

REVENUE: No revenue impact

FISCAL: Fiscal statement issued

Action:	Do Pass as Amended and Be Printed Engrossed
Vote:	6 - 0 - 2
Yeas:	Berger, Edwards C., Garrard, Gelser, Read, Roblan
Nays:	0
Exc.:	Jenson, Nolan
Prepared By:	Jerry Watson, Administrator
Meeting Dates:	5/13, 5/20, 6/3

WHAT THE MEASURE DOES: Establishes operating standards and standards of conduct for exchange facilitators. Defines key terms. Requires exchange facilitators to provide notice of change in control and specifies notice requirements. Requires exchange facilitators to maintain certain assets at set minimum amounts or insurance at a set minimum amount, at all times, and specifies requirements for same. Requires exchange facilitators to maintain errors and omissions insurance and certain assets at set minimum amounts, at all times, and specifies requirements for same. Requires exchange facilitators to act as custodians of exchange funds and directs investment of exchange funds only if certain criteria are met. Specifies criteria and limitations. Protects exchange funds from claims against the exchange facilitator. Prohibits certain conduct by exchange facilitators. Authorizes cause of action against exchange facilitators.

ISSUES DISCUSSED:

- Purpose of exchange facilitators or “accommodators” in transactions
- Difference between escrow agent and facilitator
- Unregulated industry or activity

EFFECT OF COMMITTEE AMENDMENT: Expands definition of client to include all taxpayers, not just state residents. Removes from the definition of “exchange facilitator” those who publicly represent or advertise such service. Excludes from definition of “exchange facilitator” certain exchange accommodation titleholders. Exempts exchange facilitators from notice requirement under specified conditions. Changes reference from “agreement” to “accommodation agreement” as appropriate throughout. Adds 12-month time frame to criteria to determine change in control. Removes requirement for exchange facilitator to maintain sufficient liquidity or preserve principal. Narrows prohibitions against misrepresentation to only those misrepresentations that are knowing and material.

BACKGROUND: Exchange facilitators are most commonly used in real property transactions to hold funds that would otherwise be subject to certain tax consequences. House Bill 3484 uses model statutory language that has been adopted in a substantially similar form in other states in an effort to protect those who entrust funds with exchange facilitators.