

SENATE BILL REPORT

SB 6845

As of February 4, 2008

Title: An act relating to exchange facilitators.

Brief Description: Regulating exchange facilitators.

Sponsors: Senators Hobbs and Benton.

Brief History:

Committee Activity: Financial Institutions & Insurance: 2/05/08.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Staff: Aaron Gutierrez (786-7448)

Background: The Internal Revenue Code (26 U.S.C. 1031) provides that no gain or loss must be recognized on the exchange of property held for productive use in a trade or business, or for investment. A tax deferred exchange is a method by which a property owner trades one or more relinquished properties for one or more "like-kind" replacement properties. This enables a property owner to defer the payment of federal income taxes on the transaction. If the replacement property is sold (as opposed to making another qualified exchange), the property owner must pay tax on the original deferred gain plus any additional gain realized since the purchase of the replacement property.

Section 1031 does not apply to exchanges of inventory, stocks, bonds, notes, other securities or evidence of indebtedness, or certain other assets. There are Internal Revenue Code provisions regarding the exchange process. If these provisions are not met, the exchange does not qualify to defer the taxation.

There are no federal or state licensing provisions for the exchange facilitators (also known as "qualified intermediaries") required to facilitate the exchange.

Summary of Bill: Exchange facilitators wishing to operate in this state are required to be licensed by the Department of Financial Institutions (DFI). A licensing process is established, which delineates the specific information an applicant must provide, as well as the requirements the applicant must meet, such as proof of insurance and financial security.

To be eligible, an applicant must be an attorney, or a certified public accountant. An applicant may also be eligible if the applicant has been providing exchange facilitation services for the past three years, and has passed a written exam established or approved by the Director of DFI (Director).

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.

Exchange facilitators are required to use consistent and accurate accounting principles.

The Director is granted the power to enforce all laws and rules related to exchange facilitator licensing. The Director must also conduct periodic examinations, and exchange facilitators must provide free access to all offices, records, accounts, and other related information. This does not include proprietary information exempt under the Public Records Act. Exchange facilitators must maintain such records within the state, or reimburse DFI for travel expenses incurred conducting examinations.

Violations of exchange facilitator licensing rules and laws are prohibited by the Consumer Protection Act, and intentional violations are made a class B felony.

An exchange facilitator commission is established. The Director must appoint five other members to serve staggered, five year terms. The Commission must act as advisors to the Director regarding the exchange facilitator profession.

Appropriation: None.

Fiscal Note: Requested on January 25, 2008.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on January 1, 2009.