
HOUSE BILL 2054

State of Washington

63rd Legislature

2013 Regular Session

By Representative Morris

Read first time 04/19/13. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to stimulating economic development by increasing
2 the amount of high-risk capital in Washington state; amending RCW
3 21.20.320; reenacting and amending RCW 21.20.005; adding new sections
4 to chapter 21.20 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** Early-stage, high-potential start-up
7 companies with limited operating history are generally too small to
8 raise capital in the public markets and may not have reached the point
9 where they are able to secure a bank loan or complete a debt offering.
10 Such businesses may rely on private equity from venture capital, angel
11 investing, and crowdfunding in order to succeed. The legislature
12 intends to stimulate economic development in Washington, promoting the
13 creation of new jobs and growing the knowledge economy, by increasing
14 the flow of high-risk capital in Washington state.

15 **Sec. 2.** RCW 21.20.320 and 2006 c 220 s 1 are each amended to read
16 as follows:

17 The following transactions are exempt from RCW 21.20.040 through
18 21.20.300 and 21.20.327 except as expressly provided:

1 (1) Any isolated transaction, or sales not involving a public
2 offering, whether effected through a broker-dealer or not; or any
3 transaction effected in accordance with any rule by the director
4 establishing a nonpublic offering exemption pursuant to this subsection
5 where registration is not necessary or appropriate in the public
6 interest or for the protection of investors.

7 (2) Any nonissuer transaction by a registered salesperson of a
8 registered broker-dealer, and any resale transaction by a sponsor of a
9 unit investment trust registered under the investment company act of
10 1940 pursuant to any rule adopted by the director.

11 (3) Any nonissuer transaction effected by or through a registered
12 broker-dealer pursuant to an unsolicited order or offer to buy; but the
13 director may by rule require that the customer acknowledge upon a
14 specified form that the sale was unsolicited, and that a signed copy of
15 each such form be preserved by the broker-dealer for a specified
16 period.

17 (4) Any transaction between the issuer or other person on whose
18 behalf the offering is made and an underwriter, or among underwriters.

19 (5) Any transaction in a bond or other evidence of indebtedness
20 secured by a real or chattel mortgage or deed of trust, or by an
21 agreement for the sale of real estate or chattels, if the entire
22 mortgage, deed of trust, or agreement, together with all the bonds or
23 other evidences of indebtedness secured thereby, is offered and sold as
24 a unit. A bond or other evidence of indebtedness is not offered and
25 sold as a unit if the transaction involves:

26 (a) A partial interest in one or more bonds or other evidences of
27 indebtedness secured by a real or chattel mortgage or deed of trust, or
28 by an agreement for the sale of real estate or chattels; or

29 (b) One of multiple bonds or other evidences of indebtedness
30 secured by one or more real or chattel mortgages or deeds of trust, or
31 agreements for the sale of real estate or chattels, sold to more than
32 one purchaser as part of a single plan of financing; or

33 (c) A security including an investment contract other than the bond
34 or other evidence of indebtedness.

35 (6) Any transaction by an executor, administrator, sheriff,
36 marshal, receiver, trustee in bankruptcy, guardian, or conservator.

37 (7) Any transaction executed by a bona fide pledgee without any
38 purpose of evading this chapter.

1 (8) Any offer or sale to a bank, savings institution, trust
2 company, insurance company, investment company as defined in the
3 investment company act of 1940, pension or profit-sharing trust, or
4 other financial institution or institutional buyer, or to a broker-
5 dealer, whether the purchaser is acting for itself or in some fiduciary
6 capacity.

7 (9) Any transaction effected in accordance with the terms and
8 conditions of any rule adopted by the director if:

9 (a) The aggregate offering amount does not exceed five million
10 dollars; and

11 (b) The director finds that registration is not necessary in the
12 public interest and for the protection of investors.

13 (10) Any offer or sale of a preorganization certificate or
14 subscription if (a) no commission or other remuneration is paid or
15 given directly or indirectly for soliciting any prospective subscriber,
16 (b) the number of subscribers does not exceed ten, and (c) no payment
17 is made by any subscriber.

18 (11) Any transaction pursuant to an offer to existing security
19 holders of the issuer, including persons who at the time of the
20 transaction are holders of convertible securities, nontransferable
21 warrants, or transferable warrants exercisable within not more than
22 ninety days of their issuance, if (a) no commission or other
23 remuneration (other than a standby commission) is paid or given
24 directly or indirectly for soliciting any security holder in this
25 state, or (b) the issuer first files a notice specifying the terms of
26 the offer and the director does not by order disallow the exemption
27 within the next five full business days.

