

DIVISION OF SECURITIES AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jim Bird

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Uniform Securities Act and related provisions to move the Division of Securities into the Insurance Department.

Highlighted Provisions:

This bill:

- ▶ removes the Division of Securities as a division within the Department of Commerce;
- ▶ changes references to the Division of Securities being in the Department of Commerce to being in the Insurance Department;
- ▶ modifies the definition provision in the Utah Uniform Securities Act;
- ▶ establishes the Division of Securities within the Insurance Department;
- ▶ provides for the commissioner to appoint the director;
- ▶ provides for the employment of staff with the approval of the commissioner;
- ▶ requires the director to annually submit a budget and report to the commissioner;
- ▶ addresses agency review by the commissioner;
- ▶ addresses to whom members of the Security Commission submit certain disclosures;
- ▶ provides that the commissioner concur with the director's use of certain money;
- ▶ addresses review of final orders by the commissioner;
- ▶ provides for transition into the Insurance Department; and



28 ▶ makes technical and conforming amendments.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill takes effect on July 1, 2013.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **13-1-2**, as last amended by Laws of Utah 2010, Chapter 278

36 **51-7-3**, as last amended by Laws of Utah 2011, Chapter 342

37 **61-1-13**, as last amended by Laws of Utah 2011, Chapters 317, 319, and 354

38 **61-1-18**, as last amended by Laws of Utah 2009, Chapter 351

39 **61-1-18.2**, as last amended by Laws of Utah 2009, Chapter 351

40 **61-1-18.5**, as last amended by Laws of Utah 2011, Chapter 319

41 **61-1-18.7**, as last amended by Laws of Utah 2011, Chapter 318

42 **61-1-23**, as last amended by Laws of Utah 2009, Chapter 351

43 **Uncodified Material Affected:**

44 ENACTS UNCODIFIED MATERIAL



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

47 Section 1. Section **13-1-2** is amended to read:

48 **13-1-2. Creation and functions of department -- Divisions created -- Fees --**

49 **Commerce Service Account.**

50 (1) (a) There is created the Department of Commerce.

51 (b) The department shall execute and administer state laws regulating business
52 activities and occupations affecting the public interest.

53 (2) Within the department the following divisions are created:

54 (a) the Division of Occupational and Professional Licensing;

55 (b) the Division of Real Estate;

56 ~~[(c) the Division of Securities;]~~

57 ~~[(c)]~~ (c) the Division of Public Utilities;

58 ~~[(c)]~~ (d) the Division of Consumer Protection; and

59 ~~(f)~~ (e) the Division of Corporations and Commercial Code.

60 (3) (a) Unless otherwise provided by statute, the department may adopt a schedule of
61 fees assessed for services provided by the department by following the procedures and
62 requirements of Section 63J-1-504.

63 (b) The department shall submit each fee established in this manner to the Legislature
64 for its approval as part of the department's annual appropriations request.

65 (c) (i) There is created a restricted account within the General Fund known as the
66 "Commerce Service Account."

67 (ii) The restricted account created in Subsection (3)(c)(i) consists of fees collected by
68 each division and by the department.

69 (iii) At the end of each fiscal year, the director of the Division of Finance shall transfer
70 into the General Fund any fee collections that are greater than the legislative appropriations
71 from the Commerce Service Account for that year.

72 (d) The department may not charge or collect a fee or expend money from the
73 restricted account without approval by the Legislature.

74 Section 2. Section **51-7-3** is amended to read:

75 **51-7-3. Definitions.**

76 As used in this chapter:

77 (1) "Agent" means "agent" as defined in Section 61-1-13.

78 (2) "Certified dealer" means:

79 (a) a primary reporting dealer recognized by the Federal Reserve Bank of New York
80 who is certified by the director as having met the applicable criteria of council rule; or

81 (b) a broker dealer who:

82 (i) has and maintains an office and a resident registered principal in the state;

83 (ii) meets the capital requirements established by council rules;

84 (iii) meets the requirements for good standing established by council rule; and

85 (iv) is certified by the director as meeting quality criteria established by council rule.

86 (3) "Certified investment adviser" means a federal covered adviser, as defined in
87 Section 61-1-13, or an investment adviser, as defined in Section 61-1-13, who is certified by
88 the director as having met the applicable criteria of council rule.

89 (4) "Commissioner" means the commissioner of financial institutions.

90 (5) "Council" means the State Money Management Council created by Section
91 51-7-16.

92 (6) "Director" means the director of the [~~Utah State~~] Division of Securities of the
93 [~~Department of Commerce~~] Insurance Department.

94 (7) (a) "Endowment funds" means gifts, devises, or bequests of property of any kind
95 donated to a higher education institution from any source.

96 (b) "Endowment funds" does not mean money used for the general operation of a
97 higher education institution that is received by the higher education institution from:

98 (i) state appropriations;

99 (ii) federal contracts;

100 (iii) federal grants;

101 (iv) private research grants; and

102 (v) tuition and fees collected from students.

103 (8) "First tier commercial paper" means commercial paper rated by at least two
104 nationally recognized statistical rating organizations in the highest short-term rating category.

