
HOUSE BILL 2916

State of Washington

64th Legislature

2016 Regular Session

By Representative Ryu

Read first time 01/27/16. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to exchange facilitators; amending RCW
2 19.310.005, 19.310.010, 19.310.020, 19.310.040, 19.310.050,
3 19.310.060, 19.310.100, and 19.310.130; adding new sections to
4 chapter 19.310 RCW; creating new sections; prescribing penalties; and
5 providing an effective date.

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

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

9 The legislature finds and declares that the activities of
10 exchange facilitators substantially affect the public interest
11 requiring that all actions with consumers be actuated by good faith,
12 and that persons subject to this chapter abstain from deception and
13 practice honesty and equity in all matters relating to their
14 profession. The activities of exchange facilitators have a
15 significant impact on the citizens of the state. It is the intent of
16 the legislature to establish a state system of licensure, including
17 rules of practice and conduct by exchange facilitators and the
18 persons subject to this chapter, to promote honesty and fair dealing
19 with citizens and to preserve public confidence in the industry. The
20 legislature finds that there are no statutory requirements pertaining
21 to persons who facilitate like-kind exchanges pursuant to section

1 1031 of the internal revenue code and associated treasury
2 regulations. The purpose of this chapter is to create a statutory
3 framework that provides ~~((some))~~ consumer protections to those who
4 entrust money or property to persons acting as exchange facilitators.
5 Chapter . . ., Laws of 2016 (this act) shall be liberally construed
6 to effectuate the legislature's intent to protect consumers who
7 utilize exchange facilitators.

8 **Sec. 2.** RCW 19.310.010 and 2013 c 228 s 1 are each amended to
9 read as follows:

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

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

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

21 (3) "Client" means the taxpayer with whom the exchange
22 facilitator enters into an agreement as described in subsection
23 ~~((4))~~ (8)(a)(i) of this section.

24 ~~((3))~~ (4) "Covered dishonest act" means a crime involving
25 fraud, embezzlement, misappropriation of funds, robbery, or other
26 theft of property.

27 ~~((4))~~ (5) "Department" means the department of financial
28 institutions.

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

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

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

1 (i)(A) Facilitates, for a fee, an exchange of like-kind property
2 by entering into an agreement with a taxpayer by which the exchange
3 facilitator acquires from the taxpayer the contractual rights to sell
4 the taxpayer's relinquished property located in this state and
5 transfer a replacement property to the taxpayer as a qualified
6 intermediary, as defined under treasury regulation section
7 1.1031(k)-1(g)(4); (B) enters into an agreement with a taxpayer to
8 take title to a property in this state as an exchange accommodation
9 titleholder, as defined in internal revenue service revenue procedure
10 2000-37; or (C) enters into an agreement with a taxpayer to act as a
11 qualified trustee or qualified escrow holder, as both terms are
12 defined under treasury regulation section 1.1031(k)-1(g)(3); or

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

15 (b) "Exchange facilitator" does not include:

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

20 (ii) A financial institution that is (A) acting as a depository
21 for exchange funds and is not facilitating an exchange or (B) acting
22 solely as a qualified escrow holder or qualified trustee, as both
23 terms are defined under treasury regulation section
24 1.1031(k)-1(g)(3), and is not facilitating an exchange;

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

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

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

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

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

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

15 ~~((+6))~~ (10) "License" means a single license issued under the
16 authority of this chapter.

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

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

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

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

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

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

5 ~~((7))~~ (17) "Principal" means any person who controls, directly
6 or indirectly through one or more intermediaries, alone or in concert
7 with others, a ten percent or greater interest in a partnership;
8 company; association or corporation; or a limited liability company,
9 and the owner of a sole proprietorship.

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

12 NEW SECTION. Sec. 3. (1) This chapter does not apply to any
13 person doing business under, and as permitted by, any law of this
14 state or of the United States relating to banks, savings banks, trust
15 companies, savings and loan or building and loan associations, or
16 credit unions.

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

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

22 **Sec. 4.** RCW 19.310.020 and 2009 c 70 s 3 are each amended to
23 read as follows:

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

34 (2) An exchange facilitator may not bring a suit or action for
35 the collection of compensation in connection with duties performed as
36 an exchange facilitator unless the exchange facilitator alleges and
37 proves that he or she was fully in compliance with this chapter at

1 the time of the offering to perform or performing an act or service
2 regulated under this chapter.

