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ENGROSSED SUBSTITUTE HOUSE BILL 2023

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

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

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

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

- 36 (i) The number of employment positions;  
37 (ii) The number of employment positions according to the following

1 wage bands: Less than thirty thousand dollars; thirty thousand dollars  
2 or greater, but less than sixty thousand dollars; and sixty thousand  
3 dollars or greater;

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

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

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

- 13 (a) To the issuer of the securities;
- 14 (b) To an accredited investor;
- 15 (c) As part of a registered offering; or
- 16 (d) To a member of the family of the purchaser or the equivalent,  
17 or in connection with the death or divorce or other similar  
18 circumstances, in the discretion of the director.

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

21 (1) Only an economic development organization may work in  
22 collaboration with the director to act as a portal under this chapter.  
23 For the purposes of this section, "economic development organization"  
24 means any local associate development organization, as defined in RCW  
25 43.330.010, or port district.

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

- 30 (a) A description of the issuer, including type of entity,  
31 location, and business plan, if any;
- 32 (b) The applicant's intended use of proceeds from an offering under  
33 this act;
- 34 (c) Identities of officers, directors, managing members, and ten  
35 percent beneficial owners, as applicable;
- 36 (d) A description of any outstanding securities; and

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

4 (3) Upon receipt of the information described in subsection (2) of  
5 this section, the economic development organization may offer services  
6 to the applicant that the economic development organization deems  
7 appropriate or necessary to meet the criteria for exemption under  
8 sections 3 and 5 of this act. Such services may include assistance  
9 with development of a business plan, referral to legal services, and  
10 other technical assistance in preparation for a public securities  
11 offering.

12 (4) The economic development organization shall forward the  
13 materials necessary for the applicant to qualify for exemption to the  
14 director for filing when the economic development organization is  
15 satisfied that the applicant has assembled the necessary information  
16 and materials to meet the criteria for exemption under sections 3 and  
17 5 of this act.

18 (5) The economic development organization shall work in  
19 collaboration with the director for the purposes of executing the  
20 offering upon filing with the director.

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

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

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

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

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

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

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

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

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

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

12 (3) Financial and commercial information and records supplied by  
13 private persons pertaining to export services provided under chapters  
14 43.163 and 53.31 RCW, and by persons pertaining to export projects  
15 under RCW 43.23.035;

16 (4) Financial and commercial information and records supplied by  
17 businesses or individuals during application for loans or program  
18 services provided by chapters 43.325, 43.163, 43.160, 43.330, and  
19 43.168 RCW, or during application for economic development loans or  
20 program services provided by any local agency;

21 (5) Financial information, business plans, examination reports, and  
22 any information produced or obtained in evaluating or examining a  
23 business and industrial development corporation organized or seeking  
24 certification under chapter 31.24 RCW;

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

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

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

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

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

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

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

19 (12)(a) When supplied to and in the records of the department of  
20 commerce:

21 (i) Financial and proprietary information collected from any person  
22 and provided to the department of commerce pursuant to RCW  
23 43.330.050(8); and

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

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

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

36 (d) If there is no written contact for a period of sixty days to  
37 the department of commerce from a person connected with siting,

1 recruitment, expansion, retention, or relocation of that person's  
2 business, information described in (a)(ii) of this subsection will be  
3 available to the public under this chapter;

4 (13) Financial and proprietary information submitted to or obtained  
5 by the department of ecology or the authority created under chapter  
6 70.95N RCW to implement chapter 70.95N RCW;

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

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

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

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

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

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

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

36 (20) Financial and commercial information submitted to or obtained  
37 by the University of Washington, other than information the university  
38 is required to disclose under RCW 28B.20.150, when the information



1 relates to investments in private funds, to the extent that such  
2 information, if revealed, would reasonably be expected to result in  
3 loss to the University of Washington consolidated endowment fund or to  
4 result in private loss to the providers of this information;

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

11 (22) Market share data submitted by a manufacturer under RCW  
12 70.95N.190(4); and

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

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