
ENGROSSED SUBSTITUTE HOUSE BILL 2023

AS AMENDED BY THE SENATE

Passed Legislature - 2014 Regular Session

State of Washington 63rd Legislature 2014 Regular Session

By House Business & Financial Services (originally sponsored by Representatives Habib, Ryu, Zeiger, and Maxwell)

READ FIRST TIME 01/27/14.

1 AN ACT Relating to allowing crowdfunding for certain small
2 securities offerings; amending RCW 42.56.270; adding new sections to
3 chapter 21.20 RCW; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** This act may be known and cited as the
6 Washington jobs act of 2014.

7 NEW SECTION. **Sec. 2.** The legislature finds that start-up
8 companies play a critical role in creating new jobs and revenues.
9 Crowdfunding, or raising money through small contributions from a large
10 number of investors, allows smaller enterprises to access the capital
11 they need to get new businesses off the ground. The legislature
12 further finds that the costs of state securities registration often
13 outweigh the benefits to Washington start-ups seeking to make small
14 securities offerings and that the use of crowdfunding for business
15 financing in Washington is significantly restricted by state securities
16 laws. Helping new businesses access equity crowdfunding within certain
17 boundaries will democratize venture capital and facilitate investment
18 by Washington residents in Washington start-ups while protecting

1 consumers and investors. For these reasons, the legislature intends to
2 provide Washington businesses and investors the opportunity to benefit
3 from equity crowdfunding.

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

6 (1) Any offer or sale of a security is exempt from RCW 21.20.040
7 through 21.20.300 and 21.20.327, except as expressly provided, if:

8 (a) The offering is first declared exempt by the director after:

9 (i) The issuer files the offering with the director; or

10 (ii) A portal working in collaboration with the director files the
11 offering with the director on behalf of the issuer under section 4 of
12 this act;

13 (b) The offering is conducted in accordance with the requirements
14 of section 3(a)(11) of the securities act of 1933 and securities and
15 exchange commission rule 147, 17 C.F.R. Sec. 230.147;

16 (c) The issuer is an entity organized and doing business in the
17 state of Washington;

18 (d) Each investor provides evidence or certification of residency
19 in the state of Washington at the time of purchase;

20 (e) The issuer files with the director an escrow agreement either
21 directly or through a portal providing that all offering proceeds will
22 be released to the issuer only when the aggregate capital raised from
23 all investors equals or exceeds the minimum target offering, as
24 determined by the director;

25 (f) The aggregate purchase price of all securities sold by an
26 issuer pursuant to the exemption provided by this section does not
27 exceed one million dollars during any twelve-month period;

28 (g) The aggregate amount sold to any investor by one or more
29 issuers during the twelve-month period preceding the date of the sale
30 does not exceed:

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

35 (ii) Ten percent of the annual income or net worth of the investor,
36 as applicable, up to one hundred thousand dollars, if either the annual

1 income or net worth of the investor is one hundred thousand dollars or
2 more;

3 (h) The investor acknowledges by manual or electronic signature the
4 following statement conspicuously presented at the time of sale on a
5 page separate from other information relating to the offering: "I
6 acknowledge that I am investing in a high-risk, speculative business
7 venture, that I may lose all of my investment, and that I can afford
8 the loss of my investment";

9 (i) The issuer reasonably believes that all purchasers are
10 purchasing for investment and not for sale in connection with a
11 distribution of the security; and

12 (j) The issuer and investor provide any other information
13 reasonably requested by the director.

14 (2) Attempted compliance with the exemption provided by this
15 section does not act as an exclusive election. The issuer may claim
16 any other applicable exemption.

17 (3) For as long as securities issued under the exemption provided
18 by this section are outstanding, the issuer shall provide a quarterly
19 report to the issuer's shareholders and the director by making such
20 report publicly accessible, free of charge, at the issuer's internet
21 web site address within forty-five days of the end of each fiscal
22 quarter. The report must contain the following information:

23 (a) Executive officer and director compensation, including
24 specifically the cash compensation earned by the executive officers and
25 directors since the previous report and on an annual basis, and any
26 bonuses or other compensation, including stock options or other rights
27 to receive equity securities of the issuer or any affiliate of the
28 issuer, received by them; and

29 (b) A brief analysis by management of the issuer of the business
30 operations and financial condition of the issuer.

