

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 09-0514.01 Thomas Morris

HOUSE BILL 09-1254

HOUSE SPONSORSHIP

Judd, Rice

SENATE SPONSORSHIP

Harvey,

House Committees
Judiciary

Senate Committees
Judiciary

SENATE
3rd Reading Unam ended
March 18, 2009

A BILL FOR AN ACT

101 **CONCERNING ADDITIONAL CONSUMER PROTECTIONS RELATING TO**
102 **LIKE-KIND EXCHANGES FACILITATED BY EXCHANGE**
103 **FACILITATORS.**

SENATE
Am ended 2nd Reading
March 16, 2009

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Regulates as deceptive trade practices certain actions of exchange facilitators who, for a fee, facilitate like-kind exchanges of real property for purposes of deferring applicable federal taxes, including by failing to:

- ! Timely notify clients of a change in control of the exchange facilitator;
- ! Maintain adequate insurance or other financial assurance;

HOUSE
3rd Reading Unam ended
February 24, 2009

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
Am ended 2nd Reading
February 20, 2009

and
! Act as a limited fiduciary with regard to clients' exchange funds.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Part 7 of article 1 of title 6, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **6-1-721. Like-kind exchanges by exchange facilitators -**
6 **definitions.** (1) **Legislative declaration.** THE GENERAL ASSEMBLY
7 HEREBY:

8 (a) FINDS THAT, ABSENT ENACTMENT OF THIS SECTION, COLORADO
9 HAS NO REQUIREMENTS FOR THE PROTECTION OF TAXPAYERS WHO ENGAGE
10 PERSONS OR ENTITIES THAT FACILITATE LIKE-KIND EXCHANGES PURSUANT
11 TO 26 U.S.C. SEC. 1031; AND

12 (b) DETERMINES THAT, TO PROTECT TAXPAYERS WHO ENGAGE
13 EXCHANGE FACILITATORS, EXCHANGE FACILITATORS SHOULD MEET
14 CERTAIN REQUIREMENTS AND FOLLOW CERTAIN PROCEDURES.

15 (2) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT
16 OTHERWISE REQUIRES:

17 (a) "AFFILIATED WITH" MEANS THAT A PERSON DIRECTLY, OR
18 INDIRECTLY THROUGH ONE OR MORE INTERMEDIARIES, CONTROLS, IS
19 CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH THE OTHER
20 SPECIFIED PERSON.

21 (b) "COLORADO PROPERTY" MEANS REAL PROPERTY LOCATED IN
22 COLORADO; EXCEPT THAT REPLACEMENT PROPERTY NEED NOT BE
23 LOCATED IN COLORADO.

24 (c) (I) "EXCHANGE FACILITATOR" MEANS A PERSON THAT HOLDS

1 A TAXPAYER'S EXCHANGE FUNDS AND THAT:

2 (A) FOR A FEE, FACILITATES AN EXCHANGE OF LIKE-KIND
3 COLORADO PROPERTY BY ENTERING INTO AN AGREEMENT WITH A
4 TAXPAYER BY WHICH THE EXCHANGE FACILITATOR ACQUIRES FROM THE
5 TAXPAYER THE CONTRACTUAL RIGHTS TO SELL THE TAXPAYER'S
6 RELINQUISHED COLORADO PROPERTY AND TRANSFER A REPLACEMENT
7 PROPERTY TO THE TAXPAYER AS AN EXCHANGE FACILITATOR, AS IS
8 DEFINED IN 26 CFR 1.1031 (k)-1 (g) (4), OR ENTERS INTO AN AGREEMENT
9 WITH A TAXPAYER TO TAKE TITLE TO COLORADO PROPERTY AS AN
10 EXCHANGE ACCOMMODATION TITLEHOLDER, AS THAT TERM IS DEFINED IN
11 FEDERAL INTERNAL REVENUE SERVICE REVENUE PROCEDURE 2000-37, OR
12 ENTERS INTO AN AGREEMENT WITH A TAXPAYER TO ACT AS A QUALIFIED
13 TRUSTEE OR QUALIFIED ESCROW HOLDER, AS THOSE TERMS ARE DEFINED
14 IN 26 CFR 1.1031 (k)-1 (g) (3), EXCEPT AS OTHERWISE PROVIDED IN
15 SUBPARAGRAPH (II) OF THIS PARAGRAPH (c); OR

16 (B) MAINTAINS AN OFFICE IN THIS STATE FOR THE PURPOSE OF
17 SOLICITING BUSINESS AS AN EXCHANGE FACILITATOR REGARDING
18 COLORADO PROPERTY.

