

HOUSE FLOOR AMENDMENT EXPLANATION



Bill Number: **HB 2048**

Kolodin Floor Amendment

Adds that the fraudulent practices made in connection with a transaction involving an offer to purchase or sell a security includes *contemplated offers*.

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KOLODIN FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2048
(Reference to printed bill)

Amendment instruction key:

[GREEN UNDERLINING IN BRACKETS] indicates text added to statute or previously enacted session law.

[Green underlining in brackets] indicates text added to new session law or text restoring existing law.

[~~GREEN STRIKEOUT IN BRACKETS~~] indicates new text removed from statute or previously enacted session law.

[~~Green strikeout in brackets~~] indicates text removed from existing statute, previously enacted session law or new session law.

<<Green carets>> indicate a section added to the bill.

<<~~Green strikeout in carets~~>> indicates a section removed from the bill.

1 The bill as proposed to be amended is reprinted as follows:

2 Section 1. Section 44-1801, Arizona Revised Statutes, is amended to
3 read:

4 44-1801. Definitions

5 In this chapter and chapter 13 of this title, unless the context
6 otherwise requires:

7 1. "Blind pool offering" means an offering in which either:

8 (a) The offering materials do not describe specific operational
9 plans.

10 (b) Eighty percent or more of the net offering proceeds are not
11 specifically allocated for the purchase, construction or development of
12 identified property or products, for the payment of indebtedness or
13 overhead expenses, or for other activities set forth in the issuer's
14 business plan.

15 2. "Commission" means the Arizona corporation commission.

16 3. "Commodity" means any agricultural, grain or livestock product
17 or by-product, any metal or mineral including a precious metal, any gem or
18 gemstone whether characterized as precious, semiprecious or otherwise, any
19 fuel whether liquid, gaseous or otherwise, any foreign currency and all
20 other goods, articles, products or items of any kind. Commodity does not
21 include a numismatic coin with a fair market value at least fifteen
22 percent higher than the value of the metal it contains, real property or
23 any timber, agricultural or livestock product grown or raised on real
24 property and offered or sold by the owner or lessee of such real property,
25 or any work of art offered or sold by art dealers, at public auction or
26 offered or sold through a private sale by the owner.

27 4. "Commodity exchange act" means the act of Congress known as the
28 commodity exchange act (7 United States Code, chapter 1).

1 5. "Commodity futures trading commission" means the independent
2 regulatory agency established by Congress to administer the commodity
3 exchange act.

4 6. "Commodity investment contract" means any account, agreement or
5 contract for the purchase or sale, primarily for speculation or investment
6 purposes and not for use or consumption by the offeree or purchaser, of
7 one or more commodities, whether for immediate or subsequent delivery or
8 whether delivery is intended by the parties, and whether characterized as
9 a cash contract, deferred shipment or deferred delivery contract, forward
10 contract, futures contract, installment or margin contract, leverage
11 contract or otherwise. Any commodity investment contract offered or sold,
12 in the absence of evidence to the contrary, is presumed to be offered or
13 sold for speculation or investment purposes. A commodity investment
14 contract does not include any contract or agreement that requires, and
15 under which the purchaser receives, within twenty-eight calendar days
16 after the payment in good funds of any portion of the purchase price,
17 physical delivery of the total amount of each commodity to be purchased
18 under the contract or agreement.

19 7. "Commodity option" means any account, agreement or contract
20 giving a party to the account, agreement or contract the right but not the
21 obligation to purchase or sell one or more commodities or one or more
22 commodity investment contracts, whether characterized as an option,
23 privilege, indemnity, bid, offer, put, call, advance guaranty, decline
24 guaranty or otherwise.

25 8. "CRD system" means the central registration depository system of
26 the national association of securities dealers, incorporated.

27 9. "Crowdfunding" means the practice of funding a project or
28 venture by raising many small amounts of money from a large number of
29 people.

