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SECURITIES EXEMPTION AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian M. Greene

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies securities provisions to address exemptions from certain registration and disclosure requirements.

Highlighted Provisions:

This bill:

- ▶ modifies an existing exemption to provide for an intrastate exemption from registration and disclosure requirements;
- ▶ modifies the division's authority with regard to the exemption;
- ▶ addresses intrastate portals or websites; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

61-1-14, as last amended by Laws of Utah 2010, Chapter 218

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **61-1-14** is amended to read:



28 **61-1-14. Exemptions.**

29 (1) The following securities are exempt from Sections 61-1-7 and 61-1-15:

30 (a) a security, including a revenue obligation, issued or guaranteed by the United
31 States, a state, a political subdivision of a state, or an agency or corporate or other
32 instrumentality of one or more of the foregoing, or a certificate of deposit for any of the
33 foregoing;

34 (b) a security issued or guaranteed by Canada, a Canadian province, a political
35 subdivision of a Canadian province, an agency or corporate or other instrumentality of one or
36 more of the foregoing, or another foreign government with which the United States currently
37 maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer
38 or guarantor;

39 (c) a security issued by and representing an interest in or a debt of, or guaranteed by, a
40 depository institution organized under the laws of the United States, or a depository institution
41 or trust company supervised under the laws of a state;

42 (d) a security issued or guaranteed by a public utility or a security regulated in respect
43 of its rates or in its issuance by a governmental authority of the United States, a state, Canada,
44 or a Canadian province;

45 (e) (i) a federal covered security specified in the Securities Act of 1933, Section
46 18(b)(1), 15 U.S.C. [~~Section~~] Sec. 77r(b)(1), or by rule adopted under that provision;

47 (ii) a security listed or approved for listing on another securities market specified by
48 rule under this chapter;

49 (iii) any of the following with respect to a security described in Subsection (1)(e)(i) or
50 (ii):

51 (A) a put or a call option contract;

52 (B) a warrant; or

53 (C) a subscription right on or with respect to the security;

54 (iv) an option or similar derivative security on a security or an index of securities or
55 foreign currencies issued by a clearing agency that is:

56 (A) registered under the Securities Exchange Act of 1934; and

57 (B) listed or designated for trading on a national securities exchange, or a facility of a
58 national securities association registered under the Securities Exchange Act of 1934;

59 (v) an offer or sale, of the underlying security in connection with the offer, sale, or
60 exercise of an option or other security that was exempt when the option or other security was
61 written or issued; or

62 (vi) an option or a derivative security designated by the Securities and Exchange
63 Commission under Securities Exchange Act of 1934, Section 9(b), 15 U.S.C. [~~Section~~] Sec.
64 78i(b);

65 (f) (i) a security issued by a person organized and operated not for private profit but
66 exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or
67 reformatory purposes, or as a chamber of commerce or trade or professional association; and

68 (ii) a security issued by a corporation organized under Title 3, Chapter 1, General
69 Provisions Relating to Agricultural Cooperative Associations, and a security issued by a
70 corporation to which that chapter is made applicable by compliance with Section 3-1-21;

71 (g) an investment contract issued in connection with an employees' stock purchase,
72 option, savings, pension, profit-sharing, or similar benefit plan;

73 (h) a security issued by an investment company that is registered, or that has filed a
74 registration statement, under the Investment Company Act of 1940; and

75 (i) a security as to which the director, by rule or order, finds that registration is not
76 necessary or appropriate for the protection of investors.