19 (II) "EXCHANGE FACILITATOR" DOES NOT INCLUDE:

20 (A) THE TAXPAYER OR DISQUALIFIED PERSON, AS DEFINED UNDER
21 26 CFR 1.1031 (k)-1 (k), SEEKING TO QUALIFY FOR THE NONRECOGNITION
22 PROVISIONS OF 26 U.S.C. SEC. 1031;

23 (B) A BANK, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION,
24 BUILDING AND LOAN ASSOCIATION, OR CREDIT UNION; A BANK OR SAVINGS
25 ASSOCIATION HOLDING COMPANY ORGANIZED UNDER THE LAWS OF ANY
26 STATE, THE DISTRICT OF COLUMBIA, A TERRITORY OR PROTECTORATE OF
27 THE UNITED STATES, OR THE UNITED STATES, SUBJECT TO REGULATION

1 AND SUPERVISION BY A FEDERAL BANKING AGENCY; AN OPERATING
2 SUBSIDIARY OF SUCH ENTITIES; OR AN EMPLOYEE OR EXCLUSIVE AGENT OF
3 ANY OF SUCH ENTITIES, INCLUDING, WITHOUT LIMITATION, A SUBSIDIARY
4 THAT IS OWNED OR CONTROLLED BY SUCH ENTITIES;

5 (C) A PERSON WHO ADVERTISES FOR AND TEACHES SEMINARS OR
6 CLASSES FOR, OR GIVES PRESENTATIONS TO, ATTORNEYS, ACCOUNTANTS,
7 REAL ESTATE PROFESSIONALS, TAX PROFESSIONALS, OR OTHER
8 PROFESSIONALS, WHERE THE PRIMARY PURPOSE IS TO TEACH THE
9 PROFESSIONALS ABOUT TAX-DEFERRED EXCHANGES OR TRAIN THEM TO
10 ACT AS EXCHANGE FACILITATORS;

11 (D) AN EXCHANGE FACILITATOR, AS DEFINED IN 26 CFR 1.1031
12 (k)-1 (g) (4), WHOSE SOLE BUSINESS IN THIS STATE AS AN EXCHANGE
13 FACILITATOR CONSISTS OF HOLDING EXCHANGE FUNDS FROM THE
14 DISPOSITION OF RELINQUISHED PROPERTY LOCATED OUTSIDE THIS STATE;
15 OR

16 (E) AN ENTITY THAT IS WHOLLY OWNED BY AN EXCHANGE
17 FACILITATOR OR IS WHOLLY OWNED BY THE OWNER OF AN EXCHANGE
18 FACILITATOR AND IS USED BY THAT EXCHANGE FACILITATOR TO
19 FACILITATE EXCHANGES OR TO TAKE TITLE TO COLORADO PROPERTY AS
20 AN EXCHANGE ACCOMMODATION TITLEHOLDER, AS DEFINED IN FEDERAL
21 INTERNAL REVENUE SERVICE REVENUE PROCEDURE 2000-37.

22 (III) FOR PURPOSES OF THIS PARAGRAPH (c), "FEE" MEANS
23 COMPENSATION OF ANY NATURE, DIRECT OR INDIRECT, MONETARY OR
24 IN-KIND, THAT IS RECEIVED BY A PERSON OR A RELATED PERSON AS
25 DEFINED IN 26 U.S.C. SEC. 1031 (f) (3) FOR ANY SERVICES RELATING TO OR
26 INCIDENTAL TO THE EXCHANGE OF LIKE-KIND PROPERTY UNDER 26 U.S.C.
27 SEC. 1031.

1 (d) "LIKE-KIND EXCHANGE" MEANS A SECTION 1031 EXCHANGE
2 THAT IS SUBJECT TO 26 U.S.C. SEC. 1031.

3 (e) "PUBLICLY TRADED COMPANY" MEANS A CORPORATION WHOSE
4 SECURITIES ARE PUBLICLY TRADED ON A STOCK EXCHANGE THAT IS
5 REGULATED BY THE UNITED STATES SECURITIES AND EXCHANGE
6 COMMISSION. THE TERM "PUBLICLY TRADED COMPANY" ALSO INCLUDES
7 ALL SUBSIDIARIES OF SUCH PUBLICLY TRADED COMPANY.

