
HOUSE BILL 2023

State of Washington 63rd Legislature 2013 Regular Session

By Representatives Habib, Ryu, Zeiger, and Maxwell

Read first time 04/02/13. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to allowing crowdfunding for certain small
2 securities offerings; adding new sections to chapter 21.20 RCW; and
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that start-up
6 companies play a critical role in creating new jobs and revenues.
7 Crowdfunding, or raising money through small contributions from a large
8 number of investors, allows smaller enterprises in Washington to have
9 access to the capital they need to get new businesses off the ground.
10 However, state securities registration can be prohibitively expensive
11 for the small offerings that crowdfunding facilitates, and the use of
12 crowdfunding for business financing in Washington is unnecessarily
13 restricted by state securities laws. It is the intent of the
14 legislature to help new businesses access equity-based crowdfunding as
15 a financing tool, democratizing venture capital, and facilitating
16 investment by Washington residents in Washington start-ups.

17 Accordingly, to promote the formation and growth of smaller
18 Washington enterprises and the job formation that accompanies such
19 growth, and to permit such businesses to raise capital unencumbered by

1 unnecessary government regulation, the legislature finds that
2 crowdfunding should be permitted, subject to certain restrictions to
3 protect the interests of Washington investors, in accordance with
4 section 2 of this act.

5 NEW SECTION. **Sec. 2.** A new section is added to chapter 21.20 RCW
6 to read as follows:

7 (1) The following transactions are exempt from RCW 21.20.040
8 through 21.20.300 and 21.20.327 except as expressly provided:

9 (a) Any offer or sale by the issuer of a security in a transaction
10 that meets the requirements of this section is exempt from
11 registration, including under RCW 21.20.040 through 21.20.300 and
12 21.20.327, under RCW 21.20.320(9).

13 (b) The offering must be conducted in accordance with the
14 requirements of section 3(a)(11) of the securities act of 1933 and this
15 section. Securities must be offered to and sold only to persons who
16 are residents of the state of Washington at the time of purchase.
17 Prior to any offer or sale pursuant to this exemption, the seller shall
18 obtain documentary evidence from each prospective purchaser that
19 provides the seller with a reasonable basis to believe that such
20 investor is a resident of the state of Washington. Sales of securities
21 shall be made only by entities organized and doing business in the
22 state of Washington.

23 (c) The aggregate purchase price of all securities sold by an
24 issuer pursuant to this exemption during any twelve-month period shall
25 not exceed one million dollars. Securities sold by the issuer pursuant
26 to other available exemptions shall not count against this one million
27 dollar cap.

28 (d) The aggregate amount sold to any investor by any one issuer
29 during the twelve-month period preceding the date of such transaction,
30 may not exceed:

31 (i) The greater of two thousand dollars or five percent of the
32 annual income or net worth of such investor, as applicable, if either
33 the annual income or the net worth of the investor is less than one
34 hundred thousand dollars; and

35 (ii) Ten percent of the annual income or net worth of such
36 investor, as applicable, not to exceed a maximum aggregate amount sold

1 of one hundred thousand dollars, if either the annual income or net
2 worth of the investor is one hundred thousand dollars or more.

3 (e) Securities may be sold only to persons who sign the following
4 statement at the time of sale: "I acknowledge that I am investing in
5 a high-risk, speculative business venture, that I may lose all of my
6 investment, and that I can afford the loss of my investment."

7 (f) Sales of securities may be offered through an internet portal
8 which requires as a condition of entry to the portal evidence or
9 certification of residency within the state of Washington. The
10 department of financial institutions may inspect and review any such
11 web site, and at the time such a web site first offers investment
12 opportunities to Washington residents, the web site operator shall
13 inform the director of the existence of the web site and shall give the
14 department access to the site.

15 (g) The issuer must reasonably believe that all purchasers of
16 securities are purchasing for investment and not for sale in connection
17 with a distribution of the security.

18 (h) The issuer shall file with the director a notice either in the
19 form required by the department or on securities and exchange
20 commission Form D, a consent to service of process, and a fee of three
21 hundred dollars within fifteen days after the first sale. Failure to
22 timely file such form shall not preclude an issuer from being able to
23 rely on this exemption, so long as the issuer files such form upon
24 written demand of the department.

25 (i) Attempted compliance with the exemption provided by this
26 section does not act as an exclusive election. The issuer may claim
27 any other applicable exemption.

28 (j) For so long as any of the securities issued under the exemption
29 are outstanding, the issuer shall provide a quarterly report to the
30 issuer's shareholders by making such report publicly accessible, free
31 of charge, at the issuer's internet web site address with a user name
32 and password within forty-five days of the end of each fiscal quarter.
33 The report must contain the following information:

34 (i) Executive officer and director compensation, including
35 specifically the cash compensation earned by the executive officers and
36 directors since the previous report and on an annual basis, and any
37 bonuses or other compensation, including stock options or other rights

1 to receive equity securities of the issuer or any affiliate of the
2 issuer, received by them; and

3 (ii) A brief analysis by management of the issuer of the business
4 operations and financial condition of the issuer.

5 (k) Securities issued pursuant to a transaction described in this
6 section may not be transferred by the purchaser of such securities
7 during a one-year period beginning on the date of purchase, unless such
8 securities are transferred:

- 9 (i) To the issuer of the securities;
- 10 (ii) To an accredited investor;
- 11 (iii) As part of a registered offering; or
- 12 (iv) To a member of the family of the purchaser or the equivalent,
13 or in connection with the death or divorce or other similar
14 circumstances, in the discretion of the department.

15 (2) The department may adopt rules to protect investors who
16 purchase securities under this section.

17 NEW SECTION. **Sec. 3.** A new section is added to chapter 21.20 RCW
18 to read as follows:

19 (1) There is levied and collected on the sale of securities sold by
20 an issuer pursuant to section 2 of this act, an excise tax of five
21 percent on the total aggregate purchase price. The tax imposed in this
22 section must be paid by the buyer to the seller, and each seller must
23 collect from the buyer the full amount of the tax. The tax collected
24 must be paid to the department of revenue in accordance with RCW
25 82.32.045.

26 (2) All other applicable provisions of chapter 82.32 RCW have full
27 force and application with respect to the tax imposed under this
28 section. The department of revenue must administer this section.

29 (3) For the purposes of this section, "aggregate purchase price"
30 means the total amount of consideration for the sale of securities
31 pursuant to section 2 of this act.

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