77 (2) The following transactions are exempt from Sections 61-1-7 and 61-1-15:

78 (a) an isolated nonissuer transaction, whether effected through a broker-dealer or not;

79 (b) a nonissuer transaction in an outstanding security, if as provided by rule of the
80 division:

81 (i) information about the issuer of the security as required by the division is currently
82 listed in a securities manual recognized by the division, and the listing is based upon such
83 information as required by rule of the division; or

84 (ii) the security has a fixed maturity or a fixed interest or dividend provision and there
85 is no default during the current fiscal year or within the three preceding fiscal years, or during
86 the existence of the issuer and any predecessors if less than three years, in the payment of
87 principal, interest, or dividends on the security;

88 (c) a nonissuer transaction effected by or through a registered broker-dealer pursuant to
89 an unsolicited order or offer to buy;

90 (d) a transaction between the issuer or other person on whose behalf the offering is
91 made and an underwriter, or among underwriters;

92 (e) a transaction in a bond or other evidence of indebtedness secured by a real or
93 chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the
94 entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of
95 indebtedness secured thereby, is offered and sold as a unit;

96 (f) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in
97 bankruptcy, guardian, or conservator;

98 (g) a transaction executed by a bona fide pledgee without a purpose of evading this
99 chapter;

100 (h) an offer or sale to one of the following whether the purchaser is acting for itself or
101 in a fiduciary capacity:

102 (i) a depository institution;

103 (ii) a trust company;

104 (iii) an insurance company;

105 (iv) an investment company as defined in the Investment Company Act of 1940;

106 (v) a pension or profit-sharing trust;

107 (vi) other financial institution or institutional investor; or

108 (vii) a broker-dealer;

109 (i) an offer or sale of a preorganization certificate or subscription if:

110 (i) no commission or other remuneration is paid or given directly or indirectly for
111 soliciting a prospective subscriber;

112 (ii) the number of subscribers acquiring a legal or beneficial interest therein does not
113 exceed 10;

114 (iii) there is no general advertising or solicitation in connection with the offer or sale;
115 and

116 (iv) no payment is made by a subscriber;

117 (j) subject to Subsection (6), a transaction pursuant to an offer by an issuer of its
118 securities to its existing securities holders, if:

119 (i) no commission or other remuneration, other than a standby commission is paid or
120 given directly or indirectly for soliciting a security holder in this state; and

- 121 (ii) the transaction constitutes:
- 122 (A) the conversion of convertible securities;
- 123 (B) the exercise of nontransferable rights or warrants;
- 124 (C) the exercise of transferable rights or warrants if the rights or warrants are
- 125 exercisable not more than 90 days after their issuance;
- 126 (D) the purchase of securities under a preemptive right; or
- 127 (E) a transaction other than one specified in Subsections (2)(j)(ii)(A) through (D) if:
- 128 (I) the division is furnished with:
- 129 (Aa) a general description of the transaction;
- 130 (Bb) the disclosure materials to be furnished to the issuer's securities holders in the
- 131 transaction; and
- 132 (Cc) a non-refundable fee; and
- 133 (II) the division does not, by order, deny or revoke the exemption within 20 working
- 134 days after the day on which the filing required by Subsection (2)(j)(ii)(E)(I) is complete;
- 135 (k) an offer, but not a sale, of a security for which a registration statement is filed under
- 136 both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and
- 137 no public proceeding or examination looking toward such an order is pending;
- 138 (l) a distribution of securities as a dividend if the person distributing the dividend is the
- 139 issuer of the securities distributed;
- 140 (m) a nonissuer transaction effected by or through a registered broker-dealer where the
- 141 broker-dealer or issuer files with the division, and the broker-dealer maintains in the
- 142 broker-dealer's records, and makes reasonably available upon request to a person expressing an
- 143 interest in a proposed transaction in the security with the broker-dealer information prescribed
- 144 by the division under its rules;
- 145 (n) a transaction not involving a public offering;
- 146 (o) an offer or sale of "condominium units" or "time period units" as those terms are
- 147 defined in Title 57, Chapter 8, Condominium Ownership Act, whether or not to be sold by
- 148 installment contract, if the following are complied with:
- 149 (i) Title 57, Chapter 8, Condominium Ownership Act, or if the units are located in
- 150 another state, the condominium act of that state;
- 151 (ii) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

