

2014 Legislative Report

Washington State Department of Financial Institutions

ESHB 2023 (Chapter 144, Laws of 2014) Allowing Crowdfunding for Certain Small Securities Offerings

Effective Date: June 12, 2014

Offers and sales of securities in this state must either be registered under the Washington Securities Act or be made pursuant to an exemption from registration. ESHB 2023 creates a state crowd funding exemption from registration under the Securities Act of Washington for certain small securities offerings. An offering is exempt if the offering is first declared exempt by the Department of Financial Institutions (DFI) after a filing by the issuer; or if made through a portal working in collaboration with DFI filing the offering on behalf of the issuer. Only an Associate Development Organization, a port district, or an entity that qualifies under DFI rulemaking may serve as a portal. Working in collaboration with the DFI, a portal may assist a person seeking exemption from registration by offering services it deems appropriate to meet the criteria for exemption, including help with business plans and referral to legal services. The DFI must complete rules to implement the act by April 1, 2015.

HB 2140 (Chapter 8, Laws of 2014) Concerning Credit Union Mergers

Effective Date: June 12, 2014

Credit unions mergers require two votes for approval: the board of directors and the credit union membership. Under federal law, federally chartered credit unions may merge upon a vote of a simple majority of voting members, and by a simple voting majority of the credit union's board of directors. Under current law, Washington state-chartered credit unions may follow the federal procedure with permission of the DFI. In 2013 the Legislature eliminated the boards of directors' two-thirds majority requirement for mergers in favor of a simple majority. The law did not change the requirement for a two thirds majority of voting members in the case of a merger. This new law addresses this by requiring only a simple majority of voting members to approve mergers. This makes the state law equal to the federal law for merger voting.

HB 2171 (Chapter 65, Laws of 2014) Strengthening Economic Protections for Veterans and Military Personnel

Effective Date: June 12, 2014

The Washington Service Members' Civil Relief Act (WSCRA) was enacted in 2005. The WSCRA contains certain rights for service members and their dependents whose financial and legal obligations may be impacted by active military duty. The main provisions of the WSCRA provide rights to a service member and dependents with respect to default judgments and stays in civil proceedings. The WSCRA also contains provisions restricting contract fines and penalties, restructuring interest rates on certain business loans, and tolling statutes of limitations during military service periods.

The WSCRA applies to Washington residents who are members of the National Guard or a military reserve component and who are under a call to active service for a period of more than 30 days. The WSCRA also applies to certain dependents of covered service members. The WSCRA was modeled on the portions of the federal Servicemembers Civil Relief Act (SCRA) relating to default judgments and stays of civil proceedings. The SCRA contains a number of other additional rights for service members.

The new law amends the WSCRA to provide that the federal SCRA applies in proper cases in all Washington courts, and a violation of the SCRA is a violation of the WSCRA. A service member or dependent may bring a civil action for a violation of the WSCRA to obtain equitable or declaratory relief, monetary damages, and other appropriate relief. In addition, the court may award the costs of the action and reasonable attorneys' fees to a service member or dependent who prevails in the action. The Washington Attorney General may bring a civil action to enforce the WSCRA against a person that engages in a pattern or practice of violations or engages in a violation that raises an issue of significant public purpose. The court may grant equitable or declaratory relief, monetary damages, and other appropriate relief. In addition, the court may assess a civil penalty of up to \$55,000 for a first violation and up to \$110,000 for subsequent violations.

HB 2723 (Chapter 164, Laws of 2014) Modifying Certain Provisions Governing Foreclosures

Effective Date: June 12, 2014

HB 2723 requires that the notice of pre-foreclosure options that must be sent by the beneficiary or authorized agent to the borrower must be sent by registered or certified mail, return receipt requested, in addition to sending it via first-class mail. If a meeting is requested to be held in person, it must be held in the county where the property is located, unless the parties agree otherwise, rather than where the borrower resides. The declaration that is required of the beneficiary, authorized agent, or trustee, also known as the "foreclosure loss mitigation form" is modified to add additional descriptive information or explanations as to what efforts were made to meet and confer with the borrower and what transpired as a result. For purposes of the foreclosure mediation program, owner-occupied residential real property includes residential real property of up to four units.