105 (9) "Funds functioning as endowments" means funds, regardless of source, whose
106 corpus is intended to be held in perpetuity by formal institutional designation according to the
107 institution's policy for designating those funds.

108 (10) "GASB" or "Governmental Accounting Standards Board" means the
109 Governmental Accounting Standards Board that is responsible for accounting standards used
110 by public entities.

111 (11) "Hard put" means an unconditional sell-back provision or a redemption provision
112 applicable at issue to a note or bond, allowing holders to sell their holdings back to the issuer
113 or to an equal or higher-rated third party provider at specific intervals and specific prices
114 determined at the time of issuance.

115 (12) "Higher education institution" means the institutions specified in Section
116 53B-1-102.

117 (13) "Investment adviser representative" means "investment adviser representative" as
118 defined in Section 61-1-13.

119 (14) (a) "Investment agreement" means any written agreement that has specifically
120 negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate.

121 (b) "Investment agreement" includes any agreement to supply investments on one or
122 more future dates.

123 (15) "Local government" means a county, municipality, school district, local district
124 under Title 17B, Limited Purpose Local Government Entities - Local Districts, special service
125 district under Title 17D, Chapter 1, Special Service District Act, or any other political
126 subdivision of the state.

127 (16) "Market value" means market value as defined in the Master Repurchase
128 Agreement.

129 (17) "Master Repurchase Agreement" means the current standard Master Repurchase
130 Agreement approved by the Public Securities Association or by any successor organization.

131 (18) "Maximum amount" means, with respect to qualified depositories, the total
132 amount of:

- 133 (a) deposits in excess of the federal deposit insurance limit; and
- 134 (b) nonqualifying repurchase agreements.

135 (19) "Money market mutual fund" means an open-end managed investment fund:

- 136 (a) that complies with the diversification, quality, and maturity requirements of Rule
137 2a-7 or any successor rule of the Securities and Exchange Commission applicable to money
138 market mutual funds; and

- 139 (b) that assesses no sales load on the purchase of shares and no contingent deferred
140 sales charge or other similar charges, however designated.

141 (20) "Nationally recognized statistical rating organization" means an organization that
142 has been designated as a nationally recognized statistical rating organization by the Securities
143 and Exchange Commission's Division of Market Regulation.

144 (21) "Nonqualifying repurchase agreement" means a repurchase agreement evidencing
145 indebtedness of a qualified depository arising from the transfer of obligations of the United
146 States Treasury or other authorized investments to public treasurers that is:

- 147 (a) evidenced by a safekeeping receipt issued by the qualified depository;
- 148 (b) included in the depository's maximum amount of public funds; and
- 149 (c) valued and maintained at market value plus an appropriate margin collateral
150 requirement based upon the term of the agreement and the type of securities acquired.

151 (22) "Operating funds" means current balances and other funds that are to be disbursed

152 for operation of the state government or any of its boards, commissions, institutions,
153 departments, divisions, agencies, or other similar instrumentalities, or any county, city, school
154 district, political subdivision, or other public body.

155 (23) "Permanent funds" means funds whose principal may not be expended, the
156 earnings from which are to be used for purposes designated by law.

157 (24) "Permitted depository" means any out-of-state financial institution that meets
158 quality criteria established by rule of the council.

159 (25) "Public funds" means money, funds, and accounts, regardless of the source from
160 which the money, funds, and accounts are derived, that are owned, held, or administered by the
161 state or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus,
162 laboratories, or other similar instrumentalities, or any county, city, school district, political
163 subdivision, or other public body.

164 (26) (a) "Public money" means "public funds."

165 (b) "Public money," as used in Article VII, Sec. 15, Utah Constitution, means the same
166 as "state funds."

167 (27) "Public treasurer" includes the state treasurer and the official of any state board,
168 commission, institution, department, division, agency, or other similar instrumentality, or of
169 any county, city, school district, political subdivision, or other public body who has the
170 responsibility for the safekeeping and investment of any public funds.

171 (28) "Qualified depository" means a Utah depository institution or an out-of-state
172 depository institution, as those terms are defined in Section 7-1-103 that is authorized to
173 conduct business in this state under Section 7-1-702 or Title 7, Chapter 19, Acquisition of
174 Failing Depository Institutions or Holding Companies, whose deposits are insured by an
175 agency of the federal government and that has been certified by the commissioner of financial
176 institutions as having met the requirements established under this chapter and the rules of the
177 council to be eligible to receive deposits of public funds.

178 (29) "Qualifying repurchase agreement" means a repurchase agreement evidencing
179 indebtedness of a financial institution or government securities dealer acting as principal
180 arising from the transfer of obligations of the United States Treasury or other authorized
181 investments to public treasurers only if purchased securities are:

182 (a) delivered to the public treasurer's safekeeping agent or custodian as contemplated

183 by Section 7 of the Master Repurchase Agreement; and

184 (b) valued and maintained at market value plus an appropriate margin collateral
185 requirement based upon the term of the agreement and the type of securities acquired.

186 (30) "Securities division" means Utah's Division of Securities created within the
187 [~~Department of Commerce by Section 13-1-2~~] Insurance Department.

