

ESHB 2023 - S AMD 588
By Senator Angel

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 first declared exempt by the director after:

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

26 (ii) A portal working in collaboration with the director files the
27 offering with the director on behalf of the issuer under section 4 of
28 this act;

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

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 manual or electronic signature the
28 following statement conspicuously presented at the time of sale on a
29 page 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 to the issuer's shareholders and the director by making such
7 report publicly accessible, free of charge, at the issuer's internet
8 web site address within forty-five days of the end of each fiscal
9 quarter. The report must contain the following information:

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

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

18 (4) If the issuer elects to use a portal under section 4 of this
19 act, for as long as securities issued under the exemption provided by
20 this section are outstanding, the issuer shall provide a quarterly
21 report within forty-five days of the end of each fiscal quarter to the
22 director and to the portal that the issuer used. The issuer must also
23 provide the report to the issuer's shareholders by making such report
24 publicly accessible, free of charge, at the issuer's internet web site
25 address. The report must contain the following information:

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

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

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

37 (i) The number of employment positions;

1 (ii) The number of employment positions according to the following
2 wage bands: Less than thirty thousand dollars; thirty thousand dollars
3 or greater, but less than sixty thousand dollars; and sixty thousand
4 dollars or greater;

5 (iii) The nature of benefits, including medical, dental, and
6 retirement benefits, provided to a majority of the employment
7 positions; and

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

10 (5) Securities issued under the exemption provided by this section
11 may not be transferred by the purchaser during a one-year period
12 beginning on the date of purchase, unless the securities are
13 transferred:

14 (a) To the issuer of the securities;

15 (b) To an accredited investor;

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

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

20 (6) The director shall adopt disqualification provisions under
21 which this exemption shall not be available to any person or its
22 predecessors, affiliates, officers, directors, underwriters, or other
23 related persons. The provisions shall be substantially similar to the
24 disqualification provisions adopted by the securities and exchange
25 commission pursuant to the requirements of section 401(b)(2) of the
26 Jobs act of 2012 or, if none, as adopted in Rule 506 of Regulation D.
27 Notwithstanding the foregoing, this exemption shall become available on
28 the effective date of this section.

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

31 (1) Only a local associate development organization, as defined in
32 RCW 43.330.010, a port district, or an organization that qualifies as
33 a portal pursuant to regulations promulgated by the director, may work
34 in collaboration with the director to act as a portal under this
35 chapter.

36 (2) A portal shall require, at a minimum, the following information

1 from an applicant for exemption prior to offering services to the
2 applicant or forwarding the applicant's materials to the director:

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

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

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

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

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

13 (3) Upon receipt of the information described in subsection (2) of
14 this section, the portal may offer services to the applicant that the
15 portal deems appropriate or necessary to meet the criteria for
16 exemption under sections 3 and 5 of this act. Such services may
17 include assistance with development of a business plan, referral to
18 legal services, and other technical assistance in preparation for a
19 public securities offering.

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

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

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

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

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

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

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

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

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

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

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

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

16 (3) Financial and commercial information and records supplied by
17 private persons pertaining to export services provided under chapters
18 43.163 and 53.31 RCW, and by persons pertaining to export projects
19 under RCW 43.23.035;

20 (4) Financial and commercial information and records supplied by
21 businesses or individuals during application for loans or program
22 services provided by chapters 43.325, 43.163, 43.160, 43.330, and
23 43.168 RCW, or during application for economic development loans or
24 program services provided by any local agency;

25 (5) Financial information, business plans, examination reports, and
26 any information produced or obtained in evaluating or examining a
27 business and industrial development corporation organized or seeking
28 certification under chapter 31.24 RCW;

29 (6) Financial and commercial information supplied to the state
30 investment board by any person when the information relates to the
31 investment of public trust or retirement funds and when disclosure
32 would result in loss to such funds or in private loss to the providers
33 of this information;

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

35 (8) Financial, commercial, operations, and technical and research
36 information and data submitted to or obtained by the clean Washington

1 center in applications for, or delivery of, program services under
2 chapter 70.95H RCW;

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

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

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

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

24 (12)(a) When supplied to and in the records of the department of
25 commerce:

26 (i) Financial and proprietary information collected from any person
27 and provided to the department of commerce pursuant to RCW
28 43.330.050(8); and

29 (ii) Financial or proprietary information collected from any person
30 and provided to the department of commerce or the office of the
31 governor in connection with the siting, recruitment, expansion,
32 retention, or relocation of that person's business and until a siting
33 decision is made, identifying information of any person supplying
34 information under this subsection and the locations being considered
35 for siting, relocation, or expansion of a business;

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

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

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

8 (13) Financial and proprietary information submitted to or obtained
9 by the department of ecology or the authority created under chapter
10 70.95N RCW to implement chapter 70.95N RCW;

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

17 (15) Financial and commercial information provided as evidence to
18 the department of licensing as required by RCW 19.112.110 or
19 19.112.120, except information disclosed in aggregate form that does
20 not permit the identification of information related to individual fuel
21 licensees;

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

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

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

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

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

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

10 (21) Financial, commercial, operations, and technical and research
11 information and data submitted to or obtained by innovate Washington in
12 applications for, or delivery of, grants and loans under chapter 43.333
13 RCW, to the extent that such information, if revealed, would reasonably
14 be expected to result in private loss to the providers of this
15 information; (~~and~~)

16 (22) Market share data submitted by a manufacturer under RCW
17 70.95N.190(4); and

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

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24 On page 1, line 2 of the title, after "offerings;" strike the
25 remainder of the title and insert "amending RCW 42.56.270; adding new
26 sections to chapter 21.20 RCW; and creating new sections."

EFFECT: (1) Allows the submittal of manually signed investment

risk-acknowledgment forms;

(2) Clarifies the financial reporting requirements for issuers of small securities offerings;

(3) Provides that the director must establish disqualification provisions from participating in crowdfunding;

(4) Replaces references to economic development organizations with the term portal for clarity purposes.

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