30 10. "Dealer":

31 (a) Means a person who directly or indirectly engages full-time or
32 part-time in this state as agent, broker or principal in the business of
33 offering, buying, selling or otherwise dealing or trading in securities
34 issued by another person, and who is not a salesman for a registered
35 dealer or is not a bank or savings institution the business of which is
36 supervised and regulated by an agency of this state or the United States.

37 (b) Means an issuer, other than an investment company, who,
38 directly or through an officer, director, employee or agent who is not
39 registered as a dealer under this chapter, engages in selling securities
40 issued by such issuer.

41 (c) Does not include a person who sells or offers to sell
42 securities exclusively to dealers registered under this chapter, and who
43 has no place of business within this state.

44 (d) Does not include a person who buys or sells securities for his
45 own account, either individually or in a fiduciary capacity, but not as
46 part of a regular business.

1 11. "Director" means the director of the securities division of the
2 commission.

3 12. "Division" means the securities division of the commission.

4 13. "Federal covered security" means any security described as a
5 covered security in section 18 of the securities act of 1933.

6 14. "Issuer" means any person who issues or proposes to issue any
7 security, except:

8 (a) With respect to certificates of deposit, voting-trust
9 certificates, collateral-trust certificates, certificates of interest or
10 shares in an unincorporated investment trust, whether or not of the fixed,
11 restricted management or unit type, issuer means the person or persons
12 performing the acts and assuming the duties of depositor or manager
13 pursuant to the provisions of the trust or other agreement or instrument
14 under which such securities are issued.

15 (b) With respect to equipment-trust certificates or like
16 securities, issuer means the person by whom the equipment or property is
17 or is to be used.

18 (c) With respect to fractional interests in any oil, gas or other
19 mineral lease, permit, claim or right, issuer means the owner thereof or
20 of any interest therein, whether whole or fractional, fractional interests
21 in which are created for the purpose of a public offering.

22 15. "Numismatic coin":

23 (a) Means a coin that has all of the following characteristics:

24 (i) The coin is of interest primarily to coin collectors rather
25 than to speculators or investors in precious metals.

26 (ii) The fair market value of the coin is determined primarily by
27 its design, subject matter, limited mintage, rarity and relative condition
28 of preservation from wear rather than by its intrinsic precious metal or
29 bullion content.

30 (iii) The fair market value of the coin is directly related to an
31 individual inspection and grading of its relative condition according to
32 an established system of numismatic standards promulgated independently of
33 the offerer of the coin.

34 (iv) With the exception of proof, mint and commemorative coins, the
35 coin is minted or manufactured under authority of the issuing government
36 for the purpose of being used as legal tender.

37 (b) Does not include a coin that has at least one of the following
38 characteristics:

39 (i) The coin is minted, manufactured or advertised for sale
40 primarily to persons who seek to invest or speculate in precious metals
41 rather than to coin collectors or for use in commerce as legal tender.

42 (ii) The coin is advertised or sold with the expectation that it
43 will be purchased or traded for its intrinsic precious metal or bullion
44 content.

45 (iii) The price of the coin is directly related to the spot market
46 price of its intrinsic precious metal or bullion content.

47 (iv) The coin is generally not used as legal tender.

1 (v) The quantity of mintage or manufacture of the coin is based on
2 market demand.

3 (vi) The coin is not sought for its design, subject matter, limited
4 mintage, rarity or relative condition of preservation from wear, but
5 instead is sought for the value of its intrinsic precious metal or bullion
6 content.

7 16. "Offer to sell" or "offer for sale" means an attempt or offer
8 to dispose of, or solicitation of an order or offer to buy, a security or
9 interest in a security for value or any sale or offer for sale of a
10 warrant or right to subscribe to another security of the same issuer or of
11 another issuer. Any sale or offer for sale of a security that gives the
12 holder thereof a present or future right or privilege to convert such
13 security into another security of the same issuer or of another issuer
14 shall be deemed an offer to sell the security to be acquired pursuant to
15 such right or privilege, but the existence thereof shall not be construed
16 as affecting the registration or exemption under this chapter of the
17 security to which it attaches. **AN OFFER, INCLUDING AN OFFER TO SELL OR
18 OFFER FOR SALE, OCCURS ONLY WHERE ACCEPTANCE OF THE OFFER AND PAYMENT OF
19 CONSIDERATION WOULD COMPLETE THE SALE.**

20 17. "Person" means an individual, corporation, partnership,
21 association, joint stock company or trust, limited liability company,
22 government or governmental subdivision or agency or any other
23 unincorporated organization.