- 152 (iii) Title 57, Chapter 19, Timeshare and Camp Resort Act; and
- 153 (iv) Title 70C, Utah Consumer Credit Code;
- 154 (p) a transaction or series of transactions involving a merger, consolidation,
- 155 reorganization, recapitalization, reclassification, or sale of assets, if the consideration for
- 156 which, in whole or in part, is the issuance of securities of a person or persons, and if:
- 157 (i) the transaction or series of transactions is incident to a vote of the securities holders
- 158 of each person involved or by written consent or resolution of some or all of the securities
- 159 holders of each person involved;
- 160 (ii) the vote, consent, or resolution is given under a provision in:
- 161 (A) the applicable corporate statute or other controlling statute;
- 162 (B) the controlling articles of incorporation, trust indenture, deed of trust, or
- 163 partnership agreement; or
- 164 (C) the controlling agreement among securities holders;
- 165 (iii) (A) one person involved in the transaction is required to file proxy or
- 166 informational materials under Section 14(a) or (c) of the Securities Exchange Act of 1934 or
- 167 Section 20 of the Investment Company Act of 1940 and has so filed;
- 168 (B) one person involved in the transaction is an insurance company that is exempt from
- 169 filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934, and has filed proxy or
- 170 informational materials with the appropriate regulatory agency or official of its domiciliary
- 171 state; or
- 172 (C) all persons involved in the transaction are exempt from filing under Section
- 173 12(g)(1) of the Securities Exchange Act of 1934, and file with the division such proxy or
- 174 informational material as the division requires by rule;
- 175 (iv) the proxy or informational material is filed with the division and distributed to all
- 176 securities holders entitled to vote in the transaction or series of transactions at least 10 working
- 177 days prior to any necessary vote by the securities holders or action on any necessary consent or
- 178 resolution; and
- 179 (v) the division does not, by order, deny or revoke the exemption within 10 working
- 180 days after filing of the proxy or informational materials;
- 181 (q) subject to Subsection (7), a transaction pursuant to an offer to sell securities of an
- 182 issuer if:

183 (i) the transaction is part of an issue in which ~~[there are not more than 15 purchasers in~~
184 ~~this state, other than those designated in Subsection (2)(h), during any 12 consecutive months;]~~
185 the issuer does not accept more than \$5,000 from a non-accredited investor, and has no limit
186 for an accredited investor, as defined by Rule 501 of Securities Exchange Commission
187 Regulation D, 17 C.F.R. 230.501, except the total limit under Subsection (2)(q)(v);

188 ~~[(ii) no general solicitation or general advertising is used in connection with the offer~~
189 ~~to sell or sale of the securities;]~~

190 (ii) as part of the transaction, the issuer may offer, advertise, solicit, and sell the
191 security through the issuer's own efforts, the efforts of its owners, members, officers,
192 employees, and affiliates and may advertise through any medium, including television, radio,
193 newspaper, or the issuer's own or third party websites or portals;

194 (iii) no commission or [other similar] compensation based on the offering size or dollar
195 amount of the transaction is given, directly or indirectly, to a person other than a broker-dealer
196 or agent licensed under this chapter[, for soliciting a prospective purchaser in this state];

197 (iv) the seller reasonably believes that all the purchasers in this state are purchasing the
198 security for investment purposes; [and]

199 ~~[(v) the transaction is part of an aggregate offering that does not exceed \$1,000,000, or~~
200 ~~a greater amount as prescribed by a division rule, during any 12 consecutive months;]~~

201 (v) the sum of all cash and other consideration to be received for sales of the securities
202 in a 12-month period does not exceed \$2,000,000;

203 (vi) the transaction meets the requirements of Section 3(a)(11) of the Securities Act of
204 1933, 15 U.S.C. Sec. 77c(a)(11);

205 (vii) the purchaser is a resident of the state;

206 (viii) the issuer provides the following disclosures to a prospective purchaser of the
207 security:

208 (A) a description of the issuer's company, its entity type, and the address and phone
209 number of the issuer's principal office;

210 (B) the identity of the executive officers, directors, managing members, and other
211 persons occupying a similar status or performing similar functions in the name of and on behalf
212 of the issuer;

