

**EXEMPTIONS RELATED TO EXCHANGE OF
SECURITIES**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Chad E. Bennion

This act modifies the Utah Uniform Securities Act to grant the Division of Securities authority to conduct a hearing on the fairness of the terms and conditions of certain securities exchanges. The act modifies the Administrative Procedures Act to exempt those hearings from the Administrative Procedures Act.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

63-46b-1, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

ENACTS:

61-1-11.1, Utah Code Annotated 1953

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

Section 1. Section **61-1-11.1** is enacted to read:

61-1-11.1. Hearings for certain exchanges of securities.

(1) An application may be made to the division for approval to issue securities or to deliver other consideration in exchange for:

(a) one or more bona fide outstanding securities, claims, or property interests; or

(b) partly in exchange for one or more bona fide outstanding securities, claims, or property interests, and partly for cash.

(2) The director may:

(a) hold a hearing upon the fairness of the terms and conditions of an exchange described in Subsection (1); and

(b) approve or disapprove the terms and conditions of an exchange described in Subsection (1).

(3) After conducting a hearing under this section, if the director finds that the terms and conditions of an exchange described in Subsection (1) are fair to those to whom the securities

will be issued, the director may:

(a) approve the fairness of the terms and conditions of the exchange described in Subsection (1); and

(b) approve the exchange described in Subsection (1).

(4) In a hearing under this section, all persons to whom it is proposed to issue securities or to deliver other consideration in an exchange under Subsection (1) may appear.

(5) An application under Subsection (1) shall contain the information and be accompanied by the documents required by rule or order of the division.

(6) Every person filing an application under Subsection (1) shall pay a filing fee as determined under Section 61-1-18.4.

(7) An applicant under this section shall provide adequate notice of any hearing under this section to all persons that have a right to appear, under Subsection (4), at the hearing.

(8) An application may be made under this section regardless of whether the security or transaction being issued is:

(a) exempt from registration; or

(b) not required to be registered.

(9) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may establish rules to govern the conduct of a hearing permitted by this section.

(10) This section is intended to provide for a fairness hearing that satisfies the requirements of Section 3(a)(10) of the Securities Act of 1933, 15 U.S.C. Section 77c(a)(10), or any comparable section that may subsequently be enacted.

Section 2. Section **63-46b-1** is amended to read:

63-46b-1. Scope and applicability of chapter.

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state and govern:

(a) all state agency actions that determine the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all agency actions to grant,

deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of these actions.

(2) This chapter does not govern:

(a) the procedures for making agency rules, or the judicial review of those procedures or rules;

(b) the issuance of any notice of a deficiency in the payment of a tax, the decision to waive penalties or interest on taxes, the imposition of and penalties or interest on taxes, or the issuance of any tax assessment, except that this chapter governs any agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of those actions;

(c) state agency actions relating to extradition, to the granting of pardons or parole, commutations or terminations of sentences, or to the rescission, termination, or revocation of parole or probation, to the discipline of, resolution of grievances of, supervision of, confinement of, or the treatment of inmates or residents of any correctional facility, the Utah State Hospital, the Utah State Developmental Center, or persons in the custody or jurisdiction of the Division of Substance Abuse and Mental Health, or persons on probation or parole, or judicial review of those actions;

(d) state agency actions to evaluate, discipline, employ, transfer, reassign, or promote students or teachers in any school or educational institution, or judicial review of those actions;

(e) applications for employment and internal personnel actions within an agency concerning its own employees, or judicial review of those actions;

(f) the issuance of any citation or assessment under Title 34A, Chapter 6, Utah Occupational Safety and Health Act, and Title 58, Chapter 55, Utah Construction Trades Licensing Act, except that this chapter governs any agency action commenced by the employer, licensee, or other person authorized by law to contest the validity or correctness of the citation or assessment;

(g) state agency actions relating to management of state funds, the management and disposal of school and institutional trust land assets, and contracts for the purchase or sale of

products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state, except as provided in those contracts, or judicial review of those actions;

(h) state agency actions under Title 7, Chapter 1, Article 3, Powers and Duties of Commissioner of Financial Institutions; and Title 7, Chapter 2, Possession of Depository Institution by Commissioner; Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies; and Title 63, Chapter 30, Utah Governmental Immunity Act, or judicial review of those actions;

(i) the initial determination of any person's eligibility for unemployment benefits, the initial determination of any person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial determination of a person's unemployment tax liability;

(j) state agency actions relating to the distribution or award of monetary grants to or between governmental units, or for research, development, or the arts, or judicial review of those actions;

(k) the issuance of any notice of violation or order under Title 26, Chapter 8a, Utah Emergency Medical Services System Act; Title 19, Chapter 2, Air Conservation Act; Title 19, Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act; Title 19, Chapter 5, Water Quality Act; Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act; Title 19, Chapter 6, Part 4, Underground Storage Tank Act; or Title 19, Chapter 6, Part 7, Used Oil Management Act, except that this chapter governs any agency action commenced by any person authorized by law to contest the validity or correctness of the notice or order;

(l) state agency actions, to the extent required by federal statute or regulation to be conducted according to federal procedures;

(m) the initial determination of any person's eligibility for government or public assistance benefits;

(n) state agency actions relating to wildlife licenses, permits, tags, and certificates of registration;

(o) licenses for use of state recreational facilities;

(p) state agency actions under Title 63, Chapter 2, Government Records Access and Management Act, except as provided in Section 63-2-603;

(q) state agency actions relating to the collection of water commissioner fees and delinquency penalties, or judicial review of those actions; [~~and~~]

(r) state agency actions relating to the installation, maintenance, and repair of headgates, caps, valves, or other water controlling works and weirs, flumes, meters, or other water measuring devices, or judicial review of those actions[-]; and

(s) (i) any hearing conducted by the Division of Securities under Section 61-1-11.1; and

(ii) any action taken by the Division of Securities pursuant to a hearing conducted under Section 61-1-11.1, including a determination regarding the fairness of any issuance or exchange of securities described in Subsection 61-1-11.1(1).

(3) This chapter does not affect any legal remedies otherwise available to:

- (a) compel an agency to take action; or
- (b) challenge an agency's rule.

(4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:

(a) requesting or ordering conferences with parties and interested persons to:

- (i) encourage settlement;
- (ii) clarify the issues;
- (iii) simplify the evidence;
- (iv) facilitate discovery; or
- (v) expedite the proceedings; or

(b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56, respectively, of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.

(5) (a) Declaratory proceedings authorized by Section 63-46b-21 are not governed by this chapter, except as explicitly provided in that section.

(b) Judicial review of declaratory proceedings authorized by Section 63-46b-21 are

governed by this chapter.

(6) This chapter does not preclude an agency from enacting rules affecting or governing adjudicative proceedings or from following any of those rules, if the rules are enacted according to the procedures outlined in Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and if the rules conform to the requirements of this chapter.

(7) (a) If the attorney general issues a written determination that any provision of this chapter would result in the denial of funds or services to an agency of the state from the federal government, the applicability of those provisions to that agency shall be suspended to the extent necessary to prevent the denial.

(b) The attorney general shall report the suspension to the Legislature at its next session.

(8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.

(9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening any time period prescribed in this chapter, except those time periods established for judicial review.