

SHB 2023 - H AMD 647

By Representative Hudgins

WITHDRAWN 02/13/2014

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** This act may be known and cited as the
4 Washington jobs act of 2014.

5 NEW SECTION. **Sec. 2.** 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 to access the capital
9 they need to get new businesses off the ground. The legislature
10 further finds that the costs of state securities registration often
11 outweigh the benefits to Washington start-ups seeking to make small
12 securities offerings and that the use of crowdfunding for business
13 financing in Washington is significantly restricted by state securities
14 laws. Helping new businesses access equity crowdfunding within certain
15 boundaries will democratize venture capital and facilitate investment
16 by Washington residents in Washington start-ups while protecting
17 consumers and investors. For these reasons, the legislature intends to
18 provide Washington businesses and investors the opportunity to benefit
19 from equity crowdfunding.

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

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

24 (a) The offering is:

25 (i) Made through a portal registered with and approved by the
26 department of financial institutions; or

27 (ii) First filed with and declared exempt by the director;

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

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

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

8 (e) The issuer files an escrow agreement with the director or with
9 a portal providing that all offering proceeds will be released to the
10 issuer only when the aggregate capital raised from all investors equals
11 or exceeds the minimum target offering, as determined by the director
12 or portal;

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

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

19 (i) The greater of two thousand dollars or five percent of the
20 annual income or net worth of the investor, as applicable, if either
21 the annual income or the net worth of the investor is less than one
22 hundred thousand dollars; or

23 (ii) Ten percent of the annual income or net worth of the investor,
24 as applicable, up to one hundred thousand dollars, if either the annual
25 income or net worth of the investor is one hundred thousand dollars or
26 more;

27 (h) The investor acknowledges by electronic signature the following
28 statement conspicuously presented at the time of sale on a page
29 separate from other information relating to the offering: "I
30 acknowledge that I am investing in a high-risk, speculative business
31 venture, that I may lose all of my investment, and that I can afford
32 the loss of my investment";

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

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

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

4 (3) For as long as securities issued under the exemption provided
5 by this section are outstanding, the issuer shall provide a quarterly
6 report within forty-five days of the end of each fiscal quarter to the
7 director and to the portal that the issuer used, if any. The issuer
8 must also provide the report to the issuer's shareholders by making
9 such report publicly accessible, free of charge, at the issuer's
10 internet web site address. The report must contain the following
11 information:

12 (a) Executive officer and director compensation, including
13 specifically the cash compensation earned by the executive officers and
14 directors since the previous report and on an annual basis, and any
15 bonuses or other compensation, including stock options or other rights
16 to receive equity securities of the issuer or any affiliate of the
17 issuer, received by them;

18 (b) A brief analysis by management of the issuer of the business
19 operations and financial condition of the issuer;

20 (c) A summary of the employment positions created in Washington,
21 not to include names of employees, since and attributable to receiving
22 funding under this section. The summary must include:

23 (i) The number of employment positions;

24 (ii) The number of employment positions according to the following
25 wage bands: Less than thirty thousand dollars; thirty thousand dollars
26 or greater, but less than sixty thousand dollars; and sixty thousand
27 dollars or greater;

28 (iii) The nature of benefits, including medical, dental, and
29 retirement benefits, provided to a majority of the employment
30 positions; and

31 (d) For an issuer receiving public benefits or resources such as
32 tax incentives, a description of the public resources received.

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

37 (a) To the issuer of the securities;

38 (b) To an accredited investor;

- 1 (c) As part of a registered offering; or
2 (d) To a member of the family of the purchaser or the equivalent,
3 or in connection with the death or divorce or other similar
4 circumstances, in the discretion of the director.

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

7 (1) Only an economic development organization may register with the
8 director as a portal under this chapter. For the purposes of this
9 section, "economic development organization" means any local associate
10 development organization, as defined in RCW 43.330.010, or port
11 district.

