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**HOUSE BILL 2916**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representative Ryu

AN ACT Relating to exchange facilitators; amending RCW 19.310.005, 19.310.010, 19.310.020, 19.310.040, 19.310.050, 19.310.060, 19.310.100, and 19.310.130; adding new sections to chapter 19.310 RCW; creating new sections; prescribing penalties; and providing an effective date.

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

**Sec.**  RCW 19.310.005 and 2009 c 70 s 1 are each amended to read as follows:

The legislature finds and declares that the activities of exchange facilitators substantially affect the public interest requiring that all actions with consumers be actuated by good faith, and that persons subject to this chapter abstain from deception and practice honesty and equity in all matters relating to their profession. The activities of exchange facilitators have a significant impact on the citizens of the state. It is the intent of the legislature to establish a state system of licensure, including rules of practice and conduct by exchange facilitators and the persons subject to this chapter, to promote honesty and fair dealing with citizens and to preserve public confidence in the industry. The legislature finds that there are no statutory requirements pertaining to persons who facilitate like-kind exchanges pursuant to section 1031 of the internal revenue code and associated treasury regulations. The purpose of this chapter is to create a statutory framework that provides ((~~some~~)) consumer protections to those who entrust money or property to persons acting as exchange facilitators. Chapter . . ., Laws of 2016 (this act) shall be liberally construed to effectuate the legislature's intent to protect consumers who utilize exchange facilitators.

**Sec.**  RCW 19.310.010 and 2013 c 228 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) ((~~A person or entity "affiliated" with a specific person or entity, means a person or entity who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person or entity specified.~~)) "Affiliate" means any person who, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

(2) "Applicant" means a person applying for a license under this chapter.

(3) "Client" means the taxpayer with whom the exchange facilitator enters into an agreement as described in subsection ((~~(4)~~)) (8)(a)(i) of this section.

((~~(3)~~)) (4) "Covered dishonest act" means a crime involving fraud, embezzlement, misappropriation of funds, robbery, or other theft of property.

((~~(4)~~)) (5) "Department" means the department of financial institutions.

(6) "Designated exchange facilitator officer" means any licensed exchange facilitator officer designated by a licensed exchange facilitator company and approved by the director as the licensed exchange facilitator officer responsible for supervising that company's handling of exchange facilitator transactions, management of the exchange facilitator's trust account, and supervision of all other employees of the company.

(7) "Director" means the director of the department of financial institutions.

(8)(a) "Exchange facilitator" means a person who:

(i)(A) Facilitates, for a fee, an exchange of like-kind property by entering into an agreement with a taxpayer by which the exchange facilitator acquires from the taxpayer the contractual rights to sell the taxpayer's relinquished property located in this state and transfer a replacement property to the taxpayer as a qualified intermediary, as defined under treasury regulation section 1.1031(k)-1(g)(4); (B) enters into an agreement with a taxpayer to take title to a property in this state as an exchange accommodation titleholder, as defined in internal revenue service revenue procedure 2000-37; or (C) enters into an agreement with a taxpayer to act as a qualified trustee or qualified escrow holder, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3); or

(ii) ((~~Maintains an office in this state for the purpose of soliciting~~)) solicits business as an exchange facilitator.

(b) "Exchange facilitator" does not include:

(i) A taxpayer or a disqualified person, as defined under treasury regulation section 1.1031(k)-1(k), seeking to qualify for the nonrecognition provisions of section 1031 of the internal revenue code of 1986, as amended;

(ii) A financial institution that is (A) acting as a depository for exchange funds and is not facilitating an exchange or (B) acting solely as a qualified escrow holder or qualified trustee, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), and is not facilitating an exchange;

(iii) A title insurance company, underwritten title company, or escrow company that is acting solely as a qualified escrow holder or qualified trustee, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), and is not facilitating an exchange;

(iv) A person that advertises for and teaches seminars or classes, or otherwise makes a presentation, to attorneys, accountants, real estate professionals, tax professionals, or other professionals, when the primary purpose is to teach the professionals about tax-deferred exchanges or to train them to act as exchange facilitators;

(v) A qualified intermediary, as defined under treasury regulation section 1.1031(k)-1(g)(4), who holds exchange funds from the disposition of relinquished property located outside of this state; or

(vi) An affiliated entity that is used by the exchange facilitator to facilitate exchanges or to take title to property in this state as an exchange accommodation titleholder.

(c) For the purposes of this subsection, "fee" means compensation of any nature, direct or indirect, monetary or in kind, that is received by a person or related person, as defined in section 267(b) or 707(b) of the internal revenue code, for any services relating to or incidental to the exchange of like-kind property.

