

**Representative Jim Bird** proposes the following substitute bill:

**SECURITIES AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jim Bird**

Senate Sponsor: Kevin T. Van Tassell

6	Cosponsors:	Neal B. Hendrickson	Paul Ray
7	DeMar Bud Bowman	Christopher N. Herrod	Stephen E. Sandstrom
8	Jack R. Draxler	Eric K. Hutchings	Aaron Tilton
9	Kevin S. Garn	Steven R. Mascaro	

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to certain securities related disciplinary proceedings.

**Highlighted Provisions:**

This bill:

- ▶ provides a process for nondepartmental hearing officers outside the Department of Commerce to conduct certain securities related proceedings;
- ▶ increases the cap on the Securities Investor Education and Training Fund; and
- ▶ makes technical and conforming amendments.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:



27           **61-1-6**, as last amended by Chapter 36, Laws of Utah 2003  
 28           **61-1-12**, as last amended by Chapter 133, Laws of Utah 1990  
 29           **61-1-14**, as last amended by Chapter 160, Laws of Utah 1997  
 30           **61-1-15.5**, as enacted by Chapter 160, Laws of Utah 1997  
 31           **61-1-18.3**, as enacted by Chapter 284, Laws of Utah 1983  
 32           **61-1-18.5**, as last amended by Chapter 176, Laws of Utah 2002  
 33           **61-1-18.6**, as enacted by Chapter 161, Laws of Utah 1987  
 34           **61-1-18.7**, as last amended by Chapter 256, Laws of Utah 2002  
 35           **61-1-19**, as last amended by Chapter 133, Laws of Utah 1990

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

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

39           **61-1-6. Denial, suspension, revocation, cancellation, or withdrawal of license --**  
 40 **Sanctions.**

41           (1) Subject to the requirements of [~~Subsections (2) and (3)~~] this section, the director,  
 42 by means of adjudicative proceedings conducted in accordance with Title 63, Chapter 46b,  
 43 Administrative Procedures Act, may issue an order:

- 44           (a) denying, suspending, or revoking [~~any~~] a license;  
 45           (b) barring or censuring [~~any~~] a licensee or any officer, director, partner, or person  
 46 occupying a similar status or performing similar functions for a licensee from employment with  
 47 a licensed broker-dealer or investment adviser;  
 48           (c) restricting or limiting a licensee as to any function or activity of the business for  
 49 which a license is required in this state;  
 50           (d) imposing a fine; or  
 51           (e) taking any combination of actions under Subsections (1)(a) through (d).

52           (2) (a) The director may [~~impose the sanctions~~] take an action described in Subsection  
 53 (1) if the director finds that:

- 54           (i) it is in the public interest; and [~~finds, with respect to the~~]  
 55           (ii) one of the following engaged in an act described in Subsection (2)(b):  
 56           (A) a person who is an applicant [or];  
 57           (B) a person who is a licensee [or, in the case of a broker-dealer or investment adviser,

58 any];

59 (C) a person who is a partner, officer, or director~~[, or any]~~ of a broker-dealer or  
60 investment adviser;

61 (D) a person occupying a similar status or performing similar functions~~[, or any]~~ to a  
62 partner, officer, or director of a broker-dealer or investment adviser; or

63 (E) a person directly or indirectly controlling the broker-dealer or investment adviser~~;~~  
64 that the person~~;~~.

65 (b) This Subsection (2) requires the director to find that a person described in  
66 Subsection (2)(a)(ii):

67 ~~[(a) has filed]~~ (i) files an application for a license that, as of its effective date or as of  
68 any date after filing in the case of an order denying effectiveness, ~~[was]~~;

69 (A) is incomplete in any material respect; or ~~[contained]~~

70 (B) contains any statement that ~~[was]~~ is, in light of the circumstances under which it  
71 ~~[was]~~ is made, false or misleading with respect to any material fact;

72 ~~[(b)]~~ (ii) has willfully violated or willfully failed to comply with any provision of this  
73 chapter or a predecessor act or any rule or order under this chapter or a predecessor act;

74 ~~[(c)]~~ (iii) was convicted, within the past ten years, of:

75 (A) any misdemeanor involving a security or any aspect of the securities business~~;~~; or