188 (31) "State funds" means:

189 (a) public money raised by operation of law for the support and operation of the state
190 government; and

191 (b) all other money, funds, and accounts, regardless of the source from which the
192 money, funds, or accounts are derived, that are owned, held, or administered by the state or any
193 of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories,
194 or other similar instrumentalities.

195 Section 3. Section **61-1-13** is amended to read:

196 **61-1-13. Definitions.**

197 (1) As used in this chapter:

198 (a) "Affiliate" means a person that, directly or indirectly, through one or more
199 intermediaries, controls or is controlled by, or is under common control with a person
200 specified.

201 (b) (i) "Agent" means an individual other than a broker-dealer who represents a
202 broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

203 (ii) "Agent" does not include an individual who represents:

204 (A) an issuer, who receives no commission or other remuneration, directly or
205 indirectly, for effecting or attempting to effect purchases or sales of securities in this state, and
206 who effects transactions:

207 (I) in securities exempted by Subsection 61-1-14(1)(a), (b), (c), or (g);

208 (II) exempted by Subsection 61-1-14(2);

209 (III) in a covered security as described in Sections 18(b)(3) and 18(b)(4)(D) of the
210 Securities Act of 1933; or

211 (IV) with existing employees, partners, officers, or directors of the issuer; or

212 (B) a broker-dealer in effecting transactions in this state limited to those transactions
213 described in Section 15(h)(2) of the Securities Exchange Act of 1934.

214 (iii) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a
215 similar status or performing similar functions, is an agent only if the partner, officer, director,
216 or person otherwise comes within the definition of "agent."

217 (iv) "Agent" does not include a person described in Subsection (3).

218 (c) (i) "Broker-dealer" means a person engaged in the business of effecting transactions
219 in securities for the account of others or for the person's own account.

220 (ii) "Broker-dealer" does not include:

221 (A) an agent;

222 (B) an issuer;

223 (C) a depository institution or trust company;

224 (D) a person who has no place of business in this state if:

225 (I) the person effects transactions in this state exclusively with or through:

226 (Aa) the issuers of the securities involved in the transactions;

227 (Bb) other broker-dealers;

228 (Cc) a depository institution, whether acting for itself or as a trustee;

229 (Dd) a trust company, whether acting for itself or as a trustee;

230 (Ee) an insurance company, whether acting for itself or as a trustee;

231 (Ff) an investment company, as defined in the Investment Company Act of 1940,

232 whether acting for itself or as a trustee;

233 (Gg) a pension or profit-sharing trust, whether acting for itself or as a trustee; or

234 (Hh) another financial institution or institutional buyer, whether acting for itself or as a
235 trustee; or

236 (II) during any period of 12 consecutive months the person does not direct more than
237 15 offers to sell or buy into this state in any manner to persons other than those specified in
238 Subsection (1)(c)(ii)(D)(I), whether or not the offeror or an offeree is then present in this state;

239 (E) a general partner who organizes and effects transactions in securities of three or
240 fewer limited partnerships, of which the person is the general partner, in any period of 12
241 consecutive months;

242 (F) a person whose participation in transactions in securities is confined to those
243 transactions made by or through a broker-dealer licensed in this state;

244 (G) a person who is a principal broker or associate broker licensed in this state and

245 who effects transactions in a bond or other evidence of indebtedness secured by a real or chattel
246 mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire
247 mortgage, deed of trust, or agreement, together with all the bonds or other evidences of
248 indebtedness secured thereby, is offered and sold as a unit;

249 (H) a person effecting transactions in commodity contracts or commodity options;

250 (I) a person described in Subsection (3); or

251 (J) other persons as the division, by rule or order, may designate, consistent with the
252 public interest and protection of investors, as not within the intent of this Subsection (1)(c).

253 (d) "Buy" or "purchase" means a contract for purchase of, contract to buy, or
254 acquisition of a security or interest in a security for value.

255 (e) "Commission" means the Securities Commission created in Section 61-1-18.5.

256 (f) "Commissioner" means the insurance commissioner appointed under Section
257 31A-2-102.

258 [~~(f)~~] (g) "Commodity" means, except as otherwise specified by the division by rule:

259 (i) an agricultural, grain, or livestock product or byproduct, except real property or a
260 timber, agricultural, or livestock product grown or raised on real property and offered or sold
261 by the owner or lessee of the real property;

262 (ii) a metal or mineral, including a precious metal, except a numismatic coin whose fair
263 market value is at least 15% greater than the value of the metal it contains;

264 (iii) a gem or gemstone, whether characterized as precious, semi-precious, or
265 otherwise;

266 (iv) a fuel, whether liquid, gaseous, or otherwise;

267 (v) a foreign currency; and

268 (vi) all other goods, articles, products, or items of any kind, except a work of art
269 offered or sold by art dealers, at public auction or offered or sold through a private sale by the
270 owner of the work.

271 [~~(g)~~] (h) (i) "Commodity contract" means an account, agreement, or contract for the
272 purchase or sale, primarily for speculation or investment purposes and not for use or
273 consumption by the offeree or purchaser, of one or more commodities, whether for immediate
274 or subsequent delivery or whether delivery is intended by the parties, and whether characterized
275 as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures

276 contract, installment or margin contract, leverage contract, or otherwise.