((~~(5)~~)) (9) "Financial institution" means a state chartered or federally chartered bank, credit union, savings and loan association, savings bank, or trust company whose accounts are insured by the full faith and credit of the United States, the federal deposit insurance corporation, the national credit union share insurance fund, or other similar or successor programs.

((~~(6)~~)) (10) "License" means a single license issued under the authority of this chapter.

(11) "Licensee" means a licensed exchange facilitator company or a licensed exchange facilitator officer licensed under this chapter. "Licensee" also means any person, whether located within or outside of this state, who fails to obtain a license required by this chapter.

(12) "Licensed exchange facilitator company" means any sole proprietorship, firm, association, partnership, or corporation holding a license as an exchange facilitator company under this chapter. "Licensed exchange facilitator company" also means any person, whether located within or outside of this state, who fails to obtain an exchange facilitator company license required by this chapter.

(13) "Licensed exchange facilitator officer" means any natural person holding a license as an exchange facilitator officer under this chapter. "Licensed exchange facilitator officer" also means any person, whether located within or outside of this state, who fails to obtain an exchange facilitator company license required by this chapter.

(14) "NMLS" means a licensing system developed and maintained by the conference of state bank supervisors for licensing and registration.

(15) "Officer" means an official appointed by the company for the purpose of making business decisions or corporate decisions.

(16) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, or any other form of a legal entity, and includes the agents and employees of that person.

((~~(7)~~)) (17) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, alone or in concert with others, a ten percent or greater interest in a partnership; company; association or corporation; or a limited liability company, and the owner of a sole proprietorship.

(18) "Prudent investor standard" means the standard for investment as described under RCW 11.100.020.

NEW SECTION. **Sec.**  (1) This chapter does not apply to any person doing business under, and as permitted by, any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions.

(2) The burden of proving the application for an exemption or exception from a definition, or a preemption of a provision of this chapter, is on the person claiming the exemption, exception, or preemption.

(3) The director may adopt rules interpreting this section.

**Sec.**  RCW 19.310.020 and 2009 c 70 s 3 are each amended to read as follows:

((~~An exchange facilitator may not bring a suit or action for the collection of compensation in connection with duties performed as an exchange facilitator unless the exchange facilitator alleges and proves that he or she was fully in compliance with this chapter at the time of the offering to perform or performing an act or service regulated under this chapter.~~)) (1) A person, unless specifically exempted from this chapter, may not engage in the business of an exchange facilitator, or hold themselves out as being able to conduct the activities of an exchange facilitator, without first obtaining and maintaining a license under this chapter.

(2) An exchange facilitator may not bring a suit or action for the collection of compensation in connection with duties performed as an exchange facilitator unless the exchange facilitator alleges and proves that he or she was fully in compliance with this chapter at the time of the offering to perform or performing an act or service regulated under this chapter.

(3) Every licensed exchange facilitator company must at all times have a designated exchange facilitator officer responsible for all activities of the exchange facilitator in conducting the business of an exchange facilitator. A designated exchange facilitator officer, principal, or owner who has supervisory authority over an exchange facilitator is responsible for a licensee's, employee's, or independent contractor's violations of this chapter and its rules.

NEW SECTION. **Sec.**  (1) Application for an exchange facilitator company license under this chapter must be made to a NMLS or in the form prescribed by the director. The application must contain at least the following information:

(a) The name and the business addresses of the applicant;

(b) If the applicant is a partnership, limited liability company, or association, the name of every member;

(c) If the applicant is a corporation, the name, residential address, and telephone number of each officer and director;

(d) The street address, county, and municipality from which business is to be conducted;

(e) The identity of the licensed exchange facilitator officer designated by the exchange facilitator as the designated exchange facilitator officer responsible for supervising the exchange facilitator's activities; and

(f) Such other information as the director may require by rule.

(2) As part of or in connection with an application for any license under this section, or periodically upon license renewal, each officer, director, and owner applicant must furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this section, or periodically upon license renewal, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30A, 32, and 33 RCW.

(3) At the time of filing an application for a license under this chapter, each applicant must pay to the director or through the NMLS or in a form prescribed by the director an investigation fee and the license fee in an amount determined by rule of the director to be sufficient to cover the director's costs in administering this chapter.

(4) At the time of filing an application for an exchange facilitator company license, or any renewal or reinstatement of an exchange facilitator company license, the applicant must provide satisfactory evidence to the director of having obtained the fidelity bond required by RCW 19.310.040.

