

Representative Chad E. Bennion proposes the following substitute bill:

**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



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

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

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

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

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

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

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

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

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

44 (a) exempt from registration; or

45 (b) not required to be registered.

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

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

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

52 **63-46b-1. Scope and applicability of chapter.**

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

56 (a) all state agency actions that determine the legal rights, duties, privileges,

57 immunities, or other legal interests of one or more identifiable persons, including all agency
58 actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right,
59 or license; and

60 (b) judicial review of these actions.

61 (2) This chapter does not govern:

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

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

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

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

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

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

85 (g) state agency actions relating to management of state funds, the management and
86 disposal of school and institutional trust land assets, and contracts for the purchase or sale of
87 products, real property, supplies, goods, or services by or for the state, or by or for an agency of

88 the state, except as provided in those contracts, or judicial review of those actions;

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

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

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

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

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

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

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

114 (o) licenses for use of state recreational facilities;

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

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

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

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

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

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

128 (a) compel an agency to take action; or

129 (b) challenge an agency's rule.

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

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

133 (i) encourage settlement;

134 (ii) clarify the issues;

135 (iii) simplify the evidence;

136 (iv) facilitate discovery; or

137 (v) expedite the proceedings; or

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

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

144 (b) Judicial review of declaratory proceedings authorized by Section 63-46b-21 are
145 governed by this chapter.

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

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

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

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

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