277 (ii) A commodity contract offered or sold shall, in the absence of evidence to the
278 contrary, be presumed to be offered or sold for speculation or investment purposes.

279 (iii) (A) A commodity contract may not include a contract or agreement that requires,
280 and under which the purchaser receives, within 28 calendar days from the payment in good
281 funds any portion of the purchase price, physical delivery of the total amount of each
282 commodity to be purchased under the contract or agreement.

283 (B) A purchaser is not considered to have received physical delivery of the total
284 amount of each commodity to be purchased under the contract or agreement when the
285 commodity or commodities are held as collateral for a loan or are subject to a lien of any
286 person when the loan or lien arises in connection with the purchase of each commodity or
287 commodities.

288 ~~[(h)]~~ (i) "Commodity option" means an account, agreement, or contract giving a
289 party to the option the right but not the obligation to purchase or sell one or more commodities
290 or one or more commodity contracts, or both whether characterized as an option, privilege,
291 indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

292 (ii) "Commodity option" does not include an option traded on a national securities
293 exchange registered:

294 (A) with the Securities and Exchange Commission; or

295 (B) on a board of trade designated as a contract market by the Commodity Futures
296 Trading Commission.

297 ~~[(i)]~~ (j) "Depository institution" is as defined in Section 7-1-103.

298 ~~[(j)]~~ (k) "Director" means the director of the division appointed in accordance with
299 Section 61-1-18.

300 ~~[(k)]~~ (l) "Division" means the Division of Securities established by Section 61-1-18.

301 ~~[(l)]~~ "Executive director" means the executive director of the Department of
302 Commerce.]

303 (m) "Federal covered adviser" means a person who:

304 (i) is registered under Section 203 of the Investment Advisers Act of 1940; or

305 (ii) is excluded from the definition of "investment adviser" under Section 202(a)(11) of
306 the Investment Advisers Act of 1940.

307 (n) "Federal covered security" means a security that is a covered security under Section
308 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section 18(b) of
309 the Securities Act of 1933.

310 (o) "Fraud," "deceit," and "defraud" are not limited to their common-law meanings.

311 (p) "Guaranteed" means guaranteed as to payment of principal or interest as to debt
312 securities, or dividends as to equity securities.

313 (q) (i) "Investment adviser" means a person who:

314 (A) for compensation, engages in the business of advising others, either directly or
315 through publications or writings, as to the value of securities or as to the advisability of
316 investing in, purchasing, or selling securities; or

317 (B) for compensation and as a part of a regular business, issues or promulgates
318 analyses or reports concerning securities.

319 (ii) "Investment adviser" includes a financial planner or other person who:

320 (A) as an integral component of other financially related services, provides the
321 investment advisory services described in Subsection (1)(q)(i) to others for compensation and
322 as part of a business; or

323 (B) holds the person out as providing the investment advisory services described in
324 Subsection (1)(q)(i) to others for compensation.

325 (iii) "Investment adviser" does not include:

326 (A) an investment adviser representative;

327 (B) a depository institution or trust company;

328 (C) a lawyer, accountant, engineer, or teacher whose performance of these services is
329 solely incidental to the practice of the profession;

330 (D) a broker-dealer or its agent whose performance of these services is solely
331 incidental to the conduct of its business as a broker-dealer and who receives no special
332 compensation for the services;

333 (E) a publisher of a bona fide newspaper, news column, news letter, news magazine, or
334 business or financial publication or service, of general, regular, and paid circulation, whether
335 communicated in hard copy form, or by electronic means, or otherwise, that does not consist of
336 the rendering of advice on the basis of the specific investment situation of each client;

337 (F) a person who is a federal covered adviser;

338 (G) a person described in Subsection (3); or

339 (H) such other persons not within the intent of this Subsection (1)(q) as the division
340 may by rule or order designate.

341 (r) (i) "Investment adviser representative" means a partner, officer, director of, or a
342 person occupying a similar status or performing similar functions, or other individual, except
343 clerical or ministerial personnel, who:

344 (A) (I) is employed by or associated with an investment adviser who is licensed or
345 required to be licensed under this chapter; or

346 (II) has a place of business located in this state and is employed by or associated with a
347 federal covered adviser; and

348 (B) does any of the following:

349 (I) makes a recommendation or otherwise renders advice regarding securities;

350 (II) manages accounts or portfolios of clients;

351 (III) determines which recommendation or advice regarding securities should be given;

352 (IV) solicits, offers, or negotiates for the sale of or sells investment advisory services;

353 or

354 (V) supervises employees who perform any of the acts described in this Subsection
355 (1)(r)(i)(B).

356 (ii) "Investment adviser representative" does not include a person described in
357 Subsection (3).

358 (s) "Investment contract" includes:

359 (i) an investment in a common enterprise with the expectation of profit to be derived
360 through the essential managerial efforts of someone other than the investor; or

361 (ii) an investment by which:

362 (A) an offeree furnishes initial value to an offerer;

363 (B) a portion of the initial value is subjected to the risks of the enterprise;

364 (C) the furnishing of the initial value is induced by the offerer's promises or
365 representations that give rise to a reasonable understanding that a valuable benefit of some kind
366 over and above the initial value will accrue to the offeree as a result of the operation of the
367 enterprise; and

368 (D) the offeree does not receive the right to exercise practical and actual control over

369 the managerial decisions of the enterprise.