24 18. "Precious metal" means the following in either coin, bullion or
25 other form:

- 26 (a) Silver.
- 27 (b) Gold.
- 28 (c) Platinum.
- 29 (d) Palladium.
- 30 (e) Copper.

31 19. "Real property investment contract" means a contract for the
32 sale or purchase of a promissory note secured directly or collaterally by
33 a mortgage, deed of trust or other lien on real property, including a
34 contract as defined in section 33-741, or any agreement, arrangement or
35 understanding in connection with such note, lien or contract in which a
36 person agrees, implies to do or does any of the following, whether or not
37 the investor is aware that any of the following actions are contemplated
38 or taken:

- 39 (a) Guarantee the note, lien or contract against loss at any time.
- 40 (b) Promise to provide a market for the sale of the note, lien or
41 contract, in connection with a sale or purchase.
- 42 (c) Offer to accept or accept funds for investment in notes or
43 contracts secured directly or indirectly by a lien on real property, where
44 the real property is unspecified at the time of investment.
- 45 (d) Pay any interest or premium for a period before actual purchase
46 and delivery of the note or contract.

1 (e) Pay any money to an investor if the note or contract is in
2 arrears.

3 (f) Guarantee that principal or interest will be paid in conformity
4 with the terms of the note or contract.

5 (g) Accept, from time to time, partial payment toward the purchase
6 of the note or contract.

7 (h) Promise to repurchase the note or contract, in connection with
8 sale or purchase.

9 20. "Registered dealer" means a dealer registered under this
10 chapter.

11 21. "Registered salesman" means a salesman registered under this
12 chapter.

13 22. "Sale" or "sell" means a sale or any other disposition of a
14 security or interest in a security for value and includes a contract to
15 make such sale or disposition. A security given or delivered with, or as
16 a bonus on account of, a purchase of securities or other thing shall be
17 conclusively presumed to constitute a part of the subject of the purchase
18 and to have been sold for value.

19 23. "Salesman" means an individual, other than a dealer, employed,
20 appointed or authorized by a dealer to sell securities in this state. The
21 partners or executive officers of a registered dealer shall not be deemed
22 salesmen within the meaning of this definition.

23 24. "SEC" means the United States securities and exchange
24 commission.

25 25. "Securities act of 1933" means the act of Congress known as the
26 securities act of 1933.

27 26. "Securities exchange act of 1934" means the act of Congress
28 known as the securities exchange act of 1934.

29 27. "Security":

30 (a) Means any note, stock, treasury stock, bond, commodity
31 investment contract, commodity option, debenture, evidence of
32 indebtedness, certificate of interest or participation in any
33 profit-sharing agreement, collateral-trust certificate, preorganization
34 certificate or subscription, transferable share, investment contract,
35 viatical or life settlement investment contract, voting-trust certificate,
36 certificate of deposit for a security, fractional undivided interest in
37 oil, gas or other mineral rights, real property investment contract or, in
38 general, any interest or instrument commonly known as a security, or any
39 certificate of interest or participation in, temporary or interim
40 certificate for, receipt for, guarantee of, or warrant or right to
41 subscribe to or purchase, any of the foregoing.

42 (b) Notwithstanding subdivision (a) of this paragraph, with respect
43 to a virtual coin shall not be construed more broadly than the term
44 security is construed in the securities act of 1933, the securities
45 exchange act of 1934 or any federal regulations relating to either act.

46 28. "SRO" means any national securities or commodities exchange,
47 registered association or registered clearing agency.