Even if the borrower fails to elect to mediate within the applicable time frame, the borrower and the beneficiary may nevertheless agree in writing to enter the mediation program. Documents required of the beneficiary for purposes of mediation must include the portion or excerpt of any investor restriction that prohibits the beneficiary from implementing a modification and not just the portion or excerpt of a pooling and servicing agreement that includes such a prohibition. Mediation sessions are to be convened in the county where the property is located, not where the borrower resides. The reasonable fee that a mediator may charge is that which is authorized by statute or which is authorized by the Department of Commerce.

Some of the specifics with respect to expenditures from the Foreclosure Fairness Account are modified. No less than 71 percent, rather than no less than 76 percent, must be used for the purposes of providing counseling. Up to 18 percent or \$1.4 million, rather than up to 13 percent or \$590,000, whichever amount is greater, is directed to the Department of Commerce for implementation and operation of the Foreclosure Fairness Act.

ESB 5964 (Chapter 66, Laws of 2014) Concerning Training Public Officials and Employees Regarding Public Records, Records Management, and Open Public Meetings Requirements

Effective Date: July 1, 2014

The Office of the Attorney General (ATG) hosts an "Open Government" webpage which includes training and resources for compliance with open public records laws. The new law provides that every member of the governing body of a public agency must complete training in Open Public Meetings Act requirements within 90 days of assuming their duties, and complete training at least once every four years as long as the individual is a member of the agency's governing body. The training may be completed remotely. Officials in statewide or local elective office must complete training in Public Records Act requirements and records retention protocols within 90 days of assuming their duties, and complete refresher training at least once every four years as long as they remain in office. The training must be consistent with the Attorney General's model rules for Public Records Act compliance and may be completed remotely. Public records officers and records retention officers must complete training in Public Records Act requirements and records retention protocols within 90 days of assuming their responsibilities, and complete refresher training at least once every four years as long as they remain designated as such. The training must be consistent with the Attorney General's model rules for Public Records Act compliance and may be completed remotely.

SB 5999 (Chapter 83, Laws of 2014) Concerning Corporate Entity Conversions

Effective Date: June 12, 2014

Current Washington law authorizes organizations to be created in many forms. Examples of organizations include a partnership, limited partnership, corporation, limited liability corporations (LLCs), etc. Organizations may choose to restructure their form. A conversion is a statutorily authorized process that allows an organization to change its form through a single filing with the Secretary of State. Washington law authorizes an organization to convert to and from a limited partnership. This conversion process is specific to a limited partnership. Washington law does not authorize a similar conversion process specific to other organizations such as corporations and LLCs.

Conversion is authorized for an organization to and from an LLC, and also to and from a domestic corporation. Under the new law conversion is authorized in a single filing with the Secretary of State. A converted organization is the same entity that existed prior to the conversion and retains all of its assets, liabilities, debts, and obligations.

SSB 5360 (Chapter 210, Laws of 2014) Addressing the Collection of Unpaid Wages

Effective Date: June 12, 2014

If an employee files a wage complaint for a violation of a wage payment requirement, the Department of Labor and Industries must investigate the complaint. If the Department issues a final order and an employer defaults in paying wages owed, the Department may file a warrant. The amount of the warrant becomes a lien on the employer's real or personal property.

If the Department of Labor and Industries has reason to believe a third person or other entity possesses property belonging to the employer (which may satisfy the warrant), the Department may issue to the person or entity a Notice and Order to Withhold and Deliver (NWD). If the person or entity possesses any property that may be subject to the Department's claim, it must promptly deliver the property to the Department.

In collecting unpaid taxes, the Department of Revenue also issues NWDs to persons and entities having possession of property belonging to the delinquent taxpayer. The Department of Revenue may serve a NWD electronically to financial institutions, and the financial institution must answer the NWD within 30 days.

The new law provides a method for the Department of Labor and Industries to electronically serve a financial institution with a NWD for unpaid wages by providing a list of outstanding warrants to the Department of Revenue. The Department of Revenue then may include these Labor and Industries warrants in the NWDs served on the financial institution. A financial institution served with a NWD for unpaid wages must answer the NWD within 30 days.