213 (C) the terms and conditions of the securities being offered, any outstanding securities

214 of the company, the percentage ownership of the company represented by the offered securities
215 or the valuation of the company implied by the price of the offered securities, the price per
216 share, unit, or interest of the securities being offered, the general proposed use of the proceeds
217 of the offering, the reporting to be provided to purchasers, any restrictions on the transfer of the
218 securities being offered, and any anticipated future issuance of securities that may dilute the
219 value of the securities being offered;

220 (D) a description of any litigation, legal proceedings, or pending regulatory action
221 involving the issuer or the issuer's management;

222 (E) whether the issuer or any person affiliated with the issuer or offering is subject to
223 disqualification by rule contained in the Securities Act of 1933, 17 C.F.R. 230.262; and

224 (F) a narrative of any material or significant risk factors that might have a negative
225 effect on the securities being offered that includes the following statement: "In making an
226 investment decision, purchasers must rely on their own examination of the issuer and the terms
227 of the offering, including the merits and risks involved. These securities have not been
228 registered under federal or state law, nor have these securities been recommended or approved
229 by any federal or state regulatory authority. Furthermore, no government authority has
230 confirmed the accuracy or determined the adequacy of any disclosures pertaining to these
231 securities."; and

232 (ix) the issuer of the securities:

233 (A) is a business entity organized under the laws of this state authorized to do business
234 in the state;

235 (B) is not an investment company, as defined in the Investment Company Act of 1940,
236 either before or as a result of the offering;

237 (C) not less than 10 days before commencement of any solicitation or general
238 advertising of an offering of securities, files a one-page notification form created by the
239 division that is restricted to a description of the company, its entity type, the address and phone
240 number of its principal office, the identity of the executive officers, directors, managing
241 members, and other persons occupying a similar status or performing similar functions in the
242 name of and on behalf of the issuer, and the dollar amount of the offering; and

243 (D) not less than 10 days before the commencement of any solicitation or general
244 advertising of an offering of securities, and notwithstanding Section [61-1-18.4](#), pays a filing fee

245 to the division of §120;

246 (r) a transaction involving a commodity contract or commodity option;

247 (s) a transaction in a security, whether or not the security or transaction is otherwise
248 exempt if:

249 (i) the transaction is:

250 (A) in exchange for one or more outstanding securities, claims, or property interests; or

251 (B) partly for cash and partly in exchange for one or more outstanding securities,
252 claims, or property interests; and

253 (ii) the terms and conditions are approved by the director after a hearing under Section
254 61-1-11.1;

255 (t) a transaction incident to a judicially approved reorganization in which a security is
256 issued:

257 (i) in exchange for one or more outstanding securities, claims, or property interests; or

258 (ii) partly for cash and partly in exchange for one or more outstanding securities,
259 claims, or property interests;

260 (u) a nonissuer transaction by a federal covered investment adviser with investments
261 under management in excess of \$100,000,000 acting in the exercise of discretionary authority
262 in a signed record for the account of others; and

263 (v) a transaction as to which the division finds that registration is not necessary or
264 appropriate for the protection of investors.

265 (3) A person filing an exemption notice or application shall pay a filing fee as
266 determined under Section 61-1-18.4.

267 (4) Upon approval by a majority of the commission, the director, by means of an
268 adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative
269 Procedures Act, may deny or revoke an exemption specified in Subsection (1)(f) or (g) or in
270 Subsection (2) with respect to:

271 (a) a specific security, transaction, or series of transactions; or

272 (b) a person or issuer, an affiliate or successor to a person or issuer, or an entity
273 subsequently organized by or on behalf of a person or issuer generally and may impose a fine if
274 the director finds that the order is in the public interest and that:

275 (i) the application for or notice of exemption filed with the division is incomplete in a

276 material respect or contains a statement which was, in the light of the circumstances under
277 which it was made, false or misleading with respect to a material fact;