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

10 NEW SECTION.

11 **Sec. 5.**

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

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

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

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

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

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

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

28 (2) As part of or in connection with an application for any
29 license under this section, or periodically upon license renewal,
30 each officer, director, and owner applicant must furnish information
31 concerning his or her identity, including fingerprints for submission
32 to the Washington state patrol, the federal bureau of investigation,
33 or any governmental agency or entity authorized to receive this
34 information for a state and national criminal history background
35 check; personal history; experience; business record; purposes; and
36 other pertinent facts, as the director may reasonably require. As
37 part of or in connection with an application for a license under this
38 section, or periodically upon license renewal, the director is
39 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

1 this section to criminal justice agencies. This section does not
2 apply to financial institutions regulated under chapters 31.12 and
3 31.13 RCW and Titles 30A, 32, and 33 RCW.

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

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

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

18 NEW SECTION. **Sec. 6.** (1) Every licensed exchange facilitator
19 company must ensure that all transactions are supervised by a
20 designated exchange facilitator officer. In the case of a
21 partnership, the designated exchange facilitator officer must be a
22 partner in the partnership and act on behalf of the partnership. In
23 the case of a corporation, the designated exchange facilitator
24 officer must be an officer of the corporation and act on behalf of
25 the corporation. The designated exchange facilitator officer is
26 responsible for the exchange facilitator's handling of transactions,
27 management of the trust account, and supervision of all other
28 employees of the exchange facilitator company. Responsibility for the
29 conduct of any employee or agent of the licensed exchange facilitator
30 covered by this chapter rests with the designated exchange
31 facilitator officer having direct supervision of such person's
32 activities.

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

37 NEW SECTION. **Sec. 7.** (1) Any person desiring to be a licensed
38 exchange facilitator officer must meet the requirements as provided

1 in this chapter and by rule. The applicant must submit an application
2 endorsed by a licensed exchange facilitator company to the director
3 through the NMLS or in a form prescribed by the director. Such
4 application must be received by the director within one year of
5 passing the exchange facilitator officer test. With this application
6 the applicant must:

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

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

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

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

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

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

37 NEW SECTION. **Sec. 8.** A licensed exchange facilitator company
38 must, for each license held, on or before the first day of March, pay
39 to the director an annual assessment as determined in rule by the

1 director. The licensee is responsible for payment of the annual
2 assessment for the previous calendar year if the licensee had a
3 license for any time during the preceding calendar year, regardless
4 of whether the licensee surrendered the license during the calendar
5 year or whether the license was suspended or revoked.

6 NEW SECTION. **Sec. 9.** (1) An exchange facilitator company
7 licensee may not directly or indirectly employ a person who will be
8 handling exchange facilitator transactions who has been convicted of,
9 or pled guilty or nolo contendere to, a felony or a gross misdemeanor
10 involving dishonesty within the last seven years.

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

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

17 NEW SECTION. **Sec. 10.** (1) An exchange facilitator company
18 licensee may not maintain more than one place of business under the
19 same license, but the director may issue more than one license to the
20 same licensee upon application by the licensee in a form and manner
21 established by the director.

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

26 NEW SECTION. **Sec. 11.** (1) The requirements under any federal
27 law or chapter 42.56 RCW regarding the privacy or confidentiality of
28 any information or material provided to the NMLS and any privilege
29 arising under federal or state law, including the rules of any
30 federal or state court, with respect to that information or material,
31 continues to apply to the information or material after the
32 information or material has been disclosed to the NMLS. Information
33 and material may be shared with all state and federal regulatory
34 officials with applicable industry oversight authority without the
35 loss of privilege or the loss of confidentiality protections provided
36 by federal law or state law.

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

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

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

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

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

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

25 **Sec. 12.** RCW 19.310.040 and 2013 c 228 s 2 are each amended to
26 read as follows:

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

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

38 (ii) Deposit all exchange funds in a qualified escrow account or
39 qualified trust, as both terms are defined under treasury regulation

1 section 1.1031(k)-1(g)(3), with a financial institution. If an
2 exchange facilitator deposits exchange funds in a qualified escrow
3 account or qualified trust:

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

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

11 (b) Maintain a surety bond in the amount of ten thousand dollars
12 executed by the applicant as obligor and by a surety company
13 authorized to do a surety business in this state as surety, unless
14 the fidelity bond obtained by the licensee to satisfy the requirement
15 in (a) of this subsection (1) does not have a deductible. The bond
16 must run to the state of Washington as obligee, and must run to the
17 benefit of the state and any person or persons who suffer loss by
18 reason of the applicant's or its employee's violation of this
19 chapter. The bond must be conditioned that the obligor as licensee
20 will faithfully conform to and abide by this chapter and all rules
21 adopted under this chapter, and reimburse all persons who suffer loss
22 by reason of a violation of this chapter or rules adopted under this
23 chapter. The bond must be continuous and may be canceled by the
24 surety upon the surety giving written notice to the director of its
25 intent to cancel the bond. The cancellation is effective thirty days
26 after the notice is received by the director. Whether or not the bond
27 is renewed, continued, reinstated, reissued, or otherwise extended,
28 replaced, or modified, including increases or decreases in the penal
29 sum, it is considered one continuous obligation, and the surety upon
30 the bond is not liable in an aggregate amount exceeding the penal sum
31 set forth on the face of the bond. In no event may the penal sum, or
32 any portion thereof, at two or more points in time be added together
33 in determining the surety's liability. The bond is not liable for any
34 penalties imposed on the licensee including, but not limited to, any
35 increased damages or attorneys' fees, or both, awarded under RCW
36 19.86.090; and

37 (c) Disclose on the company web site and contractual agreement
38 the following statement in large, bold, or otherwise conspicuous
39 typeface calculated to draw the eye: "Washington state law, RCW
40 19.310.040, requires an exchange facilitator to either maintain a

1 fidelity bond in an amount of not less than one million dollars that
2 protects clients against losses caused by criminal acts of the
3 exchange facilitator, ~~((or))~~ and to hold all client funds in a
4 qualified escrow account or qualified trust that requires your
5 consent for withdrawals. All exchange funds must be deposited in a
6 separately identified account using your taxpayer identification
7 number. You must receive written notification of how your exchange
8 funds have been deposited. Your exchange facilitator is required to
9 provide you with written directions of how to independently verify
10 the deposit of the exchange funds. ~~((Exchange facilitation services
11 are not regulated by any agency of the state of Washington or of the
12 United States government.))~~ It is your responsibility to determine
13 that your exchange funds will be held in a safe manner." ~~((If
14 recommending other products or services, the exchange facilitator
15 must disclose to the client that the exchange facilitator may receive
16 a financial benefit, such as a commission or referral fee, as a
17 result of such recommendation. The exchange facilitator must not
18 recommend or suggest to a client the use of services of another
19 organization or business entity in which the exchange facilitator has
20 a direct or indirect interest without full disclosure of such
21 interest at the time of recommendation or suggestion.))~~

22 (2) For the purposes of this section, "fidelity bond" means a
23 primary commercial blanket bond or its equivalent satisfactory to the
24 director and written by an insurer authorized to transact this line
25 of business in the state of Washington. Such bond must provide
26 fidelity coverage for any fraudulent or dishonest acts committed by
27 any person while employed or engaged by the licensed exchange
28 facilitator company acting alone or in collusion with others. This
29 bond must be for the sole benefit of the licensed exchange
30 facilitator company and under no circumstances whatsoever is the
31 bonding company liable under the bond to any other party unless the
32 corporate officer, partner, or sole practitioner commits a fraudulent
33 or dishonest act, in which case, the bond is for the benefit of the
34 harmed consumer. The bond must name the licensed exchange facilitator
35 company as obligee and must protect the obligee against the loss of
36 money or other real or personal property belonging to the obligee, or
37 in which the obligee has a pecuniary interest, or for which the
38 obligee is legally liable or held by the obligee in any capacity,
39 whether the obligee is legally liable therefor or not. A licensed
40 exchange facilitator company's bond must be maintained until all

1 accounts have been reconciled and the trust account balance is zero.
2 The bond may be canceled by the insurer upon delivery of thirty days'
3 written notice to the director and to the licensed exchange
4 facilitator company.

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

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

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

18 NEW SECTION. Sec. 13. In the event of cancellation of the
19 fidelity bond the director shall require the filing of a new bond or
20 bonds. Failure to provide the director with satisfactory evidence of
21 a new bond after receipt by the director of notification that one is
22 required or by the effective date of the cancellation notice,
23 whichever is later, is sufficient grounds for the suspension or
24 revocation of the exchange facilitator's license.

