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**SUBSTITUTE HOUSE BILL 1219**

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**State of Washington**

**58th Legislature**

**2003 Regular Session**

**By** House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Schual-Berke, Benson, Anderson, Upthegrove, Rockefeller and Simpson; by request of Governor Locke)

READ FIRST TIME 03/04/03.

1 AN ACT Relating to violations connected with the offer, sale, or  
2 purchase of securities; amending RCW 43.320.110, 21.20.400, 21.20.410,  
3 21.20.110, 21.20.390, 21.20.395, and 9A.20.021; adding a new section to  
4 chapter 43.320 RCW; and prescribing penalties.

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

6 **Sec. 1.** RCW 43.320.110 and 2002 c 371 s 912 are each amended to  
7 read as follows:

8 There is created a local fund known as the "financial services  
9 regulation fund" which shall consist of all moneys received by the  
10 divisions of the department of financial institutions, except for the  
11 division of securities which shall deposit thirteen percent of all  
12 moneys received, except as provided in section 2 of this act, and which  
13 shall be used for the purchase of supplies and necessary equipment; the  
14 payment of salaries, wages, and utilities; the establishment of  
15 reserves; and other incidental costs required for the proper regulation  
16 of individuals and entities subject to regulation by the department.  
17 The state treasurer shall be the custodian of the fund. Disbursements  
18 from the fund shall be on authorization of the director of financial  
19 institutions or the director's designee. In order to maintain an

1 effective expenditure and revenue control, the fund shall be subject in  
2 all respects to chapter 43.88 RCW, but no appropriation is required to  
3 permit expenditures and payment of obligations from the fund.

4 ~~((Between July 1, 2001, and December 31, 2001, the legislature may  
5 transfer up to two million dollars from the financial services  
6 regulation fund to the digital government revolving account. During  
7 the 2001-2003 fiscal biennium, the legislature may transfer from the  
8 financial services regulation fund to the state general fund such  
9 amounts as reflect the excess fund balance of the fund and  
10 appropriations reductions made by the 2002 supplemental appropriations  
11 act for administrative efficiencies and savings.))~~

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.320 RCW  
13 to read as follows:

14 (1) The securities prosecution fund is created in the custody of  
15 the state treasurer and shall consist of all fines received by the  
16 division of securities under RCW 21.20.400(2), 21.20.110, and 21.20.395  
17 and all undistributed funds from orders of disgorgement and restitution  
18 under RCW 21.20.110(8) and 21.20.390(6). No appropriation is required  
19 to permit expenditures from this fund, but the account is subject to  
20 allotment procedures under chapter 43.88 RCW.

21 (2) Expenditures from this fund may be used solely for  
22 administering the fund and for payment of costs, expenses, and charges  
23 incurred in the preparation, initiation, and prosecution of criminal  
24 charges for violations of chapters 21.20, 21.30, 19.100, and 19.110  
25 RCW. Only the director or the director's designee may authorize  
26 expenditures from the fund.

27 (3) Applications for fund expenditures must be submitted by the  
28 attorney general or the proper prosecuting attorney to the director.  
29 The application must clearly identify the alleged criminal violations  
30 identified in subsection (2) of this section and indicate the purpose  
31 for which the funds will be used. The application must also certify  
32 that any funds received will be expended only for the purpose  
33 requested. Funding requests must be approved by the director prior to  
34 any expenditure being incurred by the requesting attorney general or  
35 prosecuting attorney. At the conclusion of the prosecution, the  
36 attorney general or prosecuting attorney shall provide the director

1 with an accounting of fund expenditures, a summary of the case, and  
2 certify his or her compliance with any rules adopted by the director  
3 relating to the administration of the fund.

4 (4) If the balance of the securities prosecution fund reaches one  
5 million dollars, all fines received by the division of securities under  
6 RCW 21.20.400(2), 21.20.110, and 21.20.395 and all undistributed funds  
7 from orders of disgorgement and restitution under RCW 21.20.110(8) and  
8 21.20.390(6) shall be deposited in the financial services regulation  
9 fund until such time as the balance in the fund falls below one million  
10 dollars, at which time the fines received by the division of securities  
11 under RCW 21.20.400(2), 21.20.110, and 21.20.395 and all undistributed  
12 funds from orders of disgorgement and restitution under RCW  
13 21.20.110(8) and 21.20.390(6) shall be deposited to the securities  
14 prosecution fund until balance in the fund once again reaches one  
15 million dollars.

