

# HOUSE BILL REPORT

## HB 2316

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**As Reported by House Committee On:**  
Business & Financial Services

**Title:** An act relating to clarifying, and making department of financial institutions technical regulatory changes to, the securities act of Washington.

**Brief Description:** Addressing the securities act of Washington.

**Sponsors:** Representatives Kirby and Stanford; by request of Department of Financial Institutions.

**Brief History:**

**Committee Activity:**

Business & Financial Services: 1/12/16, 1/13/16 [DPS].

**Brief Summary of Substitute Bill**

- Makes technical changes to the Securities Act of Washington.
- Authorizes the Department of Financial Institutions to deny or revoke crowdfunding securities exemptions in certain circumstances.
- Establishes renewal deadlines for broker-dealers, investment advisers, and other registrations.
- Extends the deadline to request a hearing on certain administrative actions against a broker-dealer, investment advisor, and other registrations.

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**HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Kirby, Chair; Stanford, Vice Chair; Vick, Ranking Minority Member; Blake, Dye, Hurst, Kochmar, McCabe, Ryu and Santos.

**Staff:** David Rubenstein (786-7153).

**Background:**

The Securities Act of Washington Generally.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

A security is an interest or investment in a business venture in which the investment is risked with the expectation of some valuable benefit to the investor. Under both state and federal law, all securities offerings must be registered with state and federal regulators or exempt from registration under one of a variety of specified exemptions. The Securities Act of Washington sets out the requirements for registration and the various exemptions applicable under state law.

#### Registration of Broker-Dealers, Investment Advisers, Etc.

The Securities Act also sets out requirements for investment advisers, broker-dealers, usually called stock brokers, and certain other persons involved in securities transactions (collectively, "securities professionals"). Each investment adviser and broker-dealer, unless exempt, must be registered with the Department of Financial Institutions (DFI). Registration requires an application and approval by the DFI and is effective for one year, at which point registration must be renewed. Broker-dealers and investment advisers are also registered with the Financial Industry Regulatory Authority (FINRA), a national nongovernmental organization that regulates portions of the finance industry.

The Director of the DFI (Director) is authorized to deny, suspend, revoke, or restrict the registration of a securities professional if the Director finds that it is in the best interest of the public. The Director must enter an order to that effect and promptly notify the affected person that the person may request a hearing within 15 days of receiving notice.

#### Exemptions from Registration.

Among the exemptions from registration of securities and securities transactions are:

- nonpublic offerings complying with relevant portions of the federal Securities Act of 1933;
- isolated sales of an outstanding security by an issuer;
- sales to financial institutions, broker-dealers, or institutional buyers; and
- small offerings to investors meeting certain criteria under federal Rules 504, 505, and 506.

The Securities Administrator at the DFI is entitled to deny or revoke many of the listed exemptions, including those for employee stock plans, charitable gift annuities, Rule 506 offerings, and certain other specified securities transactions.

#### Penalties for Violation.

Willful violations of the Securities Act are a class B felony. In 2003 the Legislature enacted two separate bills amending the section setting out penalties for a violation, each without reference to the other. Both added a felony penalty (which carries a \$20,000 fine), but one of the bills struck a separate \$5,000 fine and added a separate felony offense and \$500,000 fine for altering, hiding, or destroying documents that will be used for any proceeding under the Securities Act. It also added three- and five-year limitation periods. The Office of the Code Reviser determined that the two changes could not be reconciled and both have appeared side-by-side in the code since 2003.

#### Crowdfunding.

In 2014 the Legislature enacted a new exemption from securities registration that is commonly called "crowdfunding." To meet the requirements for exemption the offering

must be smaller than \$1 million, no more than 12 months in duration, and be made only to Washington residents by Washington companies.

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**Summary of Substitute Bill:**

Administrative Amendments.

The notice period for denied, suspended, revoked, or restricted registration of securities professionals is lengthened. An affected person may request a hearing within 20 days, rather than 15.

The registration renewal deadline for securities professionals is changed from December 31 of each year to the deadline specified in the registration depositories managed by FINRA.

Terminology for audited financial statements is changed from "certificate" to "report."

Penalties for Violation.

The section setting out penalties for violation of the Securities Act is reenacted such that the provision adding a new felony violation for destroying or concealing documents and setting a limitations period is retained.

Crowdfunding.

The type of small securities offering known as crowdfunding is added to the list of offerings exempt from registration. The DFI may revoke, deny, or restrict a crowdfunding exemption, similar to other exemptions.

Technical Edits.

Various technical, spelling, and grammatical errors are corrected.

**Substitute Bill Compared to Original Bill:**

The substitute bill includes an amendment that corrects a drafting error in a section granting DFI the authority to deny or revoke crowdfunding exemptions.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This is a technical bill that is intended to provide clarity and certainty to those who rely on the Securities Act. The flaws corrected in this bill have resulted in much

confusion and many phone calls. We need to provide clarity to licensees, prosecutors, lawyers, and the public. The stakeholders the DFI has contacted support these changes.

(Opposed) None.

**Persons Testifying:** Representative Kirby, prime sponsor; and Bill Beatty and Faith Anderson, Department of Financial Institutions.

**Persons Signed In To Testify But Not Testifying:** None.