28 (12) Any offer (but not a sale) of a security for which
29 registration statements have been filed under both this chapter and the
30 securities act of 1933 if no stop order or refusal order is in effect
31 and no public proceeding or examination looking toward such an order is
32 pending under either act.

33 (13) The issuance of any stock dividend, whether the corporation
34 distributing the dividend is the issuer of the stock or not, if nothing
35 of value is given by stockholders for the distribution other than the
36 surrender of a right to a cash dividend where the stockholder can elect
37 to take a dividend in cash or stock.

1 (14) Any transaction incident to a right of conversion or a
2 statutory or judicially approved reclassification, recapitalization,
3 reorganization, quasi reorganization, stock split, reverse stock split,
4 merger, consolidation, or sale of assets.

5 (15) The offer or sale by a registered broker-dealer, or a person
6 exempted from the registration requirements pursuant to RCW 21.20.040,
7 acting either as principal or agent, of securities previously sold and
8 distributed to the public: PROVIDED, That:

9 (a) Such securities are sold at prices reasonably related to the
10 current market price thereof at the time of sale, and, if such broker-
11 dealer is acting as agent, the commission collected by such broker-
12 dealer on account of the sale thereof is not in excess of usual and
13 customary commissions collected with respect to securities and
14 transactions having comparable characteristics;

15 (b) Such securities do not constitute the whole or a part of an
16 unsold allotment to or subscription or participation by such broker-
17 dealer as an underwriter of such securities or as a participant in the
18 distribution of such securities by the issuer, by an underwriter or by
19 a person or group of persons in substantial control of the issuer or of
20 the outstanding securities of the class being distributed; and

21 (c) The security has been lawfully sold and distributed in this
22 state or any other state of the United States under this or any act
23 regulating the sale of such securities.

24 (16) Any transaction by a mutual or cooperative association meeting
25 the requirements of (a) and (b) of this subsection:

26 (a) The transaction:

27 (i) Does not involve advertising or public solicitation; or

28 (ii) Involves advertising or public solicitation, and:

29 (A) The association first files a notice of claim of exemption on
30 a form prescribed by the director specifying the terms of the offer and
31 the director does not by order deny the exemption within the next ten
32 full business days; or

33 (B) The association is an employee cooperative and identifies
34 itself as an employee cooperative in advertising or public
35 solicitation.

36 (b) The transaction involves an instrument or interest, that:

37 (i)(A) Qualifies its holder to be a member or patron of the
38 association;

1 (B) Represents a contribution of capital to the association by a
2 person who is or intends to become a member or patron of the
3 association;

4 (C) Represents a patronage dividend or other patronage allocation;
5 or

6 (D) Represents the terms or conditions by which a member or patron
7 purchases, sells, or markets products, commodities, or services from,
8 to, or through the association; and

9 (ii) Is nontransferable except in the case of death, operation of
10 law, bona fide transfer for security purposes only to the association,
11 a bank, or other financial institution, intrafamily transfer, transfer
12 to an existing member or person who will become a member, or transfer
13 by gift to any person organized and operated as a nonprofit
14 organization as defined in RCW 84.36.800(4) that also possesses a
15 current tax exempt status under the laws of the United States, and, in
16 the case of an instrument, so states conspicuously on its face.

17 (17) An offer or sale by the issuer of a security that meets the
18 requirements of section 3 of this act.

19 (18) Any transaction effected in accordance with any rule adopted
20 by the director establishing a limited offering exemption which
21 furthers objectives of compatibility with federal exemptions and
22 uniformity among the states, provided that in adopting any such rule
23 the director may require that no commission or other remuneration be
24 paid or given to any person, directly or indirectly, for effecting
25 sales unless the person is registered under this chapter as a broker-
26 dealer or salesperson.

27 NEW SECTION. Sec. 3. A new section is added to chapter 21.20 RCW
28 to read as follows:

29 (1) An offer or sale by the issuer of a security in a transaction
30 that meets the requirements of this section qualifies for the exemption
31 established in RCW 21.20.320(17).

32 (2) The offering must be conducted in accordance with the
33 requirements of section 3(a)(11) of the securities act of 1933.