(5) The director may waive one or more requirements of this section or permit an applicant to submit other information in lieu of the required information.

NEW SECTION. **Sec.**  (1) Every licensed exchange facilitator company must ensure that all transactions are supervised by a designated exchange facilitator officer. In the case of a partnership, the designated exchange facilitator officer must be a partner in the partnership and act on behalf of the partnership. In the case of a corporation, the designated exchange facilitator officer must be an officer of the corporation and act on behalf of the corporation. The designated exchange facilitator officer is responsible for the exchange facilitator's handling of transactions, management of the trust account, and supervision of all other employees of the exchange facilitator company. Responsibility for the conduct of any employee or agent of the licensed exchange facilitator covered by this chapter rests with the designated exchange facilitator officer having direct supervision of such person's activities.

(2) Whenever an exchange facilitator company licensee wishes to change the designated exchange facilitator officer named under its license, the licensee must give prior written notice to the director, pay the fee, and obtain the director's approval.

NEW SECTION. **Sec.**  (1) Any person desiring to be a licensed exchange facilitator officer must meet the requirements as provided in this chapter and by rule. The applicant must submit an application endorsed by a licensed exchange facilitator company to the director through the NMLS or in a form prescribed by the director. Such application must be received by the director within one year of passing the exchange facilitator officer test. With this application the applicant must:

(a) Pay a license fee as set forth in rule; and

(b) Furnish such proof as the director may require concerning his or her honesty, truthfulness, good reputation, and identity, including, but not limited to, fingerprints, residential address and telephone number, qualifications and employment history, a personal credit report, and any other information required by the director.

(2) The director may waive one or more requirements of subsection (1) of this section or permit an applicant to submit other information in lieu of the required information.

(3) Every exchange facilitator officer license issued under the provisions of this chapter expires on December 31st. An annual license renewal fee in the same amount must be paid on or before each renewal date. If the application for a license renewal is not received by the director on or before the renewal date such license is expired and any activity conducted is unlicensed activity in violation of this chapter. The holder of an expired license may reinstate the license by paying to the director the annual renewal fee at any time within sixty days after the renewal date. Acceptance by the director of an application for renewal after the renewal date is not a waiver of the delinquency. The director shall cancel licenses not renewed within sixty days after the renewal date. A new license may be obtained by satisfying the procedures and qualifications for initial licensing, including where applicable successful completion of required tests.

(4) A licensed exchange facilitator company is liable for any conduct violating this chapter by any person while employed or engaged by the licensed exchange facilitator company.

(5) No person may obtain an exchange facilitator officer license nor act as an exchange facilitator unless employed by a licensed exchange facilitator company.

NEW SECTION. **Sec.**  A licensed exchange facilitator company must, for each license held, on or before the first day of March, pay to the director an annual assessment as determined in rule by the director. The licensee is responsible for payment of the annual assessment for the previous calendar year if the licensee had a license for any time during the preceding calendar year, regardless of whether the licensee surrendered the license during the calendar year or whether the license was suspended or revoked.

NEW SECTION. **Sec.**  (1) An exchange facilitator company licensee may not directly or indirectly employ a person who will be handling exchange facilitator transactions who has been convicted of, or pled guilty or nolo contrendre to, a felony or a gross misdemeanor involving dishonesty within the last seven years.

(2) An exchange facilitator company licensee may not directly or indirectly employ a person who receives money for trust accounts, disburses funds, or acts as a signatory on trust accounts if the person has shown a disregard in the management of his or her financial condition in the last three years.

(3) The director may adopt rules to implement this section.

NEW SECTION. **Sec.**  (1) An exchange facilitator company licensee may not maintain more than one place of business under the same license, but the director may issue more than one license to the same licensee upon application by the licensee in a form and manner established by the director.

(2) Whenever an exchange facilitator company licensee wishes to change the place of business to a street address other than that reported in the NMLS, the licensee must give prior written notice to the director, pay the fee, and obtain the director's approval.

NEW SECTION. **Sec.**  (1) The requirements under any federal law or chapter 42.56 RCW regarding the privacy or confidentiality of any information or material provided to the NMLS and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to that information or material, continues to apply to the information or material after the information or material has been disclosed to the NMLS. Information and material may be shared with all state and federal regulatory officials with applicable industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

(2) For the purposes under subsection (1) of this section, the director is authorized to enter agreements or sharing arrangements with other governmental agencies or other associations representing governmental agencies as established by rule, regulation, or order of the director.

(3) Information or material that is subject to a privilege or confidentiality under subsection (1) of this section is not subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process unless, with respect to any privilege held by the NMLS with respect to that information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of that person, that privilege.

