
SENATE BILL 6295

State of Washington

62nd Legislature

2012 Regular Session

By Senator Morton

Read first time 01/17/12. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to exchange facilitator requirements; amending RCW
2 19.310.040; creating a new section; prescribing penalties; and
3 providing an effective date.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that exchange
6 facilitators are a specialized business in Washington state that
7 involves the transfer of certain assets of citizens for investment
8 purposes. In 2009 legislation was passed that provided enhanced
9 reporting requirements, as well as civil and criminal penalties, to
10 serve as additional protections for citizens involved in these types of
11 transactions. The legislature finds that current law is still
12 inadequate to protect those who trust these companies with assets they
13 may have spent a lifetime accumulating. Additional protections are
14 required to properly regulate the companies engaged in these
15 transactions.

16 **Sec. 2.** RCW 19.310.040 and 2009 c 70 s 5 are each amended to read
17 as follows:

1 (1) A person who engages in business as an exchange facilitator
2 shall:

3 (a) Maintain a fidelity bond or bonds in an amount of not less than
4 ~~((one))~~ fifty million dollars executed by an insurer authorized to do
5 business in this state for the benefit of a client of the exchange
6 facilitator that suffers a loss or damages to any assets entrusted with
7 the exchange facilitator; or

8 (b) Deposit an amount of cash or securities or irrevocable letters
9 of credit in an amount of not less than ~~((one))~~ fifty million dollars
10 into an interest-bearing deposit account or a money market account with
11 the financial institution of the exchange facilitator's choice.
12 Interest on that amount accrues to the exchange facilitator~~((+or))~~.

13 ~~((+e))~~ (2) A person who engages in business as an exchange
14 facilitator shall deposit all exchange funds in a qualified escrow
15 account or qualified trust, as both terms are defined under treasury
16 regulation section 1.1031(k)-1(g)(3), with a financial institution and
17 provide that a withdrawal from that escrow account or trust requires
18 the exchange facilitator's and the client's written authorization.

19 ~~((+2))~~ (3) A person who engages in business as an exchange
20 facilitator may maintain a bond or bonds or deposit an amount of cash
21 or securities or irrevocable letters of credit in excess of the minimum
22 required amounts under this section.

23 ~~((+3))~~ (4) The requirements under subsection (1)(a) of this
24 section are satisfied if the person engaging in business as an exchange
25 facilitator is listed as a named insured on one or more fidelity bonds
26 that have an aggregate total of at least one million dollars.

27 ~~((+4))~~ (5) An exchange facilitator must provide evidence to each
28 client that the requirements of this section are satisfied before
29 entering into an exchange agreement.

30 ~~((+5))~~ (6) Upon request of a current or prospective client, or the
31 attorney general under chapter 19.86 RCW, the exchange facilitator must
32 offer evidence proving that the requirements of this section are
33 satisfied at the time of the request.

34 (7) An exchange facilitator must annually file a certified report
35 to the attorney general detailing that the requirements of this section
36 are satisfied and include the exchange facilitator's current address,
37 phone number, and fax number. An exchange facilitator may not be

1 issued a license until the certified report is filed with the attorney
2 general and the attorney general issues a certification that the
3 exchange facilitator has met the requirements of this section.

4 (8) Failure to fulfill the requirements of this section constitutes
5 prima facie evidence that the exchange facilitator intended to defraud
6 a client who suffered a subsequent loss of the asset entrusted to the
7 exchange facilitator. Failure to fulfill the requirements of this
8 section also constitutes a felony. Damages awarded to a current or
9 prospective client for a civil suit filed for a violation of the
10 requirements of this section include treble damages and attorneys'
11 fees.

12 NEW SECTION. Sec. 3. This act takes effect January 1, 2013.

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