34 (3) The seller must be an entity organized and doing business in
35 the state of Washington.

36 (4) Securities must be offered to and sold only to persons who are
37 residents of the state of Washington at the time of purchase.

1 (a) Prior to any offer or sale pursuant to this exemption, the
2 seller must obtain documentary evidence from each prospective purchaser
3 that provides the seller with a reasonable basis to believe that such
4 investor is a resident of the state of Washington.

5 (b) Sales of securities may be offered through an internet portal,
6 but only if the portal requires as a condition of entry to the portal
7 evidence or certification of residency within the state of Washington.
8 The department of financial institutions may inspect and review any
9 such web site, and at the time such a web site first offers investment
10 opportunities to Washington residents, the web site operator must
11 inform the director of the existence of the web site and must give the
12 department access to the site.

13 (5) The aggregate purchase price of all securities sold by an
14 issuer pursuant to this exemption during any twelve-month period may
15 not exceed one million dollars. Securities sold by the issuer pursuant
16 to other available exemptions do not count against this one million
17 dollar cap.

18 (6) The aggregate amount sold to any investor by any one issuer
19 during the twelve-month period preceding the date of such transaction
20 may not exceed:

21 (a) The greater of two thousand dollars or five percent of the
22 annual income or net worth of such investor, as applicable, if either
23 the annual income or the net worth of the investor is less than one
24 hundred thousand dollars; and

25 (b) Ten percent of the annual income or net worth of such investor,
26 as applicable, not to exceed a maximum aggregate amount sold of one
27 hundred thousand dollars, if either the annual income or net worth of
28 the investor is one hundred thousand dollars or more.

29 (7) The issuer must reasonably believe that all purchasers of
30 securities are purchasing for investment and not for sale in connection
31 with a distribution of the security.

32 (8) Securities may be sold only to persons who sign the following
33 statement at the time of sale: "I acknowledge that I am investing in
34 a high-risk, speculative business venture, that I may lose all of my
35 investment, and that I can afford the loss of my investment."

36 (9) The issuer must file with the director a notice, either in the
37 form and manner required by the department or on securities and
38 exchange commission Form D, a consent to service of process, and a fee

1 of three hundred dollars within fifteen days after the first sale.
2 Failure to timely file such form does not preclude an issuer from being
3 able to rely on this exemption, so long as the issuer files such form
4 upon written demand of the department.

5 (10) Attempted compliance with the exemption provided by this
6 section does not act as an exclusive election. The issuer may claim
7 any other applicable exemption.

8 (11) For so long as any of the securities issued under the
9 exemption are outstanding, the issuer must provide a quarterly report
10 to the issuer's shareholders by making such report publicly accessible,
11 free of charge, at the issuer's internet web site address with a user
12 name and password within forty-five days of the end of each fiscal
13 quarter. The report must contain the following information:

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

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

22 (12) Securities issued pursuant to a transaction described in this
23 section may not be transferred by the purchaser of such securities
24 during a one-year period beginning on the date of purchase, unless such
25 securities are transferred:

26 (a) To the issuer of the securities;

27 (b) To an accredited investor;

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

29 (d) To a member of the family of the purchaser or the equivalent,
30 or in connection with the death or divorce or other similar
31 circumstances, in the discretion of the department.

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

34 The failure to file a notice required under RCW 21.20.320 within
35 the time specified by the rule of the director does not preclude the
36 availability of an exemption provided in RCW 21.20.320. An issuer who
37 fails to file the notice as provided by rule of the director must,

1 within fifteen business days after demand by the director, file the
2 notice and pay to the director a fee, in an amount to be determined by
3 the director.

4 **Sec. 5.** RCW 21.20.005 and 2011 c 336 s 594 are each reenacted and
5 amended to read as follows:

6 The definitions (~~(set forth in this section shall)~~) in this section
7 apply throughout this chapter(~~(τ)~~) unless the context otherwise
8 requires(~~(÷)~~).