278 (ii) this chapter, or a rule, order, or condition lawfully imposed under this chapter has
279 been willfully violated in connection with the offering or exemption by:

280 (A) the person filing an application for or notice of exemption;

281 (B) the issuer, a partner, officer, or director of the issuer, a person occupying a similar
282 status or performing similar functions, or a person directly or indirectly controlling or
283 controlled by the issuer, but only if the person filing the application for or notice of exemption
284 is directly or indirectly controlled by or acting for the issuer; or

285 (C) an underwriter;

286 (iii) subject to Subsection (8), the security for which the exemption is sought is the
287 subject of an administrative stop order or similar order, or a permanent or temporary injunction
288 or a court of competent jurisdiction entered under another federal or state act applicable to the
289 offering or exemption;

290 (iv) the issuer's enterprise or method of business includes or would include activities
291 that are illegal where performed;

292 (v) the offering has worked, has tended to work, or would operate to work a fraud upon
293 purchasers;

294 (vi) the offering is or was made with unreasonable amounts of underwriters' and sellers'
295 discounts, commissions, or other compensation, or promoters' profits or participation, or
296 unreasonable amounts or kinds of options;

297 (vii) an exemption is sought for a security or transaction that is not eligible for the
298 exemption; or

299 (viii) the proper filing fee, if required, has not been paid.

300 (5) (a) An order under Subsection (4) may not operate retroactively.

301 (b) A person may not be considered to have violated Section 61-1-7 or 61-1-15 by
302 reason of an offer or sale effected after the entry of an order under this Subsection (5) if the
303 person sustains the burden of proof that the person did not know, and in the exercise of
304 reasonable care could not have known, of the order.

305 (6) The exemption created by Subsection (2)(j) is not available for an offer or sale of a
306 security to an existing securities holder who has acquired the holder's security from the issuer

307 in a transaction in violation of Section 61-1-7.

308 (7) As to a security, a transaction, or a type of security or transaction, the division
309 may~~[(a) withdraw or further condition the exemption described in Subsection (2)(q); or (b)]~~
310 waive one or more of the conditions described in Subsection (2)(q).

311 (8) (a) The director may not institute a proceeding against an effective exemption under
312 Subsection (4)(b) more than one year from the day on which the order or injunction on which
313 the director relies is issued.

314 (b) The director may not enter an order under Subsection (4)(b) on the basis of an order
315 or injunction entered under another state act unless that order or injunction is issued on the
316 basis of facts that would constitute a ground for a stop order under this section at the time the
317 director enters the order.

318 (9) An intrastate portal or website described in Subsection (2)(q) through which an
319 offer or sale of securities under Subsection (2)(q) is made is not subject to the broker-dealer,
320 investment advisor, or investment adviser representative registration requirements under this
321 chapter if the intrastate portal or website:

322 (a) does not offer investment advice or recommendations;

323 (b) is a business entity organized under the laws of Utah and authorized to do business
324 in the state;

325 (c) acts as a conduit for money invested by purchasers of issuer securities, and does not
326 hold, manage, or possess purchaser money or securities;

327 (d) does not receive compensation based on the offering size or dollar amount of the
328 transaction, but may charge the issuer and receive a reasonable fee for services such as the
329 posting and processing of the offering, vetting an issuer, advertising the website, verifying
330 resident status of a potential purchaser, processing transactions, or other similar acts;

331 (e) files a simple one-page notification form with the division before advertising or
332 posting its first offering that is a one-time filing and is restricted to a description of the
333 company, its entity type, the address and phone number of its principal office, the identity of
334 the executive officers, directors, managing members, and other persons occupying similar
335 status or performing similar functions in the name of and on behalf of the company;

336 (f) notwithstanding Section 61-1-18.4, pays a one-time filing fee of \$250 to the
337 division before advertising or posting its first offering; and

338 (g) prominently displays on the intrastate portal or website in clear language a notice to
339 potential purchasers that the website is intended only for residents of this state.

Legislative Review Note
as of 11-13-14 2:36 PM

Office of Legislative Research and General Counsel