16 **Sec. 3.** RCW 21.20.400 and 1979 ex.s. c 68 s 28 are each amended to  
17 read as follows:

18 (1) Any person who willfully violates any provision of this chapter  
19 except RCW 21.20.350, or who willfully violates any rule or order under  
20 this chapter, or who willfully violates RCW 21.20.350 knowing the  
21 statement made to be false or misleading in any material respect,  
22 ((shall upon conviction be fined not more than five thousand dollars or  
23 imprisoned not more than ten years, or both; but no)) is guilty of a  
24 class B felony punishable under RCW 9A.20.021(1)(b). However, a person  
25 may not be imprisoned for the violation of any rule or order if that  
26 person proves that he or she had no knowledge of the rule or order.

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

35 (3) No indictment or information may be returned under this chapter  
36 more than (a) five years after the ((alleged)) violation, or (b) three

1 years after the actual discovery of the violation, whichever date of  
2 limitation is later.

3 **Sec. 4.** RCW 21.20.410 and 1998 c 15 s 19 are each amended to read  
4 as follows:

5 (1) The director may refer such evidence as may be available  
6 concerning violations of this chapter or of any rule or order hereunder  
7 to the attorney general or the proper prosecuting attorney, who may in  
8 his or her discretion, with or without such a reference, institute the  
9 appropriate criminal proceedings under this chapter.

10 (2) The director may render such assistance as the prosecuting  
11 attorney requests regarding a reference.

12 (3) The attorney general or the proper prosecuting attorney may  
13 request that an attorney employed by the director prosecute or assist  
14 in the prosecution of the violation or violations on behalf of the  
15 state. The attorney general or prosecuting attorney may appoint an  
16 employee approved by the director to serve as a special prosecuting  
17 attorney with the powers and duties prescribed by law and delegated by  
18 the attorney general or prosecuting attorney. The appointed attorney  
19 shall serve without compensation from the attorney general or  
20 prosecuting attorney.

21 **Sec. 5.** RCW 21.20.110 and 2002 c 65 s 4 are each amended to read  
22 as follows:

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

32 (a) Has filed an application for registration under this section  
33 which, as of its effective date, or as of any date after filing in the  
34 case of an order denying effectiveness, was incomplete in any material  
35 respect or contained any statement which was, in the light of the

1 circumstances under which it was made, false, or misleading with  
2 respect to any material fact;

3 (b) Has willfully violated or willfully failed to comply with any  
4 provision of this chapter or a predecessor act or any rule or order  
5 under this chapter or a predecessor act, or any provision of chapter  
6 21.30 RCW or any rule or order thereunder;

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

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

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

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

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

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

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

1 (f) Is the subject of an order, adjudication, or determination,  
2 after notice and opportunity for hearing, by the Securities and  
3 Exchange Commission, the Commodities Futures Trading Commission, the  
4 Federal Trade Commission, or a securities or insurance regulator of any  
5 state that the person has (~~willfully~~) violated the Securities Act of  
6 1933, the Securities Exchange Act of 1934, the Investment Advisers Act  
7 of 1940, the Investment Company Act of 1940, the Commodities Exchange  
8 Act, the securities, insurance, or commodities law of any state, or a  
9 federal or state law under which a business involving investments,  
10 franchises, business opportunities, insurance, banking, or finance is  
11 regulated;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (4) The director may not impose a fine under this section except  
36 after notice and opportunity for hearing. The fine imposed under this  
37 section may not exceed (~~five~~) ten thousand dollars for each act or  
38 omission that constitutes the basis for issuing the order. If a

1 petition for judicial review has not been timely filed under RCW  
2 34.05.542(2), a certified copy of the director's order requiring  
3 payment of the fine may be filed in the office of the clerk of the  
4 superior court in any county of this state. The clerk shall treat the  
5 order of the director in the same manner as a judgment of the superior  
6 court. The director's order so filed has the same effect as a judgment  
7 of the superior court and may be recorded, enforced, or satisfied in  
8 like manner.