12 (2) An economic development organization shall require, at a
13 minimum, the following information from an applicant for exemption
14 prior to offering services to the applicant or forwarding the
15 applicant's materials to the director:

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

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

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

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

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

26 (3) Upon receipt of the information described in subsection (2) of
27 this section, the economic development organization may offer services
28 to the applicant that the economic development organization deems
29 appropriate or necessary to meet the criteria for exemption under
30 sections 3 and 5 of this act. Such services may include assistance
31 with development of a business plan, referral to legal services, and
32 other technical assistance in preparation for a public securities
33 offering.

34 (4) The economic development organization shall forward the
35 materials necessary for the applicant to qualify for exemption to the
36 director for approval when the economic development organization is
37 satisfied that the applicant has assembled the necessary information

1 and materials to meet the criteria for exemption under sections 3 and
2 5 of this act. The economic development organization may assist the
3 issuer with the offering upon approval by the director.

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

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

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

10 (2) Adopting rules for registration and approval of portals under
11 sections 3 and 4 of this act by January 1, 2015;

12 (3) Establishing filing and transaction fees sufficient to cover
13 the costs of administering this section and sections 2 through 4 of
14 this act by January 1, 2015; and

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

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

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

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

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

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

32 (3) Financial and commercial information and records supplied by
33 private persons pertaining to export services provided under chapters
34 43.163 and 53.31 RCW, and by persons pertaining to export projects
35 under RCW 43.23.035;

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

6 (5) Financial information, business plans, examination reports, and
7 any information produced or obtained in evaluating or examining a
8 business and industrial development corporation organized or seeking
9 certification under chapter 31.24 RCW;

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

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

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

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

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

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

34 (11) Proprietary data, trade secrets, or other information that
35 relates to: (a) A vendor's unique methods of conducting business; (b)
36 data unique to the product or services of the vendor; or (c)
37 determining prices or rates to be charged for services, submitted by

1 any vendor to the department of social and health services for purposes
2 of the development, acquisition, or implementation of state purchased
3 health care as defined in RCW 41.05.011;

4 (12)(a) When supplied to and in the records of the department of
5 commerce:

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

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

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

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

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

26 (13) Financial and proprietary information submitted to or obtained
27 by the department of ecology or the authority created under chapter
28 70.95N RCW to implement chapter 70.95N RCW;

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

35 (15) Financial and commercial information provided as evidence to
36 the department of licensing as required by RCW 19.112.110 or
37 19.112.120, except information disclosed in aggregate form that does

1 not permit the identification of information related to individual fuel
2 licensees;

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

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

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

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

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

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

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

34 (22) Market share data submitted by a manufacturer under RCW
35 70.95N.190(4); and

36 (23) Financial information supplied to the department of financial
37 institutions or to a portal registered with the department of financial
38 institutions, when filed by or on behalf of an issuer of securities for

1 the purpose of obtaining the exemption from state securities
2 registration for small securities offerings provided under section 3 of
3 this act or when filed by or on behalf of an investor for the purpose
4 of purchasing such securities."

5 Correct the title.

EFFECT: Modifies the intent section. Requires that the Department of Financial Institutions approve a portal upon registration. Allows portals to take an issuer's escrow agreement and determine whether the capital raised by an offering meets or exceeds the minimum target offering. Requires that the investor disclosure statement be conspicuously displayed and acknowledged by electronic signature. Requires that reporting be made to the Department of Licensing and strikes requirement that the report be password-protected. Inserts additional reporting requirements to include jobs created, pay and benefit provided, and public support taken. Defines "economic development organizations" as associate development organizations or port districts. Requires that all portals be economic development organizations, which are tasked with preparing potential issuers to apply for exemption and to issue securities. Includes economic development organizations in Department of Financial Institution's rule-making authority. Provides the Department of Financial Institutions with authority to make rules for registration of multiple portals. Narrows the exemption from disclosure to only financial information provided by issuers or investors in connection with a filing for exemption from registration for a small securities offering.

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