(4) Chapter 42.56 RCW relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) of this section that is inconsistent with subsection (1) of this section is superseded by the requirements of this section.

(5) This section does not apply to information for access by the public.

**Sec.**  RCW 19.310.040 and 2013 c 228 s 2 are each amended to read as follows:

(1) A ((~~person~~)) licensed exchange facilitator company who engages in business as an exchange facilitator must:

(a)(i) Maintain a fidelity bond or bonds in an amount of not less than one million dollars executed by an insurer authorized to do business in this state for the benefit of a client of the exchange facilitator that suffers a direct financial loss as a result of the exchange facilitator's covered dishonest act. Such fidelity bond must cover the acts of ((~~employees of an exchange facilitator and owners of a nonpublicly traded exchange facilitator; or~~)) any person while employed or engaged by the licensed exchange facilitator company and must not have a deductible greater than ten thousand dollars; and

(ii) Deposit all exchange funds in a qualified escrow account or qualified trust, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), with a financial institution. If an exchange facilitator deposits exchange funds in a qualified escrow account or qualified trust:

(A) A withdrawal of exchange funds requires the exchange facilitator and the client to independently authenticate a record, as defined under RCW 62A.9A-102, of the transaction; and

(B) The client of the exchange facilitator must receive independently from the depository financial institution, by any commercially reasonable means, a current statement for verification of the deposited exchange funds; ((~~and~~))

(b) Maintain a surety bond in the amount of ten thousand dollars executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, unless the fidelity bond obtained by the licensee to satisfy the requirement in (a) of this subsection (1) does not have a deductible. The bond must run to the state of Washington as obligee, and must run to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its employee's violation of this chapter. The bond must be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. The bond must be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation is effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it is considered one continuous obligation, and the surety upon the bond is not liable in an aggregate amount exceeding the penal sum set forth on the face of the bond. In no event may the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond is not liable for any penalties imposed on the licensee including, but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090; and

(c) Disclose on the company web site and contractual agreement the following statement in large, bold, or otherwise conspicuous typeface calculated to draw the eye: "Washington state law, RCW 19.310.040, requires an exchange facilitator to either maintain a fidelity bond in an amount of not less than one million dollars that protects clients against losses caused by criminal acts of the exchange facilitator, ((~~or~~)) and to hold all client funds in a qualified escrow account or qualified trust that requires your consent for withdrawals. All exchange funds must be deposited in a separately identified account using your taxpayer identification number. You must receive written notification of how your exchange funds have been deposited. Your exchange facilitator is required to provide you with written directions of how to independently verify the deposit of the exchange funds. ((~~Exchange facilitation services are not regulated by any agency of the state of Washington or of the United States government.~~)) It is your responsibility to determine that your exchange funds will be held in a safe manner." ((~~If recommending other products or services, the exchange facilitator must disclose to the client that the exchange facilitator may receive a financial benefit, such as a commission or referral fee, as a result of such recommendation. The exchange facilitator must not recommend or suggest to a client the use of services of another organization or business entity in which the exchange facilitator has a direct or indirect interest without full disclosure of such interest at the time of recommendation or suggestion.~~))

(2) For the purposes of this section, "fidelity bond" means a primary commercial blanket bond or its equivalent satisfactory to the director and written by an insurer authorized to transact this line of business in the state of Washington. Such bond must provide fidelity coverage for any fraudulent or dishonest acts committed by any person while employed or engaged by the licensed exchange facilitator company acting alone or in collusion with others. This bond must be for the sole benefit of the licensed exchange facilitator company and under no circumstances whatsoever is the bonding company liable under the bond to any other party unless the corporate officer, partner, or sole practitioner commits a fraudulent or dishonest act, in which case, the bond is for the benefit of the harmed consumer. The bond must name the licensed exchange facilitator company as obligee and must protect the obligee against the loss of money or other real or personal property belonging to the obligee, or in which the obligee has a pecuniary interest, or for which the obligee is legally liable or held by the obligee in any capacity, whether the obligee is legally liable therefor or not. A licensed exchange facilitator company's bond must be maintained until all accounts have been reconciled and the trust account balance is zero. The bond may be canceled by the insurer upon delivery of thirty days' written notice to the director and to the licensed exchange facilitator company.

(3) The fidelity bond and surety bond policy required by this section must be kept in full force and effect as a condition precedent to the exchange facilitator's authority to transact exchange facilitation in this state, and the licensed exchange facilitator company must supply the director with satisfactory evidence thereof upon request.