9 (1) "Broker-dealer" means any person engaged in the business of
10 effecting transactions in securities for the account of others or for
11 that person's own account. "Broker-dealer" does not include:

12 (a) A salesperson, issuer, bank, savings institution, or trust
13 company(~~(τ)~~);

14 (b) A person who has no place of business in this state if the
15 person effects transactions in this state exclusively with or through
16 the issuers of the securities involved in the transactions, other
17 broker-dealers, or banks, savings institutions, trust companies,
18 insurance companies, investment companies as defined in the investment
19 company act of 1940, pension or profit-sharing trusts, or other
20 financial institutions or institutional buyers, whether acting for
21 themselves or as trustees(~~(τ)~~); or

22 (c) A person who has no place of business in this state if during
23 any period of twelve consecutive months that person does not direct
24 more than fifteen offers to sell or to buy into or make more than five
25 sales in this state in any manner to persons other than those specified
26 in (b) of this subsection.

27 (2) "Customer" means a person other than a broker-dealer or
28 investment adviser.

29 (3) "Director" means the director of financial institutions of this
30 state.

31 (4) "Federal covered adviser" means any person registered as an
32 investment adviser under section 203 of the investment advisers act of
33 1940.

34 (5) "Federal covered security" means any security defined as a
35 covered security in the securities act of 1933.

36 (6) "Full business day" means all calendar days, excluding

1 therefrom Saturdays, Sundays, and all legal holidays, as defined by
2 statute.

3 (7) "Guaranteed" means guaranteed as to payment of principal,
4 interest, or dividends.

5 (8)(a) "Investment adviser" means any person who, for compensation,
6 engages in the business of advising others, either directly or through
7 publications or writings, as to the value of securities or as to the
8 advisability of investing in, purchasing, or selling securities, or
9 who, for compensation and as a part of a regular business, issues or
10 promulgates analyses or reports concerning securities. "Investment
11 adviser" also includes financial planners and other persons who, as an
12 integral component of other financially related services(~~(a)~~):

13 (i) Provide the foregoing investment advisory services to others
14 for compensation as part of a business (~~(b)~~); or

15 (ii) Hold themselves out as providing the foregoing investment
16 advisory services to others for compensation. Investment adviser
17 (~~shall~~) also includes any person who holds himself or herself out as
18 a financial planner.

19 (b) "Investment adviser" does not include (~~(a)~~):

20 (i) A bank, savings institution, or trust company(~~(b)~~);

21 (ii) A lawyer, accountant, certified public accountant licensed
22 under chapter 18.04 RCW, engineer, or teacher whose performance of
23 these services is solely incidental to the practice of his or her
24 profession(~~(c)~~);

25 (iii) A broker-dealer or its salesperson whose performance of these
26 services is solely incidental to the conduct of its business as a
27 broker-dealer and who receives no special compensation for them(~~(d)~~);

28 (iv) A publisher of any bona fide newspaper, news magazine, news
29 column, newsletter, or business or financial publication or service,
30 whether communicated in hard copy form, by electronic means, or
31 otherwise, that does not consist of the rendering of advice on the
32 basis of the specific investment situation of each client(~~(e)~~);

33 (v) A radio or television station(~~(f)~~);

34 (vi) A person whose advice, analyses, or reports relate only to
35 securities exempted by RCW 21.20.310(1)(~~(g)~~);

36 (vii) An investment adviser representative(~~(h)~~);

1 (viii) An investment advisor who manages or provides advice solely
2 to one or more venture capital funds; or

3 (ix) Such other persons not within the intent of this ((paragraph))
4 subsection (8)(b) as the director may by rule or order designate.

5 (9) "Investment adviser representative" means any partner, officer,
6 director, or a person occupying similar status or performing similar
7 functions, or other individual, who is employed by or associated with
8 an investment adviser, and who does any of the following:

9 (a) Makes any recommendations or otherwise renders advice regarding
10 securities;

11 (b) Manages accounts or portfolios of clients;

12 (c) Determines which recommendation or advice regarding securities
13 should be given;

14 (d) Solicits, offers, or negotiates for the sale of or sells
15 investment advisory services; or

16 (e) Supervises employees who perform any of the functions under (a)
17 through (d) of this subsection.

18 (10) "Issuer" means any person who issues or proposes to issue any
19 security, except that with respect to certificates of deposit, voting
20 trust certificates, or collateral-trust certificates, or with respect
21 to certificates of interest or shares in an unincorporated investment
22 trust not having a board of directors (or persons performing similar
23 functions) or of the fixed, restricted management, or unit type; the
24 term "issuer" means the person or persons performing the acts and
25 assuming the duties of depositor or manager pursuant to the provisions
26 of the trust or other agreement or instrument under which the security
27 is issued.

