunity for hearing, and written findings of fact and conclusions of law.

**Sec.**  RCW 21.20.140 and 1998 c 15 s 11 are each amended to read as follows:

It is unlawful for any person to offer or sell any security in this state unless: (1) The security is registered by coordination or qualification under this chapter; (2) the security or transaction is exempted under RCW 21.20.310 ((~~or~~)), 21.20.320, or 21.20.880; or (3) the security is a federal covered security, and, if required, the filing is made and a fee is paid in accordance with RCW 21.20.327.

**Sec.**  RCW 21.20.270 and 1995 c 46 s 3 are each amended to read as follows:

(1) The director may require the person who filed the registration statement to file reports, not more often than quarterly to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which (a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the investment company act of 1940, or (b) are being offered and sold directly by or for the account of the issuer.

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

**Sec.**  RCW 21.20.275 and 1994 c 256 s 17 are each amended to read as follows:

The director may in his or her discretion send notice to the ((~~registrant~~)) applicant in any pending registration in which no action has been taken for nine months immediately prior to the sending of such notice, advising such ((~~registrant~~)) applicant that the pending registration will be terminated thirty days from the date of sending unless on or before the termination date the ((~~registrant~~)) applicant makes application in writing to the director showing good cause why it should be continued as a pending registration. If such application is not made or good cause shown, the director shall terminate the pending registration.

**Sec.**  RCW 21.20.280 and 1979 ex.s. c 68 s 17 are each amended to read as follows:

The director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if the director finds that the order is in the public interest and that:

(1) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Any provision of this chapter or any rule, order, or condition lawfully imposed under this chapter has been ((~~wilfully~~)) willfully violated, in connection with the offering by (a) the person filing the registration statement, (b) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (c) any underwriter;

(3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but (a) the director may not institute a proceeding against an effective registration statement under this clause more than one year from the date of the injunction relied on, and (b) the director may not enter an order under this clause on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(4) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(5) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(6) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by RCW 21.20.180(7)((~~, or~~));

(7) The applicant or registrant has failed to pay the proper registration fee; but the director may enter only a denial order under this subsection and shall vacate any such order when the deficiency has been corrected; or

(8) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or compensation or promoters' profits or participation, or unreasonable amounts or kinds of options.

**Sec.**  RCW 21.20.300 and 1979 ex.s. c 68 s 19 are each amended to read as follows:

Upon the entry of a stop order under any part of RCW 21.20.280, the director shall promptly notify the issuer of the securities and the applicant or registrant that the order has been entered and of the reasons therefor and that within ((~~fifteen~~)) twenty days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within ((~~fifteen~~)) twenty days and none is ordered by the director, the director shall enter written findings of fact and conclusions of law and the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearings to the issuer and to the applicant or registrant, shall enter written findings of fact and conclusions of law and may modify or vacate the order. The director may modify or vacate a stop order if the director finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

**Sec.**  RCW 21.20.325 and 1979 ex.s. c 68 s 22 are each amended to read as follows:

The director or administrator may by order deny, revoke, or condition any exemption specified in subsections (10), (11), (12) or (13) of RCW 21.20.310 ((~~or in RCW~~)), 21.20.320, ((~~as now or hereafter amended~~)) or 21.20.880, with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the director or administrator may by order summarily deny, revoke, or condition any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the director or administrator shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within ((~~fifteen~~)) twenty days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the director or administrator, the order will remain in effect until it is modified or vacated by the director or administrator. If a hearing is requested or ordered, the director or administrator, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this section may operate retroactively. No person may be considered to have violated RCW 21.20.140 as now or hereafter amended by reason of any offer or sale effected after the entry of an order under this section if he or she sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the order.

**Sec.**  RCW 21.20.340 and 1998 c 15 s 16 are each amended to read as follows:

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

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

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

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

(b) For each offering by an investment company, other than a closed-end company, as those terms are defined in the Investment Company Act of 1940, making a notice filing pursuant to RCW 21.20.327(1), the initial filing fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-twentieth of one percent for any excess over one hundred thousand dollars which are to be offered in this state during that year. The amount offered in this state during the year may be increased by paying one-twentieth of one percent of the desired increase, based on offering price, prior to the sale of securities to be covered by the fee: PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty dollar fee renew for one additional twelve-month period the unsold portion for which the filing fee has been paid.

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

(b) For each offering by a closed-end investment company, making a notice filing pursuant to RCW 21.20.327(1), the initial filing fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-fortieth of one percent for any excess over one hundred thousand dollars for the first twelve-month period plus one hundred dollars for each additional twelve months in which the same offering is continued. The amount offered in this state during the year may be increased by paying one-fortieth of one percent of the desired increase, based on offering price, prior to the sale of securities to be covered by the fee.

