

## **BILL ANALYSIS**

Senate Research Center

S.B. 2127  
By: Estes  
Business & Commerce  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, state law does not address any investor safeguards for clients of exchange facilitators. The bill would require persons involved in the business of providing exchange facilitator services to obtain, maintain, and provide to the clients financial assurances that would include evidence of a fidelity bond or fidelity bonds in an amount not less than \$1 million and a policy of errors and omissions insurance in an amount not less than \$250,000.

As proposed, S.B. 2127 relates to consumer protections for clients of exchange facilitators for tax-deferred exchanges of real property.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle C, Title 5, Business & Commerce Code, by adding Chapter 106, as follows:

#### **CHAPTER 106. CONSUMER PROTECTIONS FOR CLIENTS OF EXCHANGE FACILITATORS**

Sec. 106.001. **LEGISLATIVE PURPOSE.** Provides that the legislature finds that ensuring the integrity, trustworthiness, and capacity of persons holding themselves out as, or performing or contracting to perform the activities of, exchange facilitators is vital to the consummation of transactions involving exchange of and reinvestment in property located in this state and is in the public interest. Provides that the purpose of this chapter is to provide consumer protections for clients of persons that engage in the activities of an exchange facilitator in order to ensure the integrity, trustworthiness, and capacity of such persons to engage in those activities.

Sec. 106.002. **DEFINITIONS.** Defines "exchange facilitator," "fee," and "financial institution."

Sec. 106.003. **FINANCIAL ASSURANCES.** (a) Requires an exchange facilitator to obtain, maintain, and provide to the clients of the exchange facilitator the following financial assurances:

- (1) a fidelity bond or fidelity bonds in an amount not less than \$1 million, executed by a surety company authorized to do business in this state and approved by the commissioner of insurance for the purpose of issuing bonds under this chapter, or a deposit of cash or securities or letters of credit in an amount not less than \$1 million, with financial institutions; and
- (2) a policy of errors and omissions insurance in an amount not less than \$250,000, or a deposit of cash or securities or letters of credit in an amount not less than \$250,000, with financial institutions and issuers, as applicable.

Sec. 106.004. NATURE AND DUTIES OF AN EXCHANGE FACILITATOR. Provides that a person that engages in the business of providing the services of an exchange facilitator is a fiduciary with respect to the parties with whom the person contracts to provide services as an exchange facilitator. Provides that an exchange facilitator has a duty of loyalty and of good faith and fair dealing with such parties. Provides that a breach of the duties or of either duty is actionable by the parties with whom the exchange facilitator contracted that suffered a loss due to the breach of duty. Provides that this section is a clarification of existing law and does not create a separate cause of action.

SECTION 2. Make application of this Act prospective.

SECTION 3. Effective date: January 1, 2010.