

**SECURITIES ACT AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Francis D. Gibson**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Uniform Securities Act.

**Highlighted Provisions:**

This bill:

- ▶ modifies a transaction exemption from certain registration and sales literature requirements; 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

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

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

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

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

(a) a security, including a revenue obligation, issued or guaranteed by the United



28 States, a state, a political subdivision of a state, or an agency or corporate or other  
29 instrumentality of one or more of the foregoing, or a certificate of deposit for any of the  
30 foregoing;

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

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

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

42 (e) (i) a federal covered security specified in the Securities Act of 1933, [~~Section~~] Sec.  
43 18(b)(1), 15 U.S.C. [~~Section~~] Sec. 77r(b)(1), or by rule adopted under that provision;

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

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

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

49 (B) a warrant; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

89 (e) a transaction in a bond or other evidence of indebtedness secured by a real or

90 chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the  
91 entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of  
92 indebtedness secured thereby, is offered and sold as a unit;

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

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

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

99 (i) a depository institution;

100 (ii) a trust company;

101 (iii) an insurance company;

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

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

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

105 (vii) a broker-dealer;

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

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

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

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

112 and

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

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

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

118 (ii) the transaction constitutes:

119 (A) the conversion of convertible securities;

120 (B) the exercise of nontransferable rights or warrants;

- 121 (C) the exercise of transferable rights or warrants if the rights or warrants are  
122 exercisable not more than 90 days after their issuance;
- 123 (D) the purchase of securities under a preemptive right; or
- 124 (E) a transaction other than one specified in Subsections (2)(j)(ii)(A) through (D) if:
- 125 (I) the division is furnished with:
- 126 (Aa) a general description of the transaction;
- 127 (Bb) the disclosure materials to be furnished to the issuer's securities holders in the  
128 transaction; and
- 129 (Cc) a non-refundable fee; and
- 130 (II) the division does not, by order, deny or revoke the exemption within 20 working  
131 days after the day on which the filing required by Subsection (2)(j)(ii)(E)(I) is complete;
- 132 (k) an offer, but not a sale, of a security for which a registration statement is filed under  
133 both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and  
134 no public proceeding or examination looking toward such an order is pending;
- 135 (l) a distribution of securities as a dividend if the person distributing the dividend is the  
136 issuer of the securities distributed;
- 137 (m) a nonissuer transaction effected by or through a registered broker-dealer where the  
138 broker-dealer or issuer files with the division, and the broker-dealer maintains in the  
139 broker-dealer's records, and makes reasonably available upon request to a person expressing an  
140 interest in a proposed transaction in the security with the broker-dealer information prescribed  
141 by the division under its rules;
- 142 (n) a transaction not involving a public offering;
- 143 (o) an offer or sale of "condominium units" or "time period units" as those terms are  
144 defined in Title 57, Chapter 8, Condominium Ownership Act, whether or not to be sold by  
145 installment contract, if the following are complied with:
- 146 (i) Title 57, Chapter 8, Condominium Ownership Act, or if the units are located in  
147 another state, the condominium act of that state;
- 148 (ii) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;
- 149 (iii) Title 57, Chapter 19, Timeshare and Camp Resort Act; and
- 150 (iv) Title 70C, Utah Consumer Credit Code;
- 151 (p) a transaction or series of transactions involving a merger, consolidation,

152 reorganization, recapitalization, reclassification, or sale of assets, if the consideration for  
153 which, in whole or in part, is the issuance of securities of a person or persons, and if:

154 (i) the transaction or series of transactions is incident to a vote of the securities holders  
155 of each person involved or by written consent or resolution of some or all of the securities  
156 holders of each person involved;

157 (ii) the vote, consent, or resolution is given under a provision in:

158 (A) the applicable corporate statute or other controlling statute;

159 (B) the controlling articles of incorporation, trust indenture, deed of trust, or  
160 partnership agreement; or

161 (C) the controlling agreement among securities holders;

162 (iii) (A) one person involved in the transaction is required to file proxy or  
163 informational materials under Section 14(a) or (c) of the Securities Exchange Act of 1934 or  
164 Section 20 of the Investment Company Act of 1940 and has so filed;

165 (B) one person involved in the transaction is an insurance company that is exempt from  
166 filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934, and has filed proxy or  
167 informational materials with the appropriate regulatory agency or official of its domiciliary  
168 state; or

169 (C) all persons involved in the transaction are exempt from filing under Section  
170 12(g)(1) of the Securities Exchange Act of 1934, and file with the division such proxy or  
171 informational material as the division requires by rule;

172 (iv) the proxy or informational material is filed with the division and distributed to all  
173 securities holders entitled to vote in the transaction or series of transactions at least 10 working  
174 days prior to any necessary vote by the securities holders or action on any necessary consent or  
175 resolution; and

176 (v) the division does not, by order, deny or revoke the exemption within 10 working  
177 days after filing of the proxy or informational materials;

178 (q) subject to Subsection (7), a transaction pursuant to an offer to sell securities of an  
179 issuer if:

180 (i) the transaction is part of an issue in which there ~~[are not more than 15 purchasers in~~  
181 ~~this state, other than those designated in Subsection (2)(h), during any 12 consecutive months]~~  
182 is no limit on the number of investors;

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

185 (iii) no commission or other similar compensation is given, directly or indirectly, to a  
186 person other than a broker-dealer or agent licensed under this chapter, for soliciting a  
187 prospective purchaser in this state;

188 (iv) the seller reasonably believes that all the purchasers in this state are purchasing for  
189 investment; ~~[and]~~

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

192 (vi) the issuer of the securities:

193 (A) is an entity that is organized and located in the state; and

194 (B) has at least 80% of its assets and operations within the state;

195 (vii) each investor in a security of the issuer is a resident of the state; and

196 (viii) all offers and sales transactions occur within the state;

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

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

200 (i) the transaction is:

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

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

204 (ii) the terms and conditions are approved by the director after a hearing under Section  
205 [61-1-11.1](#);

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

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

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

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

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

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

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

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

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

226 (i) the application for or notice of exemption filed with the division is incomplete in a  
227 material respect or contains a statement which was, in the light of the circumstances under  
228 which it was made, false or misleading with respect to a material fact;

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

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

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

236 (C) an underwriter;

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

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

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

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

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

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

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

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

256 (6) The exemption created by Subsection (2)(j) is not available for an offer or sale of a  
257 security to an existing securities holder who has acquired the holder's security from the issuer  
258 in a transaction in violation of Section 61-1-7.

259 (7) As to a security, a transaction, or a type of security or transaction, the division may:

260 (a) withdraw or further condition the exemption described in Subsection (2)(q); or

261 (b) waive one or more of the conditions described in Subsection (2)(q).

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

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

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**Legislative Review Note**  
as of 2-17-14 7:55 AM

**Office of Legislative Research and General Counsel**