
SUBSTITUTE SENATE BILL 6295

State of Washington 62nd Legislature 2012 Regular Session

By Senate Financial Institutions, Housing & Insurance (originally sponsored by Senator Morton)

READ FIRST TIME 02/01/12.

1 AN ACT Relating to exchange facilitator requirements; amending RCW
2 19.310.040, 19.310.120, and 19.310.150; creating new sections;
3 prescribing penalties; and providing an expiration date.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that exchange
6 facilitators are a specialized business in Washington state that
7 involves the transfer of certain assets of citizens for investment
8 purposes. In 2009 legislation was passed that provided enhanced
9 reporting requirements, as well as civil and criminal penalties, to
10 serve as additional protections for citizens involved in these types of
11 transactions. The legislature finds that current law is still
12 inadequate to protect those who trust these companies with assets they
13 may have spent a lifetime accumulating. Additional protections are
14 required to properly regulate the companies engaged in these
15 transactions.

16 **Sec. 2.** RCW 19.310.040 and 2009 c 70 s 5 are each amended to read
17 as follows:

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

3 (a)(i) Maintain a fidelity bond or bonds in an amount of not less
4 than one million dollars executed by an insurer authorized to do
5 business in this state for the benefit of a client of the exchange
6 facilitator that suffers a loss as a result of the exchange
7 facilitator's covered dishonest act. Such fidelity bond must cover the
8 acts of employees of an exchange facilitator and owners of a
9 nonpublicly traded exchange facilitator; or

10 (~~(b) Deposit an amount of cash or securities or irrevocable~~
11 ~~letters of credit in an amount of not less than one million dollars~~
12 ~~into an interest-bearing deposit account or a money market account with~~
13 ~~the financial institution of the exchange facilitator's choice.~~
14 ~~Interest on that amount accrues to the exchange facilitator; or~~

15 (~~(c) Deposit all exchange funds in a qualified escrow account~~
16 ~~or qualified trust, as both terms are defined under treasury regulation~~
17 ~~section 1.1031(k)-1(g)(3), with a financial institution (and)).~~ The
18 qualified escrow account or qualified trust must provide that a
19 withdrawal from that escrow account or trust requires the exchange
20 (facilitator's and the client's written authorization.

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

25 (~~3) The requirements under subsection (1)(a) of this section are~~
26 ~~satisfied if the person engaging in business as an exchange facilitator~~
27 ~~is listed as a named insured on one or more fidelity bonds that have an~~
28 ~~aggregate total of at least one million dollars.~~

29 (~~4) facilitator and the client to independently authenticate a~~
30 record, as defined under RCW 62A.9A-102, of the transaction;

31 (b) Disclose on the company web site and contractual agreement the
32 following statement in large, bold, or otherwise conspicuous typeface
33 calculated to draw the eye: "Washington state law, RCW 19.310.040,
34 requires an exchange facilitator to either maintain a fidelity bond in
35 an amount of not less than one million dollars that protects clients
36 against losses caused by criminal acts of the exchange facilitator, or
37 hold all client funds in a qualified escrow account or qualified
38 trust." If recommending other products or services, the exchange

1 facilitator must disclose to the client that the exchange facilitator
2 may receive a financial benefit, such as a commission or referral fee,
3 as a result of such recommendation. The exchange facilitator must not
4 recommend or suggest to a client the use of services of another
5 organization or business entity in which the exchange facilitator has
6 a direct or indirect interest without full disclosure of such interest
7 at the time of recommendation or suggestion.

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

11 ~~((+5))~~ (3) Upon request of a current or prospective client, or the
12 attorney general under chapter 19.86 RCW, the exchange facilitator must
13 offer evidence proving that the requirements of this section are
14 satisfied at the time of the request.

15 NEW SECTION. Sec. 3. (1) A stakeholder task force comprised of
16 the department of financial institutions, the office of the insurance
17 commissioner, exchange facilitators, and title holders shall convene to
18 identify effective regulatory procedures for the exchange facilitator
19 industry. Issues for discussion must include, but not be limited to:
20 The feasibility and cost of regulation; regulatory and enforcement
21 standards; certification or licensing options; and the feasibility of
22 adopting provisions within the escrow agency act. Specific
23 recommendations on these issues are due to the legislature by December
24 1, 2012.

25 (2) This section expires December 1, 2012.

26 **Sec. 4.** RCW 19.310.120 and 2009 c 70 s 13 are each amended to read
27 as follows:

28 (1) Failure to fulfill the requirements under RCW 19.310.040
29 constitutes prima facie evidence that the exchange facilitator intended
30 to defraud a client who suffered a subsequent loss of the asset
31 entrusted to the exchange facilitator.

32 (2) A person who engages in business as an exchange facilitator and
33 who violates RCW 19.310.100 (1) through (8) or fails to comply with the
34 requirements under RCW 19.310.040 is guilty of a class B felony under
35 chapter 9A.20 RCW. However, an exchange facilitator is not guilty of
36 a class B felony for failure to comply with the requirements under RCW

1 19.310.040 if: (a) Failure to comply is due to the cancellation or
2 amendment of the fidelity bond by the bond issuer; and (b) the exchange
3 facilitator:

4 (i) Within thirty days, takes all reasonable steps to comply with
5 the requirements under RCW 19.310.040; and

6 (ii) Deposits any new exchange funds into a qualified escrow
7 account or qualified trust until a fidelity bond is obtained that meets
8 the requirements under RCW 19.310.040(1)(a)(i).

9 **Sec. 5.** RCW 19.310.150 and 2009 c 70 s 16 are each amended to read
10 as follows:

11 (1) A person who violates this chapter is subject to civil suit in
12 a court of competent jurisdiction.

13 (2) Damages awarded to a current client for a civil suit filed for
14 a violation of the requirements under RCW 19.310.040 include treble
15 damages and attorneys' fees.

--- END ---