

**ESHB 2023 - S AMD 595**

By Senators Angel, Hobbs

ADOPTED 03/07/2014

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

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

5 NEW SECTION. **Sec. 2.** The legislature finds that start-up  
6 companies play a critical role in creating new jobs and revenues.  
7 Crowdfunding, or raising money through small contributions from a large  
8 number of investors, allows smaller enterprises to access the capital  
9 they need to get new businesses off the ground. The legislature  
10 further finds that the costs of state securities registration often  
11 outweigh the benefits to Washington start-ups seeking to make small  
12 securities offerings and that the use of crowdfunding for business  
13 financing in Washington is significantly restricted by state securities  
14 laws. Helping new businesses access equity crowdfunding within certain  
15 boundaries will democratize venture capital and facilitate investment  
16 by Washington residents in Washington start-ups while protecting  
17 consumers and investors. For these reasons, the legislature intends to  
18 provide Washington businesses and investors the opportunity to benefit  
19 from equity crowdfunding.

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

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

24 (a) The offering is 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) Securities issued under the exemption provided by this section  
19 may not be transferred by the purchaser during a one-year period  
20 beginning on the date of purchase, unless the securities are  
21 transferred:

22 (a) To the issuer of the securities;

23 (b) To an accredited investor;

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

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

28 (5) The director shall adopt disqualification provisions under  
29 which this exemption shall not be available to any person or its  
30 predecessors, affiliates, officers, directors, underwriters, or other  
31 related persons. The provisions shall be substantially similar to the  
32 disqualification provisions adopted by the securities and exchange  
33 commission pursuant to the requirements of section 401(b)(2) of the  
34 Jobs act of 2012 or, if none, as adopted in Rule 506 of Regulation D.  
35 Notwithstanding the foregoing, this exemption shall become available on  
36 the effective date of this section.

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

3        (1) Only a local associate development organization, as defined in  
4 RCW 43.330.010, a port district, or an organization that qualifies as  
5 a portal pursuant to regulations promulgated by the director, may work  
6 in collaboration with the director to act as a portal under this  
7 chapter.

8        (2) A portal shall require, at a minimum, the following information  
9 from an applicant for exemption prior to offering services to the  
10 applicant or forwarding the applicant's materials to the director:

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

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

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

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

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

21        (3) Upon receipt of the information described in subsection (2) of  
22 this section, the portal may offer services to the applicant that the  
23 portal deems appropriate or necessary to meet the criteria for  
24 exemption under sections 3 and 5 of this act. Such services may  
25 include assistance with development of a business plan, referral to  
26 legal services, and other technical assistance in preparation for a  
27 public securities offering.

28        (4) The portal shall forward the materials necessary for the  
29 applicant to qualify for exemption to the director for filing when the  
30 portal is satisfied that the applicant has assembled the necessary  
31 information and materials to meet the criteria for exemption under  
32 sections 3 and 5 of this act.

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

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

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

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

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

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

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

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

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

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

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

25 (3) Financial and commercial information and records supplied by  
26 private persons pertaining to export services provided under chapters  
27 43.163 and 53.31 RCW, and by persons pertaining to export projects  
28 under RCW 43.23.035;

29 (4) Financial and commercial information and records supplied by  
30 businesses or individuals during application for loans or program  
31 services provided by chapters 43.325, 43.163, 43.160, 43.330, and  
32 43.168 RCW, or during application for economic development loans or  
33 program services provided by any local agency;

34 (5) Financial information, business plans, examination reports, and  
35 any information produced or obtained in evaluating or examining a  
36 business and industrial development corporation organized or seeking  
37 certification under chapter 31.24 RCW;

1 (6) Financial and commercial information supplied to the state  
2 investment board by any person when the information relates to the  
3 investment of public trust or retirement funds and when disclosure  
4 would result in loss to such funds or in private loss to the providers  
5 of this information;

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

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

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

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

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

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

32 (12)(a) When supplied to and in the records of the department of  
33 commerce:

34 (i) Financial and proprietary information collected from any person  
35 and provided to the department of commerce pursuant to RCW  
36 43.330.050(8); and

37 (ii) Financial or proprietary information collected from any person  
38 and provided to the department of commerce or the office of the

1 governor in connection with the siting, recruitment, expansion,  
2 retention, or relocation of that person's business and until a siting  
3 decision is made, identifying information of any person supplying  
4 information under this subsection and the locations being considered  
5 for siting, relocation, or expansion of a business;

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

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

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

16 (13) Financial and proprietary information submitted to or obtained  
17 by the department of ecology or the authority created under chapter  
18 70.95N RCW to implement chapter 70.95N RCW;

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

25 (15) Financial and commercial information provided as evidence to  
26 the department of licensing as required by RCW 19.112.110 or  
27 19.112.120, except information disclosed in aggregate form that does  
28 not permit the identification of information related to individual fuel  
29 licensees;

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

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

37 (b) Farm plans developed under chapter 90.48 RCW and not under the

1 federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to  
2 RCW 42.56.610 and 90.64.190;

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

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

11 (20) Financial and commercial information submitted to or obtained  
12 by the University of Washington, other than information the university  
13 is required to disclose under RCW 28B.20.150, when the information  
14 relates to investments in private funds, to the extent that such  
15 information, if revealed, would reasonably be expected to result in  
16 loss to the University of Washington consolidated endowment fund or to  
17 result in private loss to the providers of this information;

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

24 (22) Market share data submitted by a manufacturer under RCW  
25 70.95N.190(4); and

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

**ADOPTED 03/07/2014**

1           On page 1, line 2 of the title, after "offerings;" strike the  
2 remainder of the title and insert "amending RCW 42.56.270; adding new  
3 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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