25 **Sec. 14.** RCW 19.310.050 and 2013 c 228 s 3 are each amended to
26 read as follows:

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

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

33 **Sec. 15.** RCW 19.310.060 and 2009 c 70 s 7 are each amended to
34 read as follows:

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

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

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

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

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

19 ~~((4))~~ (3) An exchange facilitator must provide evidence to each
20 client that the requirements of this section are satisfied before
21 entering into an exchange agreement and must disclose to the client
22 the amount of the errors and omissions policy required under
23 subsection (1) of this section.

24 ~~((5))~~ (4) Upon request of a current or prospective client~~((, or~~
25 ~~the attorney general under chapter 19.86 RCW,))~~ the exchange
26 facilitator must offer evidence proving that the requirements of this
27 section are satisfied at the time of the request.

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

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

1 NEW SECTION. **Sec. 16.** In the event of cancellation of the
2 fidelity bond the director shall require the filing of a new bond or
3 bonds. Failure to provide the director with satisfactory evidence of
4 a new bond after receipt by the director of notification that one is
5 required or by the effective date of the cancellation notice,
6 whichever is later, is sufficient grounds for the suspension or
7 revocation of the exchange facilitator company's license.

8 NEW SECTION. **Sec. 17.** (1) The director shall issue and deliver
9 an exchange facilitator company or officer license to the applicant
10 in accordance with this chapter at the location specified in the
11 application if, after investigation, the director finds that:

12 (a) The applicant has paid all required fees;

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

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

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

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

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

36 (2) If the director does not find that the conditions of
37 subsection (1) of this section have been met, the director must not
38 issue the license. The director shall notify the applicant of the
39 denial and return to the applicant the bond posted and the sum paid

1 by the applicant as a license fee, retaining the investigation fee to
2 cover the costs of investigating the application.

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

6 **Sec. 18.** RCW 19.310.100 and 2013 c 228 s 5 are each amended to
7 read as follows:

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

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

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

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

17 (4) Obtain property by fraud or misrepresentation;

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

21 (6) Commingle funds held for a client in any account that holds
22 the exchange facilitator's own funds, except as provided in RCW
23 19.310.080(1)(a);

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

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

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

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

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

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

15 ~~((12))~~ (13) Make any false statement or omission of material
16 fact in connection with any reports filed by an exchange facilitator
17 or in connection with any investigation conducted by the department
18 of financial institutions.

19 NEW SECTION. Sec. 19. The licensee must keep and use in the
20 business such books, accounts, records, papers, documents, files, and
21 other information as will enable the director to determine whether
22 the licensee is complying with this chapter and with the rules
23 adopted by the director under this chapter. The director must have
24 free access to such books, accounts, records, papers, documents,
25 files, and other information wherever located. Every licensee must
26 preserve the books, accounts, records, papers, documents, files, and
27 other information relevant to the transaction for at least three
28 years after making the final entry on any transaction. No licensee or
29 person subject to examination or investigation under this chapter may
30 withhold, abstract, remove, mutilate, destroy, or secrete any books,
31 accounts, records, papers, documents, files, or other information.

32 Each licensee must, on or before the first day of March of each
33 year, file a report with the director giving such relevant
34 information as the director may reasonably require concerning the
35 business and operations of each licensed place of business conducted
36 during the preceding calendar year. The report must be made under
37 oath and must be in the form prescribed by the director. Every
38 licensee that fails to file a report that is required to be filed by

1 this chapter within the time required under this chapter is subject
2 to a penalty of fifty dollars for each day's delay.

3 NEW SECTION. **Sec. 20.** (1) A licensee must file with the
4 director within ten business days any material changes in information
5 provided in a licensee's application and pay the applicable change
6 fee as prescribed in rule by the director. If this information
7 indicates that the licensee is no longer in compliance with this
8 chapter, the director may take any action authorized under this
9 chapter to ensure that the licensee operates in compliance with this
10 chapter.

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

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

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

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

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

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

29 NEW SECTION. **Sec. 21.** (1) The director must enforce all laws
30 and rules relating to the licensing and regulation of licensees and
31 persons subject to this chapter.

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

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

36 (b) Violation of an order issued by the director under this
37 chapter or another chapter administered by the director including,

1 but not limited to, cease and desist orders and temporary cease and
2 desist orders;

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

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

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

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

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

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

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

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

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

38 (a) Any violation of this chapter; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (8) Whenever the director determines that the public is likely to
36 be substantially injured by delay in issuing a cease and desist
37 order, the director may immediately issue a temporary cease and
38 desist order. The order may direct the licensee to discontinue any
39 violation of this chapter, to take such affirmative action as is
40 necessary to comply with this chapter, and may include a summary

1 suspension of the licensee's license and may order the licensee to
2 immediately cease the conduct of business under this chapter. The
3 order becomes effective at the time specified in the order. Every
4 temporary cease and desist order must include a provision that a
5 hearing will be held upon request to determine whether the order will
6 become permanent. Such hearing must be held within fourteen days of
7 receipt of a request for a hearing unless otherwise provided in
8 chapter 34.05 RCW.