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

(5)(a) For filing an amended offering circular after the initial registration permit has been granted or pursuant to RCW 21.20.327(1)(b), the fee shall be ten dollars.

(b) For filing a report under RCW 21.20.270(1) or 21.20.327(1)(c), the fee shall be ten dollars.

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

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

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

(8) If a registration, or filing pursuant to RCW 21.20.050, of a broker-dealer, salesperson, investment adviser, federal covered adviser, or investment adviser representative is not renewed on or before ((~~December 31st of each year~~)) the renewal deadline specified in the central registration depository (CRD) or the investment adviser registration depository (IARD), as applicable, the renewal is delinquent. The director by rule or order may set and assess a fee for delinquency not to exceed two hundred dollars. Acceptance by the director of an application for renewal after ((~~December 31st~~)) the renewal deadline specified in the CRD or the IARD, as applicable, is not a waiver of delinquency. A delinquent application for renewal will not be accepted for filing after March 1st.

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

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

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

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

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

(b) For the filing required by RCW 21.20.327(2), the fee shall be three hundred dollars.

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

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

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

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

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

**Sec.**  RCW 21.20.360 and 1975 1st ex.s. c 84 s 21 are each amended to read as follows:

Neither the fact that an application for registration under RCW 21.20.050, a registration statement under RCW 21.20.180 or 21.20.210 has been filed, nor the fact that a person or security ((~~if [is]~~)) is effectively registered, constitutes a finding by the director that any document filed under this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the director has passed in any way upon the merits ((~~of [or]~~)) or qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.

**Sec.**  RCW 21.20.390 and 2003 c 288 s 5 are each amended to read as follows:

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

(1) Issue an order directing the person to cease and desist from continuing the act or practice and to take appropriate affirmative action within a reasonable period of time, as prescribed by the director, to correct conditions resulting from the act or practice including, without limitation, a requirement to provide restitution. Reasonable notice of and opportunity for a hearing shall be given. The director may issue a summary order pending the hearing which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within twenty days after the receipt of notice; or

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

(3) Whenever it appears to the director that any person who has received a permit to issue, sell, or otherwise dispose of securities under this chapter, whether current or otherwise, has become insolvent, the director may petition a court of competent jurisdiction to appoint a receiver or conservator for the defendant or the defendant's assets. The director may not be required to post a bond.

(4) The director may bring an action for restitution or damages on behalf of the persons injured by a violation of this chapter, if the court finds that private civil action would be so burdensome or expensive as to be impractical.

(5) In any action under this section, the director may charge the costs, fees, and other expenses incurred by the director in the conduct of any administrative investigation, hearing, or court proceeding against any person found to be in violation of any provision of this section or any rule or order adopted under this section.

(6) In any action under subsection (1) of this section, the director may enter an order requiring an accounting, restitution, and disgorgement, including interest at the legal rate under RCW 4.56.110((~~(3)~~)). The director may by rule or order provide for payments to investors, interest rates, periods of accrual, and other matters the director deems appropriate to implement this subsection.

**Sec.**  RCW 21.20.400 and 2003 c 288 s 3 and 2003 c 53 s 163 are each reenacted to read as follows:

(1) Any person who willfully violates any provision of this chapter except RCW 21.20.350, or who willfully violates any rule or order under this chapter, or who willfully violates RCW 21.20.350 knowing the statement made to be false or misleading in any material respect, is guilty of a class B felony punishable under RCW 9A.20.021(1)(b). However, a person may not be imprisoned for the violation of any rule or order if that person proves that he or she had no knowledge of the rule or order.

(2) Any person who knowingly alters, destroys, shreds, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding under this chapter, is guilty of a class B felony punishable under RCW 9A.20.021(1)(b) or punishable by a fine of not more than five hundred thousand dollars, or both. The fines paid under this subsection shall be deposited into the securities prosecution fund.

(3) No indictment or information may be returned under this chapter more than (a) five years after the violation, or (b) three years after the actual discovery of the violation, whichever date of limitation is later.

**Sec.**  RCW 21.20.710 and 1988 c 244 s 3 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a debenture company shall not offer for sale any security other than capital stock if such sale would result in the violation of the following capital requirements:

(a) For outstanding securities other than capital stock totaling from $1 to $1,000,000, a debenture company shall have a net worth of at least $200,000.

(b) In addition to the requirement set forth in (a) of this subsection:

(i) A debenture company with outstanding securities other than capital stock totaling in excess of $1,000,000 but not over $100,000,000 shall have additional net worth equal to at least ten percent of the outstanding securities in excess of $1,000,000 but not over $100,000,000; and

(ii) A debenture company with outstanding securities other than capital stock totaling in excess of $100,000,000 shall have additional net worth equal to at least five percent of the outstanding securities in excess of $100,000,000.