370 (t) "Isolated transaction" means not more than a total of two transactions that occur
371 anywhere during six consecutive months.

372 (u) (i) "Issuer" means a person who issues or proposes to issue a security or has
373 outstanding a security that it has issued.

374 (ii) With respect to a preorganization certificate or subscription, "issuer" means the one
375 or more promoters of the person to be organized.

376 (iii) "Issuer" means the one or more persons performing the acts and assuming duties
377 of a depositor or manager under the provisions of the trust or other agreement or instrument
378 under which the security is issued with respect to:

379 (A) interests in trusts, including collateral trust certificates, voting trust certificates, and
380 certificates of deposit for securities; or

381 (B) shares in an investment company without a board of directors.

382 (iv) With respect to an equipment trust certificate, a conditional sales contract, or
383 similar securities serving the same purpose, "issuer" means the person by whom the equipment
384 or property is to be used.

385 (v) With respect to interests in partnerships, general or limited, "issuer" means the
386 partnership itself and not the general partner or partners.

387 (vi) With respect to certificates of interest or participation in oil, gas, or mining titles or
388 leases or in payment out of production under the titles or leases, "issuer" means the owner of
389 the title or lease or right of production, whether whole or fractional, who creates fractional
390 interests therein for the purpose of sale.

391 (v) (i) "Life settlement interest" means the entire interest or a fractional interest in any
392 of the following that is the subject of a life settlement:

393 (A) a policy; or

394 (B) the death benefit under a policy.

395 (ii) "Life settlement interest" does not include the initial purchase from the owner by a
396 life settlement provider.

397 (w) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

398 (x) "Person" means:

399 (i) an individual;

- 400 (ii) a corporation;
- 401 (iii) a partnership;
- 402 (iv) a limited liability company;
- 403 (v) an association;
- 404 (vi) a joint-stock company;
- 405 (vii) a joint venture;
- 406 (viii) a trust where the interests of the beneficiaries are evidenced by a security;
- 407 (ix) an unincorporated organization;
- 408 (x) a government; or
- 409 (xi) a political subdivision of a government.
- 410 (y) "Precious metal" means the following, whether in coin, bullion, or other form:
 - 411 (i) silver;
 - 412 (ii) gold;
 - 413 (iii) platinum;
 - 414 (iv) palladium;
 - 415 (v) copper; and
 - 416 (vi) such other substances as the division may specify by rule.
- 417 (z) "Promoter" means a person who, acting alone or in concert with one or more
- 418 persons, takes initiative in founding or organizing the business or enterprise of a person.
- 419 (aa) (i) Except as provided in Subsection (1)(aa)(ii), "record" means information that
- 420 is:
 - 421 (A) inscribed in a tangible medium; or
 - 422 (B) (I) stored in an electronic or other medium; and
 - 423 (II) retrievable in perceivable form.
- 424 (ii) This Subsection (1)(aa) does not apply when the context requires otherwise,
- 425 including when "record" is used in the following phrases:
 - 426 (A) "of record";
 - 427 (B) "official record"; or
 - 428 (C) "public record."
- 429 (bb) (i) "Sale" or "sell" includes a contract for sale of, contract to sell, or disposition of,
- 430 a security or interest in a security for value.

431 (ii) "Offer" or "offer to sell" includes an attempt or offer to dispose of, or solicitation of
432 an offer to buy, a security or interest in a security for value.

433 (iii) The following are examples of the definitions in Subsection (1)(bb)(i) or (ii):

434 (A) a security given or delivered with or as a bonus on account of a purchase of a
435 security or any other thing, is part of the subject of the purchase, and is offered and sold for
436 value;

437 (B) a purported gift of assessable stock is an offer or sale as is each assessment levied
438 on the stock;

439 (C) an offer or sale of a security that is convertible into, or entitles its holder to acquire
440 or subscribe to another security of the same or another issuer is an offer or sale of that security,
441 and also an offer of the other security, whether the right to convert or acquire is exercisable
442 immediately or in the future;

443 (D) a conversion or exchange of one security for another constitutes an offer or sale of
444 the security received in a conversion or exchange, and the offer to buy or the purchase of the
445 security converted or exchanged;

446 (E) securities distributed as a dividend wherein the person receiving the dividend
447 surrenders the right, or the alternative right, to receive a cash or property dividend is an offer or
448 sale;

449 (F) a dividend of a security of another issuer is an offer or sale; or

450 (G) the issuance of a security under a merger, consolidation, reorganization,
451 recapitalization, reclassification, or acquisition of assets constitutes the offer or sale of the
452 security issued as well as the offer to buy or the purchase of a security surrendered in
453 connection therewith, unless the sole purpose of the transaction is to change the issuer's
454 domicile.

455 (iv) The terms defined in Subsections (1)(bb)(i) and (ii) do not include:

456 (A) a good faith gift;

457 (B) a transfer by death;

458 (C) a transfer by termination of a trust or of a beneficial interest in a trust;

459 (D) a security dividend not within Subsection (1)(bb)(iii)(E) or (F); or

460 (E) a securities split or reverse split.