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

((~~(3)~~)) (5) Upon request of a current or prospective client((~~, or the attorney general under chapter 19.86 RCW,~~)) the exchange facilitator must offer evidence proving that the requirements of this section are satisfied at the time of the request.

NEW SECTION. **Sec.**  In the event of cancellation of the fidelity bond the director shall require the filing of a new bond or bonds. Failure to provide the director with satisfactory evidence of a new bond after receipt by the director of notification that one is required or by the effective date of the cancellation notice, whichever is later, is sufficient grounds for the suspension or revocation of the exchange facilitator's license.

**Sec.**  RCW 19.310.050 and 2013 c 228 s 3 are each amended to read as follows:

(1) A person who claims to have sustained damages by reason of the fraudulent act or covered dishonest act of ((~~an exchange facilitator or an exchange facilitator's employee~~)) a licensee may file a claim on the fidelity bond.

(2) The remedies provided under this section are cumulative and nonexclusive and do not affect any other remedy available at law.

**Sec.**  RCW 19.310.060 and 2009 c 70 s 7 are each amended to read as follows:

(1) A ((~~person who engages in business as an exchange facilitator~~)) licensed exchange facilitator company shall((~~:~~

~~(a)~~)) maintain a policy of errors and omissions insurance in an amount of not less than two hundred fifty thousand dollars executed by an insurer authorized to do business in this state((~~; or~~

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

(2) ((~~A person who engages in business as an exchange facilitator may maintain insurance or deposit an amount of cash or securities or irrevocable letters of credit in excess of the minimum required amounts under this section.~~

~~(3)~~)) The requirements under subsection (1)((~~(a)~~)) of this section are satisfied if the person engaging in business as an exchange facilitator is listed as a named insured on one or more errors and omissions policies that have an aggregate total of at least two hundred fifty thousand dollars.

((~~(4)~~)) (3) An exchange facilitator must provide evidence to each client that the requirements of this section are satisfied before entering into an exchange agreement and must disclose to the client the amount of the errors and omissions policy required under subsection (1) of this section.

((~~(5)~~)) (4) Upon request of a current or prospective client((~~, or the attorney general under chapter 19.86 RCW,~~)) the exchange facilitator must offer evidence proving that the requirements of this section are satisfied at the time of the request.

(5) For the purposes of this section, an "errors and omissions policy" means a group or individual insurance policy satisfactory to the director and issued by an insurer authorized to transact insurance business in the state of Washington. Such policy must provide coverage for unintentional errors and omissions of the exchange facilitator and its employees, and may be canceled by the insurer upon delivery of thirty days' written notice to the director and to the exchange facilitator.

(6) The errors and omissions policy required by this section must be kept in full force and effect as a condition precedent to the exchange facilitator's authority to transact exchange facilitation in this state, and the exchange facilitator must supply the director with satisfactory evidence thereof upon request.

NEW SECTION. **Sec.**  In the event of cancellation of the fidelity bond the director shall require the filing of a new bond or bonds. Failure to provide the director with satisfactory evidence of a new bond after receipt by the director of notification that one is required or by the effective date of the cancellation notice, whichever is later, is sufficient grounds for the suspension or revocation of the exchange facilitator company's license.

NEW SECTION. **Sec.**  (1) The director shall issue and deliver an exchange facilitator company or officer license to the applicant in accordance with this chapter at the location specified in the application if, after investigation, the director finds that:

(a) The applicant has paid all required fees;

(b) The applicant has submitted a complete application in compliance with section 5 or 7 of this act, as applicable;

(c) Neither the applicant nor its officers or principals, nor the designated exchange facilitator officer have had a license issued under this section or any other section, in this state or another state, revoked or suspended within the last five years of the date of filing of the application;

(d) Neither the applicant nor any of its officers or principals, or the designated exchange facilitator officer have been convicted of a gross misdemeanor involving dishonesty or financial misconduct, or a felony or a violation of the banking laws of this state, or of the United States within seven years of the filing of the application;

(e) The financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter; and

(f) The designated exchange facilitator officer (i) is an attorney or certified public accountant admitted to practice in any state or territory of the United States or (ii) has been actively conducting the business of exchange facilitation on a full-time basis for the last three years and has passed a written test whose content is established or approved by the director.

(2) If the director does not find that the conditions of subsection (1) of this section have been met, the director must not issue the license. The director shall notify the applicant of the denial and return to the applicant the bond posted and the sum paid by the applicant as a license fee, retaining the investigation fee to cover the costs of investigating the application.