8 (f) "SECTION 1031 EXCHANGE" MEANS AN EXCHANGE CONDUCTED
9 PURSUANT TO 26 U.S.C. SEC. 1031 THAT ALLOWS INVESTORS TO DEFER
10 THE TAX ON CAPITAL GAINS.

11 (g) "TAXPAYER EXCHANGE FUNDS" OR "EXCHANGE FUNDS" MEANS
12 MONEY A TAXPAYER ENTRUSTS TO AN EXCHANGE FACILITATOR.

13 (3) **Deceptive trade practices.** A PERSON ENGAGES IN A
14 DECEPTIVE TRADE PRACTICE WHEN A PERSON ACTS AS AN EXCHANGE
15 FACILITATOR AND:

16 (a) (I) EXCEPT AS SPECIFIED IN SUBPARAGRAPH (III) OF THIS
17 PARAGRAPH (a), FAILS TO NOTIFY ALL CURRENT CLIENTS OF ANY CHANGE
18 IN CONTROL OF THE EXCHANGE FACILITATOR WITHIN TWO BUSINESS DAYS
19 AFTER THE EFFECTIVE DATE OF THE CHANGE BY:

20 (A) FACSIMILE, E-MAIL TRANSMISSION, OR FIRST-CLASS MAIL; AND

21 (B) POSTING SUCH NOTICE ON THE EXCHANGE FACILITATOR'S WEB
22 SITE FOR A PERIOD ENDING NOT SOONER THAN NINETY DAYS AFTER THE
23 CHANGE IN CONTROL.

24 (II) THE NOTICE REQUIRED IN SUBPARAGRAPH (I) OF THIS
25 PARAGRAPH (a) SHALL SPECIFY THE NAME, ADDRESS, AND OTHER
26 CONTACT INFORMATION OF THE TRANSFEREES.

27 (III) IF THE EXCHANGE FACILITATOR IS A PUBLICLY TRADED

1 COMPANY AND REMAINS A PUBLICLY TRADED COMPANY AFTER A CHANGE
2 IN CONTROL, THE EXCHANGE FACILITATOR NEED NOT NOTIFY ITS CLIENT
3 OF THE CHANGE IN CONTROL.

4 (IV) FOR PURPOSES OF THIS PARAGRAPH (a), "CHANGE IN
5 CONTROL" MEANS ANY TRANSFER WITHIN TWELVE MONTHS OF MORE THAN
6 FIFTY PERCENT OF THE ASSETS OR OWNERSHIP INTERESTS, DIRECTLY OR
7 INDIRECTLY, OF THE EXCHANGE FACILITATOR.

8 (b) (I) FAILS TO MAINTAIN ADEQUATE FINANCIAL ASSURANCE AND
9 ERRORS AND OMISSIONS INSURANCE OR DEPOSITS. AN EXCHANGE
10 FACILITATOR MAY MAINTAIN BONDS, INSURANCE POLICIES, DEPOSITS, OR
11 IRREVOCABLE LETTERS OF CREDIT IN EXCESS OF THE AMOUNTS REQUIRED
12 BY THIS SUBPARAGRAPH (I). AN EXCHANGE FACILITATOR SHALL AT ALL
13 TIMES:

14 (A) MAINTAIN A FIDELITY BOND OR BONDS EXECUTED BY AN
15 INSURER AUTHORIZED TO DO BUSINESS IN THIS STATE IN THE AMOUNT OF
16 AT LEAST ONE MILLION DOLLARS AND MAINTAIN A POLICY OF ERRORS AND
17 OMISSIONS INSURANCE, IN AN AMOUNT OF AT LEAST TWO HUNDRED FIFTY
18 THOUSAND DOLLARS, EXECUTED BY AN INSURER AUTHORIZED TO DO
19 BUSINESS IN THIS STATE;

20 (B) DEPOSIT AN AMOUNT OF CASH OR IRREVOCABLE LETTERS OF
21 CREDIT IN AN AMOUNT OF AT LEAST THE SUM OF THE AMOUNTS SPECIFIED
22 IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I) IN AN
23 INTEREST-BEARING DEPOSIT ACCOUNT OR IN A MONEY MARKET ACCOUNT
24 WITH A FINANCIAL INSTITUTION OF THE EXCHANGE FACILITATOR'S CHOICE,
25 WITH THE INTEREST EARNED ON SUCH ACCOUNT ACCRUING TO THE
26 EXCHANGE FACILITATOR; OR

27 (C) DEPOSIT ALL EXCHANGE FUNDS IN A QUALIFIED ESCROW OR

1 QUALIFIED TRUST AS THOSE TERMS ARE DEFINED UNDER 26 CFR
2 1.1031(k)-1 (g) (3) WITH A FINANCIAL INSTITUTION AND PROVIDE THAT
3 ANY WITHDRAWALS FROM SUCH QUALIFIED ESCROW OR QUALIFIED TRUST
4 REQUIRE THE TAXPAYER'S AND THE EXCHANGE FACILITATOR'S WRITTEN
5 AUTHORIZATION.