461 (cc) "Securities Act of 1933," "Securities Exchange Act of 1934," and "Investment

462 Company Act of 1940" mean the federal statutes of those names as amended before or after the
463 effective date of this chapter.

464 (dd) "Securities Exchange Commission" means the United States Securities Exchange
465 Commission created by the Securities Exchange Act of 1934.

466 (ee) (i) "Security" means a:

467 (A) note;

468 (B) stock;

469 (C) treasury stock;

470 (D) bond;

471 (E) debenture;

472 (F) evidence of indebtedness;

473 (G) certificate of interest or participation in a profit-sharing agreement;

474 (H) collateral-trust certificate;

475 (I) preorganization certificate or subscription;

476 (J) transferable share;

477 (K) investment contract;

478 (L) burial certificate or burial contract;

479 (M) voting-trust certificate;

480 (N) certificate of deposit for a security;

481 (O) certificate of interest or participation in an oil, gas, or mining title or lease or in
482 payments out of production under such a title or lease;

483 (P) commodity contract or commodity option;

484 (Q) interest in a limited liability company;

485 (R) life settlement interest; or

486 (S) in general, an interest or instrument commonly known as a "security," or a
487 certificate of interest or participation in, temporary or interim certificate for, receipt for,
488 guarantee of, or warrant or right to subscribe to or purchase an item listed in Subsections
489 (1)(ee)(i)(A) through (R).

490 (ii) "Security" does not include:

491 (A) an insurance or endowment policy or annuity contract under which an insurance
492 company promises to pay money in a lump sum or periodically for life or some other specified

493 period;

494 (B) an interest in a limited liability company in which the limited liability company is
495 formed as part of an estate plan where all of the members are related by blood or marriage, or
496 the person claiming this exception can prove that all of the members are actively engaged in the
497 management of the limited liability company; or

498 (C) (I) a whole long-term estate in real property;

499 (II) an undivided fractionalized long-term estate in real property that consists of 10 or
500 fewer owners; or

501 (III) an undivided fractionalized long-term estate in real property that consists of more
502 than 10 owners if, when the real property estate is subject to a management agreement:

503 (Aa) the management agreement permits a simple majority of owners of the real
504 property estate to not renew or to terminate the management agreement at the earlier of the end
505 of the management agreement's current term, or 180 days after the day on which the owners
506 give notice of termination to the manager;

507 (Bb) the management agreement prohibits, directly or indirectly, the lending of the
508 proceeds earned from the real property estate or the use or pledge of its assets to a person or
509 entity affiliated with or under common control of the manager; and

510 (Cc) the management agreement complies with any other requirement imposed by rule
511 by the Real Estate Commission under Section 61-2f-103.

512 (iii) For purposes of Subsection (1)(ee)(ii)(B), evidence that members vote or have the
513 right to vote, or the right to information concerning the business and affairs of the limited
514 liability company, or the right to participate in management, may not establish, without more,
515 that all members are actively engaged in the management of the limited liability company.

516 (ff) "State" means a state, territory, or possession of the United States, the District of
517 Columbia, and Puerto Rico.

518 (gg) (i) "Undivided fractionalized long-term estate" means an ownership interest in real
519 property by two or more persons that is:

520 (A) a tenancy in common; or

521 (B) a fee estate.

522 (ii) "Undivided fractionalized long-term estate" does not include a joint tenancy.

523 (hh) "Undue influence" means that a person uses a relationship or position of authority,

524 trust, or confidence:

525 (i) that is unrelated to a relationship created:

526 (A) in the ordinary course of making investments regulated under this chapter; or

527 (B) by a licensee providing services under this chapter;

528 (ii) that results in:

529 (A) an investor perceiving the person as having heightened credibility, personal

530 trustworthiness, or dependability; or

531 (B) the person having special access to or control of an investor's financial resources,

532 information, or circumstances; and

533 (iii) to:

534 (A) exploit the trust, dependence, or fear of the investor;

535 (B) knowingly assist or cause another to exploit the trust, dependence, or fear of the

536 investor; or

537 (C) gain control deceptively over the decision making of the investor.

538 (ii) "Vulnerable adult" means an individual whose age or mental or physical

539 impairment substantially affects that individual's ability to:

540 (i) manage the individual's resources; or

541 (ii) comprehend the nature and consequences of making an investment decision.

542 (jj) "Whole long-term estate" means a person owns or persons through joint tenancy

543 own real property through a fee estate.

544 (kk) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive of

545 legal holidays listed in Section 63G-1-301.

546 (2) A term not defined in this section shall have the meaning as established by division

547 rule. The meaning of a term neither defined in this section nor by rule of the division shall be

548 the meaning commonly accepted in the business community.

549 (3) (a) This Subsection (3) applies to the offer or sale of a real property estate

550 exempted from the definition of security under Subsection (1)(ee)(ii)(C).

551 (b) A person who, directly or indirectly receives compensation in connection with the

552 offer or sale as provided in this Subsection (3) of a real property estate is not an agent,

553 broker-dealer, investment adviser, or investment adviser representative under this chapter if

554 that person is licensed under Chapter 2f, Real Estate Licensing and Practices Act, as:

- 555 (i) a principal broker;
- 556 (ii) an associate broker; or
- 557 (iii) a sales agent.