(3) A license issued under this section expires on December 31st of the year it is issued. The director shall adopt rules establishing the process and fee for the renewal of licenses.

**Sec.**  RCW 19.310.100 and 2013 c 228 s 5 are each amended to read as follows:

A person who engages in business as an exchange facilitator shall not, with respect to a like-kind exchange transaction:

(1) Make a false, deceptive, or misleading material representation, directly or indirectly, concerning a like-kind transaction;

(2) Make a false, deceptive, or misleading material representation, directly or indirectly, in advertising or by any other means, concerning a like-kind transaction;

(3) Engage in any unfair or deceptive practice toward any person;

(4) Obtain property by fraud or misrepresentation;

(5) Fail to account for any moneys or property belonging to others that may be in the possession or under the control of the exchange facilitator;

(6) Commingle funds held for a client in any account that holds the exchange facilitator's own funds, except as provided in RCW 19.310.080(1)(a);

(7) Loan or otherwise transfer exchange funds to any person or entity, other than a financial institution, that is affiliated with or related to the exchange facilitator, except for the transfer of funds from an exchange facilitator to an exchange accommodation title holder in accordance with an exchange contract;

(8) Keep, or cause to be kept, any money in any bank, credit union, or other financial institution under a name designating the money as belonging to the client of any exchange facilitator, unless that money belongs to that client and was entrusted to the exchange facilitator by that client;

(9) Fail to fulfill its contractual duties to the client to deliver property or funds to the taxpayer in a material way unless such a failure is due to: (a) Events beyond the prediction or control of the exchange facilitator; or (b) an investment specifically requested by the client;

(10) Commit, including commission by its owners, officers, directors, employees, agents, or independent contractors, any crime involving fraud, misrepresentation, deceit, embezzlement, misappropriation of funds, robbery, or other theft of property;

(11) If recommending other products or services, fail to disclose to the client that the exchange facilitator may receive a financial benefit, such as a commission or referral fee, as a result of such recommendation. The company or officer must not recommend or suggest to a client the use of services of another organization or business entity in which the company or officer has a direct or indirect interest without full disclosure of such interest at the time of recommendation or suggestion;

(12) Fail to make disclosures required by any applicable state law; or

((~~(12)~~)) (13) Make any false statement or omission of material fact in connection with any reports filed by an exchange facilitator or in connection with any investigation conducted by the department of financial institutions.

NEW SECTION. **Sec.**  The licensee must keep and use in the business such books, accounts, records, papers, documents, files, and other information as will enable the director to determine whether the licensee is complying with this chapter and with the rules adopted by the director under this chapter. The director must have free access to such books, accounts, records, papers, documents, files, and other information wherever located. Every licensee must preserve the books, accounts, records, papers, documents, files, and other information relevant to the transaction for at least three years after making the final entry on any transaction. No licensee or person subject to examination or investigation under this chapter may withhold, abstract, remove, mutilate, destroy, or secrete any books, accounts, records, papers, documents, files, or other information.

Each licensee must, on or before the first day of March of each year, file a report with the director giving such relevant information as the director may reasonably require concerning the business and operations of each licensed place of business conducted during the preceding calendar year. The report must be made under oath and must be in the form prescribed by the director. Every licensee that fails to file a report that is required to be filed by this chapter within the time required under this chapter is subject to a penalty of fifty dollars for each day's delay.

NEW SECTION. **Sec.**  (1) A licensee must file with the director within ten business days any material changes in information provided in a licensee's application and pay the applicable change fee as prescribed in rule by the director. If this information indicates that the licensee is no longer in compliance with this chapter, the director may take any action authorized under this chapter to ensure that the licensee operates in compliance with this chapter.

(2) A licensee must file a report with the director within one business day after the licensee has reason to know of the occurrence of any of the following events:

(a) The filing of a petition by or against the licensee under the United States bankruptcy code (11 U.S.C. Sec. 101-110) for bankruptcy or reorganization;

(b) The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(c) The commencement of a proceeding to revoke, suspend, restrict, or condition its license, or otherwise discipline or sanction the licensee, in a state or country in which the licensee engages in business or is licensed;

(d) The cancellation or other impairment of the licensee's bond; or

(e) A felony charge or felony conviction of an officer, director, principal, or the designated exchange facilitator officer.

NEW SECTION. **Sec.**  (1) The director must enforce all laws and rules relating to the licensing and regulation of licensees and persons subject to this chapter.