31 (4) Securities issued under the exemption provided by this section
32 may not be transferred by the purchaser during a one-year period
33 beginning on the date of purchase, unless the securities are
34 transferred:

35 (a) To the issuer of the securities;

36 (b) To an accredited investor;

37 (c) As part of a registered offering; or

1 (d) To a member of the family of the purchaser or the equivalent,
2 or in connection with the death or divorce or other similar
3 circumstances, in the discretion of the director.

4 (5) The director shall adopt disqualification provisions under
5 which this exemption shall not be available to any person or its
6 predecessors, affiliates, officers, directors, underwriters, or other
7 related persons. The provisions shall be substantially similar to the
8 disqualification provisions adopted by the securities and exchange
9 commission pursuant to the requirements of section 401(b)(2) of the
10 Jobs act of 2012 or, if none, as adopted in Rule 506 of Regulation D.
11 Notwithstanding the foregoing, this exemption shall become available on
12 the effective date of this section.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 21.20 RCW
14 to read as follows:

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

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

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

25 (b) The applicant's intended use of proceeds from an offering under
26 this act;

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

29 (d) A description of any outstanding securities; and

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

33 (3) Upon receipt of the information described in subsection (2) of
34 this section, the portal may offer services to the applicant that the
35 portal deems appropriate or necessary to meet the criteria for
36 exemption under sections 3 and 5 of this act. Such services may

1 include assistance with development of a business plan, referral to
2 legal services, and other technical assistance in preparation for a
3 public securities offering.

4 (4) The portal shall forward the materials necessary for the
5 applicant to qualify for exemption to the director for filing when the
6 portal is satisfied that the applicant has assembled the necessary
7 information and materials to meet the criteria for exemption under
8 sections 3 and 5 of this act.

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

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

13 The director must adopt rules to implement sections 2 and 3 of this
14 act subject to RCW 21.20.450 including, but not limited to:

15 (1) Adopting rules for filing with the director under sections 3
16 and 4 of this act by October 1, 2014;

17 (2) Establishing filing and transaction fees sufficient to cover
18 the costs of administering this section and sections 2 through 4 of
19 this act by January 1, 2015; and

20 (3) Adopting any other rules to implement sections 3 and 4 of this
21 act by April 1, 2015.

22 The director shall take steps and adopt rules to implement this
23 section by the dates specified in this section.

24 **Sec. 6.** RCW 42.56.270 and 2013 c 305 s 14 are each amended to read
25 as follows:

26 The following financial, commercial, and proprietary information is
27 exempt from disclosure under this chapter:

28 (1) Valuable formulae, designs, drawings, computer source code or
29 object code, and research data obtained by any agency within five years
30 of the request for disclosure when disclosure would produce private
31 gain and public loss;

32 (2) Financial information supplied by or on behalf of a person,
33 firm, or corporation for the purpose of qualifying to submit a bid or
34 proposal for (a) a ferry system construction or repair contract as
35 required by RCW 47.60.680 through 47.60.750 or (b) highway construction
36 or improvement as required by RCW 47.28.070;

1 (3) Financial and commercial information and records supplied by
2 private persons pertaining to export services provided under chapters
3 43.163 and 53.31 RCW, and by persons pertaining to export projects
4 under RCW 43.23.035;

5 (4) Financial and commercial information and records supplied by
6 businesses or individuals during application for loans or program
7 services provided by chapters 43.325, 43.163, 43.160, 43.330, and
8 43.168 RCW, or during application for economic development loans or
9 program services provided by any local agency;

10 (5) Financial information, business plans, examination reports, and
11 any information produced or obtained in evaluating or examining a
12 business and industrial development corporation organized or seeking
13 certification under chapter 31.24 RCW;

14 (6) Financial and commercial information supplied to the state
15 investment board by any person when the information relates to the
16 investment of public trust or retirement funds and when disclosure
17 would result in loss to such funds or in private loss to the providers
18 of this information;

19 (7) Financial and valuable trade information under RCW 51.36.120;

20 (8) Financial, commercial, operations, and technical and research
21 information and data submitted to or obtained by the clean Washington
22 center in applications for, or delivery of, program services under
23 chapter 70.95H RCW;

24 (9) Financial and commercial information requested by the public
25 stadium authority from any person or organization that leases or uses
26 the stadium and exhibition center as defined in RCW 36.102.010;

27 (10)(a) Financial information, including but not limited to account
28 numbers and values, and other identification numbers supplied by or on
29 behalf of a person, firm, corporation, limited liability company,
30 partnership, or other entity related to an application for a horse
31 racing license submitted pursuant to RCW 67.16.260(1)(b), liquor
32 license, gambling license, or lottery retail license;