558 Section 4. Section **61-1-18** is amended to read:

559 **61-1-18. Division of Securities established -- Director -- Investigators.**

560 (1) (a) There is established within the [~~Department of Commerce~~] Insurance
561 Department a Division of Securities.

562 (b) The division is under the direction and control of a director. The [~~executive~~
563 ~~director~~] commissioner shall appoint the director [~~with the governor's approval~~].

564 (c) Subject to Section 61-1-18.5, the division shall administer and enforce this chapter.

565 (d) The director shall hold office at the pleasure of the governor.

566 (2) The director, with the approval of the [~~executive director~~] commissioner, may
567 employ the staff necessary to discharge the duties of the division or commission at salaries to
568 be fixed by the director according to standards established by the Department of Human
569 Resource Management.

570 (3) An investigator employed pursuant to Subsection (2) who meets the training
571 requirements of Subsection 53-13-105(3) may be designated a special function officer, as
572 defined in Section 53-13-105, by the director, but is not eligible for retirement benefits under
573 the Public Safety Employee's Retirement System.

574 Section 5. Section **61-1-18.2** is amended to read:

575 **61-1-18.2. Budget -- Annual report.**

576 The director shall annually prepare and submit to the [~~executive director~~]
577 commissioner:

578 (1) a budget for the expenses of the division and commission for the administration and
579 enforcement of this chapter for the next fiscal year; and

580 (2) a report outlining the division's and commission's work for the preceding fiscal
581 year.

582 Section 6. Section **61-1-18.5** is amended to read:

583 **61-1-18.5. Securities Commission -- Transition.**

584 (1) (a) There is created a Securities Commission.

585 (b) The division shall provide staffing to the commission.

586 (2) (a) The commission shall:
587 (i) formulate and make recommendations to the director regarding policy and
588 budgetary matters;
589 (ii) submit recommendations regarding registration requirements;
590 (iii) formulate and make recommendations to the director regarding the establishment
591 of reasonable fees;
592 (iv) act in an advisory capacity to the director with respect to the exercise of the
593 director's duties, powers, and responsibilities;
594 (v) conduct an administrative hearing under this chapter that is not:
595 (A) delegated by the commission to an administrative law judge or the division relating
596 to a violation of this chapter; or
597 (B) expressly delegated to the division under this chapter;
598 (vi) except as provided in Subsection (2)(b), and consistent with Section 61-1-20,
599 impose a sanction as provided in this chapter;
600 (vii) review rules made by the division for purposes of concurrence in accordance with
601 Section 61-1-24; and
602 (viii) perform other duties as this chapter provides.
603 (b) (i) The commission may delegate to the division the authority to impose a sanction
604 under this chapter.
605 (ii) If under Subsection (2)(b)(i) the commission delegates to the division the authority
606 to impose a sanction, a person who is subject to the sanction may petition the commission for
607 review of the sanction.
608 (iii) A person who is sanctioned by the division in accordance with this Subsection
609 (2)(b) may seek agency review by the [~~executive director~~] commissioner only after the
610 commission reviews the division's action.
611 (3) (a) The governor shall appoint five members to the commission with the consent of
612 the Senate as follows:
613 (i) two members from the securities brokerage community:
614 (A) who are not from the same broker-dealer or affiliate; and
615 (B) who have at least five years prior experience in securities matters;
616 (ii) one member from the securities section of the Utah State Bar;

- 617 (A) whose practice primarily involves:
- 618 (I) corporate securities; or
- 619 (II) representation of plaintiffs in securities cases;
- 620 (B) who does not routinely represent clients involved in:
- 621 (I) civil or administrative litigation with the division; or
- 622 (II) criminal cases brought under this chapter; and
- 623 (C) who has at least five years prior experience in securities matters;
- 624 (iii) one member who is an officer or director of a business entity not subject to the
- 625 reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934; and
- 626 (iv) one member from the public at large who has no active participation in the
- 627 securities business.
- 628 (b) A member may not serve more than two consecutive terms.
- 629 (4) (a) Except as required by Subsection (4)(b) and subject to Subsection (4)(c), as
- 630 terms of current members expire, the governor shall appoint a new member or reappointed
- 631 member to a four-year term.
- 632 (b) Notwithstanding Subsection (4)(a), the governor shall, at the time of appointment
- 633 or reappointment, adjust the length of terms to ensure that the terms of commission members
- 634 are staggered so that approximately half of the commission is appointed every two years.
- 635 (c) For purposes of making an appointment to the commission, the governor:
- 636 (i) shall as of May 12, 2009:
- 637 (A) appoint all five members of the commission; and
- 638 (B) stagger the terms of the five members of the commission to comply with
- 639 Subsection (4)(b); and
- 640 (ii) may not consider the commission an extension of the previous Securities Advisory
- 641 Board.
- 642 (d) When a vacancy occurs in the membership for any reason, the governor shall
- 643 appoint a replacement member for the unexpired term.
- 644 (e) A member shall serve until the member's respective successor is appointed and
- 645 qualified.
- 646 (f) The commission shall annually select one member to serve as chair of the
- 647 commission.