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

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

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

33 (8) In any action under subsection (1) of this section, the  
34 director may enter an order requiring an accounting, restitution, and  
35 disgorgement, including interest at the legal rate under RCW  
36 4.56.110(3). The director may by rule or order provide for payments to  
37 investors, rates of interest, periods of accrual, and other matters the  
38 director deems appropriate to implement this subsection.

1       (9) The director shall immediately suspend the license or  
2 certificate of a person who has been certified pursuant to RCW  
3 74.20A.320 by the department of social and health services as a person  
4 who is not in compliance with a support order. If the person has  
5 continued to meet all other requirements for reinstatement during the  
6 suspension, reissuance of the license or certificate shall be automatic  
7 upon the director's receipt of a release issued by the department of  
8 social and health services stating that the licensee is in compliance  
9 with the order.

10       **Sec. 6.** RCW 21.20.390 and 1995 c 46 s 7 are each amended to read  
11 as follows:

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

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

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

1 director shall be entitled to a reasonable attorney's fee to be fixed  
2 by the court.

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

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

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

18 (6) In any action under subsection (1) of this section, the  
19 director may enter an order requiring an accounting, restitution, and  
20 disgorgement, including interest at the legal rate under RCW  
21 4.56.110(3). The director may by rule or order provide for payments to  
22 investors, interest rates, periods of accrual, and other matters the  
23 director deems appropriate to implement this subsection.

24 **Sec. 7.** RCW 21.20.395 and 1998 c 15 s 18 are each amended to read  
25 as follows:

26 (1) A person who, in an administrative action by the director, is  
27 found to have knowingly or recklessly violated any provision of this  
28 chapter, or any rule or order under this chapter, may be fined, after  
29 notice and opportunity for hearing, in an amount not to exceed ((five))  
30 ten thousand dollars for each violation.

31 (2) A person who, in an administrative action by the director, is  
32 found to have knowingly or recklessly violated an administrative order  
33 issued under RCW 21.20.110 or 21.20.390 shall pay an administrative  
34 fine in an amount not to exceed twenty-five thousand dollars for each  
35 violation.

36 (3) The fines paid under subsections (1) and (2) of this section  
37 shall be deposited into the securities prosecution fund.

1       (4) If a petition for judicial review has not been timely filed  
2 under RCW 34.05.542(2), a certified copy of the director's order  
3 requiring payment of the fine may be filed in the office of the clerk  
4 of the superior court in any county of this state. The clerk shall  
5 treat the order of the director in the same manner as a judgment of the  
6 superior court. The director's order so filed has the same effect as  
7 a judgment of the superior court and may be recorded, enforced, or  
8 satisfied in like manner.

9       **Sec. 8.** RCW 9A.20.021 and 1982 c 192 s 10 are each amended to read  
10 as follows:

11       (1) Felony. Unless a different maximum sentence for a classified  
12 felony is specifically established by statute, no person convicted of  
13 a classified felony shall be punished by confinement or fine exceeding  
14 the following:

15       (a) For a class A felony, by confinement in a state correctional  
16 institution for a term of life imprisonment, or by a fine in an amount  
17 fixed by the court of fifty thousand dollars, or by both such  
18 confinement and fine;

19       (b) For a class B felony, by confinement in a state correctional  
20 institution for a term of ten years, or by a fine in an amount fixed by  
21 the court of twenty thousand dollars, or by both such confinement and  
22 fine;

23       (c) For a class C felony, by confinement in a state correctional  
24 institution for five years, or by a fine in an amount fixed by the  
25 court of ten thousand dollars, or by both such confinement and fine.

26       (2) Gross misdemeanor. Every person convicted of a gross  
27 misdemeanor defined in Title 9A RCW shall be punished by imprisonment  
28 in the county jail for a maximum term fixed by the court of not more  
29 than one year, or by a fine in an amount fixed by the court of not more  
30 than five thousand dollars, or by both such imprisonment and fine.

31       (3) Misdemeanor. Every person convicted of a misdemeanor defined  
32 in Title 9A RCW shall be punished by imprisonment in the county jail  
33 for a maximum term fixed by the court of not more than ninety days, or  
34 by a fine in an amount fixed by the court of not more than one thousand  
35 dollars, or by both such imprisonment and fine.

1           (4) This section applies to only those crimes committed on or after  
2 July 1, 1984.

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