33 (b) Internal control documents, independent auditors' reports and
34 financial statements, and supporting documents: (i) Of house-banked
35 social card game licensees required by the gambling commission pursuant
36 to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes
37 with an approved tribal/state compact for class III gaming;

1 (11) Proprietary data, trade secrets, or other information that
2 relates to: (a) A vendor's unique methods of conducting business; (b)
3 data unique to the product or services of the vendor; or (c)
4 determining prices or rates to be charged for services, submitted by
5 any vendor to the department of social and health services for purposes
6 of the development, acquisition, or implementation of state purchased
7 health care as defined in RCW 41.05.011;

8 (12)(a) When supplied to and in the records of the department of
9 commerce:

10 (i) Financial and proprietary information collected from any person
11 and provided to the department of commerce pursuant to RCW
12 43.330.050(8); and

13 (ii) Financial or proprietary information collected from any person
14 and provided to the department of commerce or the office of the
15 governor in connection with the siting, recruitment, expansion,
16 retention, or relocation of that person's business and until a siting
17 decision is made, identifying information of any person supplying
18 information under this subsection and the locations being considered
19 for siting, relocation, or expansion of a business;

20 (b) When developed by the department of commerce based on
21 information as described in (a)(i) of this subsection, any work product
22 is not exempt from disclosure;

23 (c) For the purposes of this subsection, "siting decision" means
24 the decision to acquire or not to acquire a site;

25 (d) If there is no written contact for a period of sixty days to
26 the department of commerce from a person connected with siting,
27 recruitment, expansion, retention, or relocation of that person's
28 business, information described in (a)(ii) of this subsection will be
29 available to the public under this chapter;

30 (13) Financial and proprietary information submitted to or obtained
31 by the department of ecology or the authority created under chapter
32 70.95N RCW to implement chapter 70.95N RCW;

33 (14) Financial, commercial, operations, and technical and research
34 information and data submitted to or obtained by the life sciences
35 discovery fund authority in applications for, or delivery of, grants
36 under chapter 43.350 RCW, to the extent that such information, if
37 revealed, would reasonably be expected to result in private loss to the
38 providers of this information;

1 (15) Financial and commercial information provided as evidence to
2 the department of licensing as required by RCW 19.112.110 or
3 19.112.120, except information disclosed in aggregate form that does
4 not permit the identification of information related to individual fuel
5 licensees;

6 (16) Any production records, mineral assessments, and trade secrets
7 submitted by a permit holder, mine operator, or landowner to the
8 department of natural resources under RCW 78.44.085;

9 (17)(a) Farm plans developed by conservation districts, unless
10 permission to release the farm plan is granted by the landowner or
11 operator who requested the plan, or the farm plan is used for the
12 application or issuance of a permit;

13 (b) Farm plans developed under chapter 90.48 RCW and not under the
14 federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to
15 RCW 42.56.610 and 90.64.190;

16 (18) Financial, commercial, operations, and technical and research
17 information and data submitted to or obtained by a health sciences and
18 services authority in applications for, or delivery of, grants under
19 RCW 35.104.010 through 35.104.060, to the extent that such information,
20 if revealed, would reasonably be expected to result in private loss to
21 providers of this information;

22 (19) Information gathered under chapter 19.85 RCW or RCW 34.05.328
23 that can be identified to a particular business;

24 (20) Financial and commercial information submitted to or obtained
25 by the University of Washington, other than information the university
26 is required to disclose under RCW 28B.20.150, when the information
27 relates to investments in private funds, to the extent that such
28 information, if revealed, would reasonably be expected to result in
29 loss to the University of Washington consolidated endowment fund or to
30 result in private loss to the providers of this information;

31 (21) Financial, commercial, operations, and technical and research
32 information and data submitted to or obtained by innovate Washington in
33 applications for, or delivery of, grants and loans under chapter 43.333
34 RCW, to the extent that such information, if revealed, would reasonably
35 be expected to result in private loss to the providers of this
36 information; (~~and~~)

37 (22) Market share data submitted by a manufacturer under RCW
38 70.95N.190(4); and

1 (23) Financial information supplied to the department of financial
2 institutions or to a portal under section 4 of this act, when filed by
3 or on behalf of an issuer of securities for the purpose of obtaining
4 the exemption from state securities registration for small securities
5 offerings provided under section 3 of this act or when filed by or on
6 behalf of an investor for the purpose of purchasing such securities.

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