(c) Every debenture company shall hold at least one-half the amount of its required net worth in cash or comparable liquid assets as defined by rule, or shall demonstrate comparable liquidity to the satisfaction of the director.

(2) The director may for good cause in the interest of the existing investors, waive the requirements of subsection (1) of this section. If the director waives the minimum requirements set forth in subsection (1) of this section, the debenture company shall increase its ((~~new [net]~~)) net worth or liquidity in accordance with conditions imposed by the director until such time as the debenture company can meet the requirements of this section without waiver from the director.

**Sec.**  RCW 21.20.727 and 1987 c 421 s 5 are each amended to read as follows:

(1) It is unlawful for any person to acquire control of a debenture company until thirty days after filing with the director a copy of the notice of change of control on the form specified by the director. The notice or application shall be under oath and contain substantially all of the following information plus any additional information that the director may prescribe as necessary or appropriate in the particular instance for the protection of investors, borrowers, or shareholders and the public interest:

(a) The identity and business experience of each person by whom or on whose behalf acquisition is to be made;

(b) The financial and managerial resources and future prospects of each person involved in the acquisition;

(c) The terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(d) The source and amount of the funds or other consideration used or to be used in making the acquisition, and a description of the transaction and the names of the parties if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition;

(e) Any plan or proposal which any person making the acquisition may have to liquidate the debenture company, to sell its assets, to merge it with any other company, or to make any other major change in its business or corporate structure or management;

(f) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on its behalf, who makes solicitations or recommendations to shareholders for the purpose of assisting in the acquisition and a brief description of the terms of the employment, retainer, or arrangement for compensation; and

(g) Copies of all invitations for tenders or advertisements making a tender offer to shareholders for the purchase of their stock to be used in connection with the proposed acquisition.

(2) When a person, other than an individual or corporation, is required to file an application under this section, the director may require that the information required by subsection (1)(a), (b), and (f) of this section be given with respect to each person who has an interest in or controls a person filing an application under this subsection.

(3) When a corporation is required to file an application under this section, the director may require that the information required by subsection (1)(a), (b), and (f) of this section be given for the company, each officer and director of the company, and each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the company.

(4) If any tender offer, request, or invitation for tenders or other agreements to acquire control is proposed to be made by means of a registration statement under the Securities Act of 1933 ((~~(48 Stat. 74; 15 U.S.C. Sec. 77(a))~~)), as amended, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 ((~~(48 Stat. 881; 15 U.S.C. Sec. 78(a))~~)), as amended, the registration statement or application may be filed with the director in lieu of the requirements of this section.

(5) Any acquiring party shall also deliver a copy of any notice or application required by this section to the debenture company proposed to be acquired within two days after the notice or application is filed with the director.

(6) Any acquisition of control in violation of this section shall be ineffective and void.

(7) Any person who ((~~wilfully~~)) willfully or intentionally violates this section or any rule adopted pursuant thereto is guilty of a gross misdemeanor and shall be punished pursuant to chapter 9A.20 RCW. Each day's violation shall be considered a separate violation.

**Sec.**  RCW 21.20.883 and 2014 c 144 s 4 are each amended to read as follows:

(1) Only a local associate development organization, as defined in RCW 43.330.010, a port district, or an organization that qualifies as a portal pursuant to regulations promulgated by the director, may work in collaboration with the director to act as a portal under this chapter.

(2) A portal shall require, at a minimum, the following information from an applicant for exemption prior to offering services to the applicant or forwarding the applicant's materials to the director:

(a) A description of the issuer, including type of entity, location, and business plan, if any;

(b) The applicant's intended use of proceeds from ((~~an~~)) the offering ((~~under chapter 144, Laws of 2014~~));

(c) Identities of officers, directors, managing members, and ten percent beneficial owners, as applicable;

(d) A description of any outstanding securities; and

(e) A description of any litigation or legal proceedings involving the applicant, its officers, directors, managing members, or ten percent beneficial owners, as applicable.

(3) Upon receipt of the information described in subsection (2) of this section, the portal may offer services to the applicant that the portal deems appropriate or necessary to meet the criteria for exemption under RCW 21.20.880 and 21.20.886. Such services may include assistance with development of a business plan, referral to legal services, and other technical assistance in preparation for a public securities offering.

(4) The portal shall forward the materials necessary for the applicant to qualify for exemption to the director for filing when the portal is satisfied that the applicant has assembled the necessary information and materials to meet the criteria for exemption under RCW 21.20.880 and 21.20.886.

(5) The portal shall work in collaboration with the director for the purposes of executing the offering upon filing with the director.

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