(2) The director may deny applications for licenses for:

(a) Failure of the applicant to demonstrate, within its application for a license, that the applicant meets the requirements for licensing in section 8 of this act;

(b) Violation of an order issued by the director under this chapter or another chapter administered by the director including, but not limited to, cease and desist orders and temporary cease and desist orders;

(c) Revocation or suspension of a license to conduct the business of an exchange facilitator, by this state, another state, or by the federal government within five years of the date of submission of a complete application for a license; or

(d) Filing an incomplete application when that incomplete application has been filed with the department for sixty or more days, provided that the director has given notice to the licensee that the application is incomplete, informed the applicant why the application is incomplete, and allowed at least twenty days for the applicant to complete the application.

(3)(a) The director may condition, suspend, or revoke a license issued under this chapter if the director finds that:

(i) The licensee has failed to pay any fee due the state of Washington, has failed to maintain in effect the bond or permitted substitute required under this chapter, or has failed to comply with any specific order or demand of the director lawfully made and directed to the licensee in accordance with this chapter;

(ii) The licensee, either knowingly or without the exercise of due care, has violated any provision of this chapter or any rule adopted under this chapter;

(iii) A fact or condition exists that, if it had existed at the time of the original application for the license, clearly would have allowed the director to deny the application for the original license; or

(iv) The licensee failed to comply with any directive, order, or subpoena issued by the director under this chapter.

(b) The director may condition, revoke, or suspend only the particular license with respect to which grounds for conditioning, revocation, or suspension may occur or exist or the director may condition, revoke, or suspend all of the licenses issued to the licensee.

(4) The director may impose fines of up to one hundred dollars per day, per violation, upon the licensee, its employee or designated exchange facilitator officer, or other person subject to this chapter for:

(a) Any violation of this chapter; or

(b) Failure to comply with any directive, order, or subpoena issued by the director under this chapter.

(5) The director may issue an order directing the licensee, its employee or designated exchange facilitator officer, or other person subject to this chapter to:

(a) Cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter;

(b) Take such affirmative action as is necessary to comply with this chapter;

(c) Make a refund or restitution to a person who is damaged as a result of a violation of this chapter;

(d) Refund all fees received through any violation of this chapter.

(6) The director may issue an order removing from office or prohibiting from participation in the affairs of any licensee, or both, any officer, principal, employee or designated exchange facilitator officer, or any person subject to this chapter for:

(a) False statements or omission of material information from an application for a license that, if known, would have allowed the director to deny the original application for a license;

(b) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony;

(c) Suspension or revocation of a license to engage in the business of an exchange facilitator, in this state or another state;

(d) Failure to comply with any order or subpoena issued under this chapter;

(e) A violation of section 9 or 19 of this act; or

(f) Failure to obtain a license for activity that requires a license.

(7) Except to the extent prohibited by another statute, the director may engage in informal settlement of complaints or enforcement actions including, but not limited to, payment to the department for purposes of financial literacy and education programs authorized under RCW 43.320.150. If any person subject to this chapter makes a payment to the department under this section, the person may not advertise such payment.

(8) Whenever the director determines that the public is likely to be substantially injured by delay in issuing a cease and desist order, the director may immediately issue a temporary cease and desist order. The order may direct the licensee to discontinue any violation of this chapter, to take such affirmative action as is necessary to comply with this chapter, and may include a summary suspension of the licensee's license and may order the licensee to immediately cease the conduct of business under this chapter. The order becomes effective at the time specified in the order. Every temporary cease and desist order must include a provision that a hearing will be held upon request to determine whether the order will become permanent. Such hearing must be held within fourteen days of receipt of a request for a hearing unless otherwise provided in chapter 34.05 RCW.

(9) A licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the licensee's civil or criminal liability, if any, for acts committed before the surrender, including any administrative action initiated by the director to suspend or revoke a license, impose fines, compel the payment of restitution, or exercise any other authority under this chapter. The statute of limitations on actions not subject to RCW 4.16.160 that are brought under this chapter by the director is five years.

(10) The revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and a client.

(11) Every license issued under this chapter remains in force and effect until it has been surrendered, revoked, or suspended in accordance with this chapter. However, the director may on his or her own initiative reinstate suspended licenses or issue new licenses to a licensee whose license or licenses have been revoked if the director finds that the licensee meets all the requirements of this chapter.

(12) A license issued under this chapter expires upon the licensee's failure to comply with the annual assessment requirements, or failure to renew the license, including payment of the applicable renewal fee.

NEW SECTION. **Sec.**  No licensee may advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever, any statement or representation that is false, misleading, or deceptive.