648 (5) (a) The commission shall meet:

649 (i) at least quarterly on a regular date to be fixed by the commission; and

650 (ii) at such other times at the call of:

651 (A) the director; or

652 (B) any two members of the commission.

653 (b) A majority of the commission shall constitute a quorum for the transaction of
654 business.

655 (c) An action of the commission requires a vote of a majority of members present.

656 (6) A member of the commission shall, by sworn and written statement filed with the
657 [~~Department of Commerce~~] Insurance Department and the lieutenant governor, disclose any
658 position of employment or ownership interest that the member has with respect to an entity or
659 business subject to the jurisdiction of the division or commission. This statement shall be filed
660 upon appointment and must be appropriately amended whenever significant changes occur in
661 matters covered by the statement.

662 (7) A member may not receive compensation or benefits for the member's service, but
663 may receive per diem and travel expenses in accordance with:

664 (a) Section 63A-3-106;

665 (b) Section 63A-3-107; and

666 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
667 63A-3-107.

668 (8) (a) A rule or form made by the division under this section that is in effect on May
669 11, 2009, is considered to have been concurred with by the commission as of May 12, 2009,
670 until the commission acts on the rule or form.

671 (b) For a civil or administrative action pending under this chapter as of May 12, 2009,
672 brought under the authority of division under this chapter as in effect May 11, 2009, that may
673 be brought only by the commission under this chapter as in effect on May 12, 2009:

674 (i) the action shall be considered brought by the commission; and

675 (ii) the commission may take any act authorized under this chapter regarding that
676 action.

677 Section 7. Section **61-1-18.7** is amended to read:

678 **61-1-18.7. Funding of securities investor education, training, and enforcement.**

679 (1) (a) There is created a restricted special revenue fund known as the "Securities
680 Investor Education, Training, and Enforcement Fund" to provide revenue for the purposes
681 stated in this section.

682 (b) For purposes of this section, "fund" means the Securities Investor Education,
683 Training, and Enforcement Fund.

684 (2) Money received by the state by reason of civil penalties ordered and administrative
685 fines collected pursuant to this chapter shall be deposited in the fund, and is subject to the
686 requirements of Title 51, Chapter 5, Funds Consolidation Act.

687 (3) A fine collected by the division after July 1, 1989, pursuant to a voluntary
688 settlement or administrative order shall be deposited into the fund.

689 (4) (a) The fund shall earn interest.

690 (b) Interest earned on fund money shall be deposited into the fund.

691 (5) Notwithstanding Title 63J, Chapter 1, Budgetary Procedures Act, the director may
692 use money in the fund, upon concurrence of the commission and the ~~[executive director of the~~
693 ~~Department of Commerce]~~ commissioner, in a manner consistent with the duties of the
694 division and commission under this chapter and only for any or all of the following and the
695 expense of providing them:

696 (a) education and training of Utah residents in matters concerning securities laws and
697 investment decisions, by publications or presentations;

698 (b) education of registrants and licensees under this chapter, by:

699 (i) publication of this chapter and rules and policy statements and opinion letters issued
700 under this chapter; and

701 (ii) sponsorship of seminars or meetings to educate registrants and licensees as to the
702 requirements of this chapter;

703 (c) investigation and litigation; and

704 (d) to pay an award to a reporter as provided in Part 1, Securities Fraud Reporting
705 Program Act.

706 (6) If the balance in the fund exceeds \$500,000 at the close of any fiscal year, the
707 excess shall be transferred to the General Fund.

708 Section 8. Section **61-1-23** is amended to read:

709 **61-1-23. Review of orders.**

710 A person aggrieved by a final order under this chapter determining all of the issues of
711 an adjudicative proceeding may obtain review of the order by the [~~executive director~~]
712 commissioner in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

713 Section 9. **Transition.**

714 (1) By no later than January 1, 2014, the Division of Securities shall renumber its rules
715 to be located with the rules of the Insurance Department and make other necessary changes
716 consistent with this bill.

717 (2) (a) The Division of Securities and Insurance Department shall coordinate with the
718 necessary state agencies, including the Department of Human Resource Management,
719 Department of Facilities Construction and Management, Department of Commerce,
720 Department of Technology Services, Capital Preservation Board, Department of
721 Administrative Services, Division of Finance, and Office of the Attorney General, to physically
722 move the Division of Securities to be housed with the Insurance Department.

723 (b) By no later than January 1, 2014, the coordinating agencies described in Subsection
724 (2)(a) shall submit a detailed plan to the Business and Labor Interim Committee, Office of the
725 Legislative Fiscal Analyst, and Governor's Office of Planning and Budget that at a minimum
726 provides for the design, cost estimation, funding source, and required space to implement the
727 physical relocation of the Division of Securities with the Insurance Department.

728 (3) Cases under Title 61, Chapter 1, Utah Uniform Securities Act, pending before the
729 executive director of the Department of Commerce as of June 30, 2013, shall be transferred to
730 the insurance commissioner.

731 Section 10. **Effective date.**

732 This bill takes effect on July 1, 2013.

Legislative Review Note
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Office of Legislative Research and General Counsel