6 (II) A PERSON CLAIMING TO HAVE SUSTAINED DAMAGE BY REASON
7 OF THE FAILURE OF AN EXCHANGE FACILITATOR TO COMPLY WITH THIS
8 SECTION MAY FILE A CLAIM TO RECOVER DAMAGES FROM THE BOND OR
9 DEPOSIT DESCRIBED IN THIS PARAGRAPH (b).

10 (c) FAILS TO ACT AS A CUSTODIAN FOR ALL EXCHANGE FUNDS,
11 INCLUDING MONEY, COLORADO PROPERTY, OTHER CONSIDERATION, OR
12 INSTRUMENTS RECEIVED BY THE EXCHANGE FACILITATOR FROM OR ON
13 BEHALF OF THE TAXPAYER, EXCEPT FUNDS RECEIVED AS THE EXCHANGE
14 FACILITATOR'S COMPENSATION. AS USED IN THIS PARAGRAPH (c),
15 "CUSTODIAN" MEANS A PERSON WHO HAS THE SAME RESPONSIBILITIES AS
16 A FIDUCIARY UNDER COLORADO LAW TO PROTECT AND PRESERVE ASSETS
17 AND SHALL NOT MEAN A PERSON WHO HAS THE SAME RESPONSIBILITIES AS
18 A FIDUCIARY UNDER COLORADO LAW TO INCREASE ASSETS OR TO
19 ACCOMPLISH OTHER FIDUCIARY DUTIES. EXCHANGE FUNDS ARE NOT
20 SUBJECT TO EXECUTION OR ATTACHMENT ON ANY CLAIM AGAINST AN
21 EXCHANGE FACILITATOR. AN EXCHANGE FACILITATOR SHALL NOT
22 KNOWINGLY KEEP OR CAUSE TO BE KEPT ANY MONEY IN A FINANCIAL
23 INSTITUTION UNDER ANY NAME DESIGNATING THE MONEY AS BELONGING
24 TO A TAXPAYER UNLESS THE MONEY EQUITABLY BELONGS TO THE
25 TAXPAYER AND WAS ACTUALLY ENTRUSTED TO THE EXCHANGE
26 FACILITATOR BY THE TAXPAYER. TAXPAYER EXCHANGE FUNDS IN EXCESS
27 OF TWO HUNDRED FIFTY THOUSAND DOLLARS SHALL BE INVESTED OR

1 DEPOSITED IN SUCH MANNER AS TO REQUIRE BOTH THE TAXPAYER'S AND
2 THE EXCHANGE FACILITATOR'S COMMERCIALY REASONABLE MEANS OF
3 AUTHORIZATION FOR WITHDRAWAL, INCLUDING: THE TAXPAYER'S
4 DELIVERY TO THE EXCHANGE FACILITATOR OF THE TAXPAYER'S
5 AUTHORIZATION TO DISBURSE EXCHANGE FUNDS, AND THE EXCHANGE
6 FACILITATOR'S DELIVERY TO THE DEPOSITORY OF THE EXCHANGE
7 FACILITATOR'S AUTHORIZATION TO DISBURSE EXCHANGE FUNDS; OR
8 DELIVERY TO THE DEPOSITORY OF BOTH THE TAXPAYER'S AND THE
9 EXCHANGE FACILITATOR'S AUTHORIZATIONS TO DISBURSE EXCHANGE
10 FUNDS. AN EXCHANGE FACILITATOR SHALL PROVIDE THE TAXPAYER WITH
11 WRITTEN NOTIFICATION OF THE MANNER IN WHICH THE EXCHANGE FUNDS
12 WILL BE INVESTED OR DEPOSITED, SHALL INVEST OR DEPOSIT EXCHANGE
13 FUNDS FOR THE BENEFIT OF THE TAXPAYER IN INVESTMENTS THAT MEET
14 A STANDARD OF CARE THAT AN ORDINARILY PRUDENT INVESTOR WOULD
15 USE WHEN DEALING WITH THE PROPERTY OF ANOTHER, AND SHALL SATISFY
16 INVESTMENT GOALS OF LIQUIDITY AND PRESERVATION OF PRINCIPAL. FOR
17 PURPOSES OF THIS PARAGRAPH (c), A PRUDENT INVESTOR STANDARD OF
18 CARE SHALL BE DEEMED TO HAVE BEEN VIOLATED IF:

19 (I) A TAXPAYER'S EXCHANGE FUNDS ARE COMMINGLED BY THE
20 EXCHANGE FACILITATOR WITH THE OPERATING ACCOUNTS OF THE
21 EXCHANGE FACILITATOR OR WITH THE EXCHANGE FUNDS OF ANOTHER
22 TAXPAYER; EXCEPT THAT AN EXCHANGE FACILITATOR MAY AGGREGATE
23 EXCHANGE FUNDS. FOR PURPOSES OF THIS SUBPARAGRAPH (I):

24 (A) "AGGREGATE" MEANS TO COMBINE EXCHANGE FUNDS OF
25 MULTIPLE TAXPAYERS FOR INVESTMENT PURPOSES TO ACHIEVE COMMON
26 INVESTMENT GOALS AND EFFICIENCIES. EXCHANGE FUNDS THAT HAVE
27 BEEN AGGREGATED INTO COMMON INVESTMENTS SHALL BE READILY

1 IDENTIFIABLE BY THE FINANCIAL INSTITUTION OR OTHER REGULATED
2 INVESTMENT CUSTODIAN HOLDING THE FUNDS AS TO EACH TAXPAYER FOR
3 WHOM THEY ARE HELD THROUGH AN ACCOUNTING OR SUBACCOUNTING
4 SYSTEM. ==

5 (B) "COMMINGLE" MEANS TO MIX TOGETHER EXCHANGE FUNDS OF
6 TAXPAYERS WITH OTHER FUNDS BELONGING TO OR UNDER THE CONTROL
7 OF THE EXCHANGE FACILITATOR IN SUCH A MANNER THAT A TAXPAYER'S
8 EXCHANGE FUNDS CANNOT BE DISTINGUISHED FROM OTHER FUNDS
9 BELONGING TO OR UNDER THE CONTROL OF THE EXCHANGE FACILITATOR.

10 (II) EXCHANGE FUNDS ARE LOANED OR OTHERWISE TRANSFERRED
11 TO ANY PERSON OR ENTITY AFFILIATED WITH THE EXCHANGE FACILITATOR;
12 EXCEPT THAT THIS SUBPARAGRAPH (II) SHALL NOT APPLY TO A TRANSFER
13 OR LOAN MADE TO A FINANCIAL INSTITUTION THAT IS THE PARENT OF OR
14 AFFILIATED WITH THE EXCHANGE FACILITATOR OR FROM AN EXCHANGE
15 FACILITATOR TO AN EXCHANGE ACCOMMODATION TITLEHOLDER, AS
16 DEFINED IN FEDERAL INTERNAL REVENUE SERVICE REVENUE PROCEDURE
17 2000-37, AS REQUIRED UNDER THE SECTION 1031 EXCHANGE CONTRACT;
18 OR

19 (III) EXCHANGE FUNDS ARE INVESTED IN A MANNER THAT DOES
20 NOT PROVIDE SUFFICIENT LIQUIDITY TO MEET THE EXCHANGE
21 FACILITATOR'S CONTRACTUAL OBLIGATIONS TO THE TAXPAYER AND DOES
22 NOT PRESERVE THE PRINCIPAL OF THE EXCHANGE FUNDS. THE DEPOSIT OF
23 FUNDS IN A FINANCIAL INSTITUTION EXEMPTED FROM THIS SECTION
24 PURSUANT TO SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (II) OF
25 PARAGRAPH (c) OF SUBSECTION (2) OF THIS SECTION SHALL BE DEEMED TO
26 BE SUFFICIENTLY LIQUID TO MEET THE REQUIREMENTS OF THIS
27 SUBPARAGRAPH (III).