NEW SECTION. **Sec.**  (1) The director or authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

(a) State that an order is sought under this section;

(b) Adequately specify the documents, records, evidence, or testimony; and

(c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3).

NEW SECTION. **Sec.**  (1) For the purpose of discovering violations of this chapter or securing information lawfully required under this chapter, the director may at any time, either personally or by designees, investigate or examine the business and, wherever located, the books, accounts, records, papers, documents, files, and other information used in the business of every licensee and of every person who is engaged in the business of an exchange facilitator, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. The director or designated representative:

(a) Must have free access to the employees, offices, and places of business, books, accounts, papers, documents, other information, records, files, safes, and vaults of all such persons during normal business hours;

(b) May require the attendance of and examine under oath all persons whose testimony may be required about the business or the subject matter of any investigation, examination, or hearing and may require such person to produce books, accounts, papers, records, files, and any other information the director or designated persons deem relevant to the inquiry;

(c) May require by directive, subpoena, or any other lawful means the production of original books, accounts, papers, records, files, and other information; may require that such original books, accounts, papers, records, files, and other information be copied; or may make copies of such original books, accounts, papers, records, files, or other information;

(d) May issue a subpoena or subpoena duces tecum requiring attendance by any person identified in this section or compelling production of any books, accounts, papers, records, files, or other documents or information identified in this section.

(2) The director must make such periodic examinations of the affairs, business, office, and records of each licensee as determined in rule by the director.

(3) Every licensee examined or investigated by the director or the director's designee must pay to the director the cost of the examination or investigation of each licensed place of business as determined in rule by the director, including travel expenses.

(4) In order to carry out the purposes of this section, the director may:

(a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(c) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter;

(d) Accept and rely on examination or investigation reports made by other government officials, within or without this state;

(e) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of the investigation, or other writing of the director; or

(f) Assess the licensee, individual, or person subject to this chapter the cost of the services in (a) of this subsection (4).

(5) Every licensee examined or investigated by the director or the director's designee must pay to the director the cost of the examination or investigation of each licensed place of business as determined in rule by the director.

NEW SECTION. **Sec.**  Upon application by the director or any other interested party and upon a showing that the interest of the creditors so requires, the superior court may appoint a receiver to take over, operate, or liquidate any exchange facilitator office in this state.

**Sec.**  RCW 19.310.130 and 2009 c 70 s 14 are each amended to read as follows:

A person who engages in business as an exchange facilitator and who violates RCW 19.310.100 ((~~(11) or~~)) (12) or (13) is guilty of a misdemeanor under chapter 9A.20 RCW.

NEW SECTION. **Sec.**  (1) The director or designated persons may, at his or her discretion, take such action as provided for in this chapter to enforce this chapter. If the person subject to such action does not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on the action, then the person is deemed to consent to the action. If the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter.

(2) The director may recover the state's costs and expenses for prosecuting violations of this chapter, including staff time spent preparing for and attending administrative hearings and reasonable attorneys' fees unless, after a hearing, the director determines no violation occurred.

NEW SECTION. **Sec.**  (1) The director has the power, and broad administrative discretion, to administer and interpret this chapter to facilitate the delivery of financial services to the citizens of this state by exchange facilitators and designated exchange facilitator officers subject to this chapter. The director shall adopt all rules necessary to administer this chapter, to set all fees, and to ensure complete and full disclosure by licensees of transactions governed by this chapter.

(2) If it appears to the director that a licensee is conducting business in an injurious manner or is violating any provision of this chapter, the director may order or direct the discontinuance of any such injurious or illegal practice.

(3) For purposes of this section, "conducting business in an injurious manner" means conducting business in a manner that violates any provision of this chapter, or that creates the reasonable likelihood of a violation of any provision of this chapter.

(4) The director or designated persons, with or without prior administrative action, may bring an action in superior court to enjoin the acts or practices that constitute violations of this chapter and to enforce compliance with this chapter or any rule or order made under this chapter. Upon proper showing, injunctive relief or a temporary restraining order shall be granted. The director must not be required to post a bond in any court proceedings.

(5) The director shall establish, set, and adjust by rule the amount of all fees and charges authorized by this chapter.

NEW SECTION. **Sec.**  The director of the department of financial institutions or the director's designee may take such steps as are necessary to ensure this act is implemented on January 1, 2017.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  This act may be known and cited as the exchange facilitator act.

NEW SECTION. **Sec.**  Sections 3, 5 through 11, 13, 16, 17, 19 through 25, 27, and 28 of this act are each added to chapter 19.310 RCW.

NEW SECTION. **Sec.**  This act takes effect January 1, 2017.

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