SB 6134 (Chapter 36, Laws of 2014) Addressing Nondepository Institutions Regulated by the Department of Financial Institutions

Effective Date: June 12, 2014

The new law makes several changes to statutes applicable to licensees in the Consumer Services Division, Department of Financial Institutions (DFI). The statute of limitations applicable for fines is five years for enforcement actions brought by the DFI involving escrow, mortgage brokers, consumer loan companies, money transmitters and check cashers and sellers. The new law provides that check cashers and sellers (payday lenders) and money transmitters that operate multistate businesses must provide financial reports electronically. In addition, information that DFI receives from other regulators under the Check Cashers and Sellers Act is considered confidential, and follows the law of where DFI obtained the information.

SB 6135 (Chapter 37, Laws of 2014) Addressing Banks and Trust Companies

Effective Date: January 5, 2015

The new law divides the Washington State Commercial Banking Act and the Washington Trust Institutions Act. Many provisions in the new Trust Act incorporate or reference the regulations and requirements under current law.

A state trust company may not make loans or extensions of credit and may not extend leases to any person except in relation to nonfiduciary corporate funds. Loans or extensions of credit or leases in relation to nonfiduciary funds are subject to Department of Financial Institutions (DFI) approval. Loans or leases to insiders may only be made to the extent permitted for state banks under Federal Reserve Board regulations.

The Director of the DFI is authorized to regulate all the activities of a trust company that are enumerated in statute. Supervisory authority over an out-of-state trust institution is also provided to the Director. The terms of such authority are set forth in a cooperative agreement between the Director and the trust institution's home state. In the trust statute, the Director may issue a superior court approved subpoena to inspect an unregulated institution suspected of unauthorized trust activity or an unregulated third-party service provider of a trust company, if relevant.

The duties of the Board of Directors of a state trust company, including its administration of the fiduciary powers of the state trust company are set forth in statute. An independent audit committee is established and required to audit the state trust institution at least once every calendar year.

An out-of-state trust institution that meets the statutory requirements regarding state trust companies is not required to but may establish and maintain a physical trust office in Washington State. Already approved out-of-state trust institutions meeting specified conditions are exempt from providing written notice to the Director of their intent to engage in trust business in Washington and may immediately engage in trust activities. The Director may examine and investigate out-of-state trust institutions engaged in business in Washington as deemed necessary to ensure the safety and soundness of such institutions. The Director may also require periodic reports from an out-of-state trust institution.

The law specifically states that it does not apply to a private trust or private trust company. Trust companies are not depositories but it is clarified that they may take or hold deposits under limited circumstances specified under statute. A new chapter is added regarding the merger of trust companies. Existing law under RCW 30.53 is

incorporated into the new chapter and a new provision regarding the sale of a trust institution's assets is included.

SSB 6273 (Chapter 206, Law of 2014) Revising Provisions Governing Money Transmitters

Effective Date: June 12, 2014

The Department of Financial Institutions (DFI) regulates money transmitters. Under current law, a money transmitter must transmit money or its equivalent value received from a customer within 10 business days after receiving the money unless otherwise ordered by the customer or unless the money transmitter has reason to believe that a crime has occurred.

SSB 6273 provides that when a money transmission request is for the payment of goods or services, a money transmitter is not required to transmit money or its monetary equivalent within 10 business days of receipt of the money. A money transmitter that accepts money from consumers purchasing goods or services from third-party merchants and transmits the money or its equivalent to those merchants selling the goods or services to the consumer must transmit the money within the time agreed upon in the merchant's agreement with the money transmitter. The agreement must conspicuously disclose to the merchant the money transmitter's authority to place a hold or delay in the transmittal for more than 10 business days and the circumstances under which the merchant may be subject to a hold or delay.

ESB 6553 (Chapter 107, Laws of 2014) Concerning the Distribution of Real Property Sale Proceeds

Effective Date: June 12, 2014

Under current law, when a sheriff sells real property to satisfy a judgment (including a judgment under a judicial foreclosure); the surplus goes to the judgment debtor. Junior lienholders do not obtain anything and their only option is a lawsuit as an unsecured creditor. The new law provides that the surplus from any sheriff's sale in excess of what it takes to satisfy the judgment creditor (including a mortgagee foreclosing judicially on real property) will be distributed first in order of priority to junior lienholders and only then to the judgment debtor, if there is any left over.