

SSB 6032 - S AMD 28  
By Senator Berkey

PULLED 03/06/2009

1 Beginning on page 7, line 23, strike all of section 11 and insert  
2 the following:

3 "NEW SECTION. **Sec. 11.** A person who engages in business as an  
4 exchange facilitator shall not, with respect to a like-kind exchange  
5 transaction, knowingly or with criminal negligence:

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

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

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

12 (4) Obtain property by fraud or misrepresentation;

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

16 (6) Commingle funds held for a client in any account that holds the  
17 exchange facilitator's own funds, except as provided in section 9(1)(a)  
18 of this act;

19 (7) Loan or otherwise transfer exchange funds to any person or  
20 entity, other than a financial institution, that is affiliated with or  
21 related to the exchange facilitator, except for the transfer of funds  
22 from an exchange facilitator to an exchange accommodation title holder  
23 in accordance with an exchange contract;

24 (8) Keep, or cause to be kept, any money in any bank, credit union,  
25 or other financial institution under a name designating the money as  
26 belonging to the client of any exchange facilitator, unless that money  
27 belongs to that client and was entrusted to the exchange facilitator by  
28 that client;

29 (9) Fail to fulfill its contractual duties to the client to deliver

1 property or funds to the taxpayer in a material way unless such a  
2 failure is due to circumstances beyond the control of the exchange  
3 facilitator;

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

8 (11) Fail to make disclosures required by any applicable state law;  
9 or

10 (12) Make any false statement or omission of material fact in  
11 connection with any reports filed by an exchange facilitator or in  
12 connection with any investigation conducted by the department of  
13 financial institutions."

14 On page 9, line 2, after "who" strike "intentionally"

15 On page 9, line 3, after "through" strike "(7)" and insert "(8)"

16 On page 9, line 6, after "who" strike "intentionally"

17 On page 9, beginning on line 6, after "section 11" strike "(10) or  
18 (11)" and insert "(11) or (12)"

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