1 (d) COMMITS ANY OF THE FOLLOWING:

2 (I) KNOWINGLY MAKES ANY MATERIAL MISREPRESENTATION
3 CONCERNING AN EXCHANGE FACILITATOR'S TRANSACTION THAT IS
4 INTENDED TO MISLEAD ANOTHER;

5 (II) PURSUES A CONTINUED OR FLAGRANT COURSE OF
6 MISREPRESENTATION OR MAKES FALSE STATEMENTS THROUGH
7 ADVERTISING OR OTHERWISE;

8 (III) FAILS, WITHIN A REASONABLE TIME, TO ACCOUNT FOR ANY
9 MONEY OR PROPERTY BELONGING TO OTHERS THAT MAY BE IN THE
10 POSSESSION OR UNDER THE CONTROL OF THE EXCHANGE FACILITATOR;

11 (IV) ENGAGES IN ANY CONDUCT CONSTITUTING FRAUDULENT OR
12 DISHONEST DEALING;

13 (V) IS CONVICTED OF, OR, IN THE CASE OF AN ENTITY, ONE OR
14 MORE OF ITS OWNERS, OFFICERS, DIRECTORS, OR EMPLOYEES WHO HAS
15 ACCESS TO EXCHANGE FUNDS IS CONVICTED OF, ANY CRIME INVOLVING
16 FRAUD, MISREPRESENTATION, DECEIT, EMBEZZLEMENT,
17 MISAPPROPRIATION OF FUNDS, ROBBERY, OR OTHER THEFT OF PROPERTY;
18 EXCEPT THAT COMMISSION OF SUCH CRIME BY AN OFFICER, DIRECTOR, OR
19 EMPLOYEE OF AN EXCHANGE FACILITATOR SHALL NOT BE CONSIDERED A
20 VIOLATION OF THIS SUBPARAGRAPH (V) IF THE EMPLOYMENT OR
21 APPOINTMENT OF THE OFFICER, DIRECTOR, OR EMPLOYEE HAS BEEN
22 TERMINATED AND NO CLIENTS OF THE EXCHANGE FACILITATOR WERE
23 HARMED OR FULL RESTITUTION HAS BEEN MADE TO ALL HARMED CLIENTS;

24 (VI) WILFULLY FAILS TO FULFILL AN EXCHANGE FACILITATOR'S
25 CONTRACTUAL DUTIES TO THE TAXPAYER TO DELIVER PROPERTY OR FUNDS
26 TO THE TAXPAYER UNLESS SUCH FAILURE IS DUE TO CIRCUMSTANCES
27 BEYOND THE CONTROL OF THE EXCHANGE FACILITATOR;

1 (VII) MATERIALLY VIOLATES THIS SECTION OR AIDS, ABETS, OR
2 KNOWINGLY PERMITS ANY PERSON TO VIOLATE THIS SECTION;

3 (VIII) COMMITS AN ACT THAT DOES NOT MEET GENERALLY
4 ACCEPTED STANDARDS OF PRACTICE FOR ORDINARILY PRUDENT INVESTORS
5 OR FAILS TO PERFORM AN ACT NECESSARY TO MEET GENERALLY ACCEPTED
6 STANDARDS OF PRACTICE FOR ORDINARILY PRUDENT INVESTORS;

7 (IX) FAILS TO KEEP APPROPRIATE BUSINESS AND TRANSACTION
8 RECORDS, FALSIFIES SUCH RECORDS, OR KNOWINGLY AND WILFULLY
9 MAKES INCORRECT ENTRIES OF AN ESSENTIAL NATURE ON SUCH RECORDS;
10 EXCEPT THAT AN EXCHANGE FACILITATOR MAY DISPOSE OF RECORDS
11 AFTER A REASONABLE TIME PURSUANT TO THE EXCHANGE FACILITATOR'S
12 DOCUMENT RETENTION AND DOCUMENT DESTRUCTION POLICY;

13 (X) IS DISCIPLINED IN ANY WAY BY A NATIONAL CERTIFYING
14 AGENCY OR BY A REGULATORY AGENCY OF ANOTHER JURISDICTION FOR
15 CONDUCT THAT RELATES TO THE PERSON'S EMPLOYMENT AS AN EXCHANGE
16 FACILITATOR; OR

17 (XI) IS CONVICTED OF OR PLEADS GUILTY OR NOLO CONTENDERE
18 TO A FELONY OR ANY CRIME DEFINED IN TITLE 18, C.R.S., THAT RELATES
19 TO THE PERSON'S EMPLOYMENT AS AN EXCHANGE FACILITATOR. A
20 CERTIFIED COPY OF THE JUDGMENT OF A COURT OF COMPETENT
21 JURISDICTION OF THE CONVICTION OR PLEA SHALL BE PRIMA FACIE
22 EVIDENCE OF THE CONVICTION OR PLEA.

23 **SECTION 2. Applicability.** This act shall apply to acts
24 occurring on or after the effective date of this act.

25 **SECTION 3. Safety clause.** The general assembly hereby finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, and safety.