1 29. "Underwriter" means a person who has acquired from an issuer
2 with a view to, or sells for an issuer in connection with, the
3 distribution of any securities or participates or has a direct or indirect
4 participation in such undertaking, or participates or has a participation
5 in the direct or indirect underwriting of such undertaking. Underwriter
6 does not include a person whose interest is limited to a commission from
7 an underwriter or dealer not in excess of the usual and customary
8 distributor's or seller's commission.

9 30. "Viatical or life settlement investment contract" means an
10 agreement for consideration for the purchase, assignment, transfer, sale,
11 devise or bequest of any portion of the death benefit under or ownership
12 of either an insurance policy or certificate of insurance. A viatical or
13 life settlement investment contract does not include:

14 (a) Any agreement for the original issuance of an insurance policy
15 or certificate of insurance.

16 (b) An assignment, transfer, sale, devise or bequest of a death
17 benefit under or ownership of either an insurance policy or certificate of
18 insurance by the original owner or a person who has an insurable interest
19 in the insured pursuant to section 20-1104 to any of the following:

20 (i) The insured.

21 (ii) A person who has an insurable interest in the insured pursuant
22 to section 20-1104.

23 (iii) A dealer.

24 (iv) A person who is engaged in the business of purchasing the
25 death benefit under or ownership of either insurance policies or
26 certificates of insurance.

27 (c) An assignment of an insurance policy or certificate of
28 insurance to any bank, savings bank, savings and loan association, credit
29 union or other licensed lending institution as collateral for a loan.

30 (d) The exercise of accelerated benefits pursuant to the life
31 insurance policy.

32 31. "Virtual coin" means a digital representation of value that can
33 be digitally traded and that functions as a medium of exchange, unit of
34 account and store of value.

35 32. "Virtual coin offering":

36 (a) Means an offer for sale of a virtual coin that either:

37 (i) Meets the definition of a security prescribed in this section.

38 (ii) The issuer elects to treat as a security by complying with
39 section 44-1844, subsection A, paragraph 22.

40 (b) Does not include an offer for sale of a virtual coin that both:

41 (i) Has not been marketed by the issuer as an investment.

42 (ii) Grants to the purchaser, within ninety days after the
43 purchaser's receipt of the virtual coin, the right to use, contribute to
44 the development of or license the use of a platform using blockchain
45 technology as defined in section 44-7061, including a license to use a
46 product or service on the platform or a discount against fees for use of
47 the platform.

1 <<Sec. 2. Section 44-1991, Arizona Revised Statutes, is amended to
2 read:
3 44-1991. Fraud in purchase or sale of securities
4 A. It is a fraudulent practice and unlawful for a person, in
5 connection with a transaction or transactions within or from this state
6 involving an offer[, OR CONTEMPLATED OFFER,] to sell or buy securities, or
7 a sale or purchase of securities, including securities exempted under
8 section 44-1843 or 44-1843.01 and including transactions exempted under
9 section 44-1844, 44-1845 or 44-1850, directly or indirectly to do any of
10 the following:
11 1. Employ any device, scheme or artifice to defraud.
12 2. Make any untrue statement of material fact, or omit to state any
13 material fact necessary in order to make the statements made, in the light
14 of the circumstances under which they were made, not misleading.
15 3. Engage in any transaction, practice or course of business which
16 operates or would operate as a fraud or deceit.
17 B. In a private action brought pursuant to subsection A, paragraph
18 2 of this section or section 44-1992, if the person who offered or sold
19 the security proves that any portion or all of the amount recoverable
20 under subsection A, paragraph 2 of this section or section 44-1992
21 represents an amount other than the depreciation in value of the subject
22 security resulting from the part of the prospectus or oral communication,
23 with respect to which the liability of the person is asserted, not being
24 true or omitting to state a material fact required to be stated or
25 necessary to make the statement not misleading, then the amount shall not
26 be recoverable. This subsection does not apply to any actions based on
27 allegations of activities constituting dishonest or unethical practices in
28 the securities industry. >>
29 Enroll and engross to conform
30 Amend title to conform

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