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

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

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

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

32 NEW SECTION. **Sec. 22.** No licensee may advertise, print,
33 display, publish, distribute, or broadcast or cause or permit to be
34 advertised, printed, displayed, published, distributed, or broadcast,
35 in any manner whatsoever, any statement or representation that is
36 false, misleading, or deceptive.

37 NEW SECTION. **Sec. 23.** (1) The director or authorized assistants
38 may apply for and obtain a superior court order approving and

1 authorizing a subpoena in advance of its issuance. The application
2 may be made in the county where the subpoenaed person resides or is
3 found, or the county where the subpoenaed documents, records, or
4 evidence are located, or in Thurston county. The application must:

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

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

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

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

18 (3) The director or authorized assistants may seek approval and a
19 court may issue an order under this section without prior notice to
20 any person, including the person to whom the subpoena is directed and
21 the person who is the subject of an investigation. An application for
22 court approval is subject to the fee and process set forth in RCW
23 36.18.012(3).

24 NEW SECTION. **Sec. 24.** (1) For the purpose of discovering
25 violations of this chapter or securing information lawfully required
26 under this chapter, the director may at any time, either personally
27 or by designees, investigate or examine the business and, wherever
28 located, the books, accounts, records, papers, documents, files, and
29 other information used in the business of every licensee and of every
30 person who is engaged in the business of an exchange facilitator,
31 whether the person acts or claims to act as principal or agent, or
32 under or without the authority of this chapter. The director or
33 designated representative:

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

38 (b) May require the attendance of and examine under oath all
39 persons whose testimony may be required about the business or the

1 subject matter of any investigation, examination, or hearing and may
2 require such person to produce books, accounts, papers, records,
3 files, and any other information the director or designated persons
4 deem relevant to the inquiry;

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

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

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

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

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

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

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

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

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

37 (e) Accept audit reports made by an independent certified public
38 accountant for the licensee, individual, or person subject to this
39 chapter in the course of that part of the examination covering the
40 same general subject matter as the audit and may incorporate the

1 audit report in the report of the examination, report of the
2 investigation, or other writing of the director; or

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

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

9 NEW SECTION. **Sec. 25.** Upon application by the director or any
10 other interested party and upon a showing that the interest of the
11 creditors so requires, the superior court may appoint a receiver to
12 take over, operate, or liquidate any exchange facilitator office in
13 this state.

14 **Sec. 26.** RCW 19.310.130 and 2009 c 70 s 14 are each amended to
15 read as follows:

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

19 NEW SECTION. **Sec. 27.** (1) The director or designated persons
20 may, at his or her discretion, take such action as provided for in
21 this chapter to enforce this chapter. If the person subject to such
22 action does not appear in person or by counsel at the time and place
23 designated for any administrative hearing that may be held on the
24 action, then the person is deemed to consent to the action. If the
25 person subject to the action consents, or if after hearing the
26 director finds by a preponderance of the evidence that any grounds
27 for sanctions under this chapter exist, then the director may impose
28 any sanction authorized by this chapter.

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

34 NEW SECTION. **Sec. 28.** (1) The director has the power, and broad
35 administrative discretion, to administer and interpret this chapter
36 to facilitate the delivery of financial services to the citizens of

1 this state by exchange facilitators and designated exchange
2 facilitator officers subject to this chapter. The director shall
3 adopt all rules necessary to administer this chapter, to set all
4 fees, and to ensure complete and full disclosure by licensees of
5 transactions governed by this chapter.

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

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

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

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

23 NEW SECTION. **Sec. 29.** The director of the department of
24 financial institutions or the director's designee may take such steps
25 as are necessary to ensure this act is implemented on January 1,
26 2017.

27 NEW SECTION. **Sec. 30.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 31.** This act may be known and cited as the
32 exchange facilitator act.

33 NEW SECTION. **Sec. 32.** Sections 3, 5 through 11, 13, 16, 17, 19
34 through 25, 27, and 28 of this act are each added to chapter 19.310
35 RCW.

1 NEW SECTION. **Sec. 33.** This act takes effect January 1, 2017.

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