28 (11) "Nonissuer" means not directly or indirectly for the benefit
29 of the issuer.

30 (12) "Person" means an individual, a corporation, a partnership, a
31 limited liability company, a limited liability partnership, an
32 association, a joint-stock company, a trust where the interest of the
33 beneficiaries are evidenced by a security, an unincorporated
34 organization, a government, or a political subdivision of a government.

35 (13) "Relatives," as used in RCW 21.20.310(11) includes:

36 (a) A member's spouse;

37 (b) Parents of the member or the member's spouse;

38 (c) Grandparents of the member or the member's spouse;

1 (d) Natural or adopted children of the member or the member's
2 spouse;

3 (e) Aunts and uncles of the member or the member's spouse; and

4 (f) First cousins of the member or the member's spouse.

5 (14)(a) "Sale" or "sell" includes every contract of sale of,
6 contract to sell, or disposition of, a security or interest in a
7 security for value. "Offer" or "offer to sell" includes every attempt
8 or offer to dispose of, or solicitation of an offer to buy, a security
9 or interest in a security for value.

10 (b) Any security given or delivered with, or as a bonus on account
11 of, any purchase of securities or any other thing is considered to
12 constitute part of the subject of the purchase and to have been offered
13 and sold for value. A purported gift of assessable stock is considered
14 to involve an offer and sale. Every sale or offer of a warrant or
15 right to purchase or subscribe to another security of the same or
16 another issuer, as well as every sale or offer of a security which
17 gives the holder a present or future right or privilege to convert into
18 another security of the same or another issuer, is considered to
19 include an offer of the other security.

20 (15) "Salesperson" means any individual other than a broker-dealer
21 who represents a broker-dealer or issuer in effecting or attempting to
22 effect sales of securities. "Salesperson" does not include an
23 individual who represents an issuer in (a) effecting a transaction in
24 a security exempted by RCW 21.20.310 (1), (2), (3), (4), (9), (10),
25 (11), (12), or (13), (b) effecting transactions exempted by RCW
26 21.20.320 unless otherwise expressly required by the terms of the
27 exemption, or (c) effecting transactions with existing employees,
28 partners, or directors of the issuer if no commission or other
29 remuneration is paid or given directly or indirectly for soliciting any
30 person in this state.

31 (16) "Securities act of 1933," "securities exchange act of 1934,"
32 "public utility holding company act of 1935," "investment company act
33 of 1940," and "investment advisers act of 1940" means the federal
34 statutes of those names as amended before or after June 10, 1959.

35 (17)(a) "Security" means any note; stock; treasury stock; bond;
36 debenture; evidence of indebtedness; certificate of interest or
37 participation in any profit-sharing agreement; collateral-trust
38 certificate; preorganization certificate or subscription; transferable

1 share; investment contract; investment of money or other consideration
2 in the risk capital of a venture with the expectation of some valuable
3 benefit to the investor where the investor does not receive the right
4 to exercise practical and actual control over the managerial decisions
5 of the venture; voting-trust certificate; certificate of deposit for a
6 security; fractional undivided interest in an oil, gas, or mineral
7 lease or in payments out of production under a lease, right, or
8 royalty; charitable gift annuity; any put, call, straddle, option, or
9 privilege on any security, certificate of deposit, or group or index of
10 securities, including any interest therein or based on the value
11 thereof; or any put, call, straddle, option, or privilege entered into
12 on a national securities exchange relating to foreign currency; or, in
13 general, any interest or instrument commonly known as a "security," or
14 any certificate of interest or participation in, temporary or interim
15 certificate for, receipt for, guarantee of, or warrant or right to
16 subscribe to or purchase, any security under this subsection. This
17 subsection applies whether or not the security is evidenced by a
18 written document.

19 (b) "Security" does not include: (i) Any insurance or endowment
20 policy or annuity contract under which an insurance company promises to
21 pay a fixed sum of money either in a lump sum or periodically for life
22 or some other specified period; or (ii) an interest in a contributory
23 or noncontributory pension or welfare plan subject to the employee
24 retirement income security act of 1974.

25 (18) "State" means any state, territory, or possession of the
26 United States, as well as the District of Columbia and Puerto Rico.

27 (19) "Venture capital fund" means any private fund that meets the
28 definition of a venture capital fund in 17 C.F.R. 275.203(1)-1, as
29 amended as of April 1, 2013.

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