76 (B) any felony;

77 ~~[(d)]~~ (iv) is permanently or temporarily enjoined by any court of competent jurisdiction  
78 from engaging in or continuing any conduct or practice involving any aspect of the securities  
79 business;

80 ~~[(e)]~~ (v) is the subject of an order of the director ~~[or any predecessor]~~ denying,  
81 suspending, or revoking a license as:

82 (A) a broker-dealer~~;~~;

83 (B) an agent~~;~~;

84 (C) an investment adviser~~;~~; or

85 (D) an investment adviser representative;

86 ~~[(f)]~~ (vi) is the subject of:

87 ~~[(g)]~~ (A) an adjudication or determination, within the past five years by a securities or  
88 commodities agency or administrator of another state, Canadian province or territory, or a court

89 of competent jurisdiction that the person has willfully violated;

90 (I) the Securities Act of 1933[;];

91 (II) the Securities Exchange Act of 1934[;];

92 (III) the Investment Advisers Act of 1940[;];

93 (IV) the Investment Company Act of 1940[;];

94 (V) the Commodity Exchange Act[;]; or

95 (VI) the securities or commodities law of any other state; or

96 ~~[(i)]~~ (B) subject to Subsection (2)(c), an order;

97 (I) entered within the past five years by the securities administrator of any state or  
98 Canadian province or territory or by the Securities and Exchange Commission denying or  
99 revoking license as a broker-dealer, agent, investment adviser, or investment adviser  
100 representative or the substantial equivalent of those terms ~~[or is the subject of an order];~~

101 (II) of the Securities and Exchange Commission suspending or expelling the person  
102 from a national securities exchange or national securities association registered under the  
103 Securities Exchange Act of 1934[;]; or ~~[is the subject of]~~

104 (III) that is a United States post office fraud order; ~~[except that]~~

105 ~~[(iii) the division may not commence agency action to revoke or suspend any license  
106 under Subsection (2)(f) more than one year from the date of the order relied on, and the director  
107 may not enter an order under Subsection (2)(f) on the basis of an order under another state's  
108 law unless that order was based on facts that would currently constitute a ground for an agency  
109 action under this section;]~~

110 ~~[(g)]~~ (vii) has engaged in dishonest or unethical practices in the securities business;

111 ~~[(h)]~~ (viii) is insolvent, either in the sense that liabilities exceed assets or in the sense  
112 that obligations cannot be met as they mature, except that the director may not enter an order  
113 against a broker-dealer or investment adviser under this Subsection (2)~~[(h)]~~ (b)(viii) without a  
114 finding of insolvency as to the broker-dealer or investment adviser;

115 ~~[(i)]~~ (ix) is not qualified on the basis of the lack of training, experience, and knowledge  
116 of the securities business, except as otherwise provided in Subsection (6);

117 ~~[(j)]~~ (x) has failed reasonably to supervise ~~[his]~~ that person's:

118 (A) agents or employees if the person is a broker-dealer[;]; or ~~[his]~~

119 (B) investment adviser representatives or employees if the person is an investment

120 adviser; or

121 ~~[(k) has failed]~~ (xi) fails to pay the proper filing fee within 30 days after being notified  
122 by the division of a deficiency.

123 (c) (i) The division may not commence agency action to revoke or suspend a license  
124 under Subsection (2)(b)(vi) more than one year from the day on which the order on which the  
125 division relies is entered.

126 (ii) An order may not be entered under Subsection (2)(b)(vi) on the basis of an order  
127 under another state's law unless that order is issued on the basis of facts that would constitute a  
128 ground for an agency action under this section on the day on which the notice of agency action  
129 is filed.

130 (3) (a) ~~[Before the director may issue an]~~ An order issued by the director under  
131 Subsection (1) that does the following is subject to Subsection (3)(b):

132 (i) revokes any license;

133 (ii) bars or censures any licensee or any officer, director, partner, or person occupying a  
134 similar status or performing similar functions for a licensee from employment with a licensed  
135 broker-dealer or investment adviser; or

136 (iii) imposes a fine[-];

137 (b) Before the director may issue an order described in Subsection (3)(a), the Securities  
138 [Advisory] Board shall:

139 ~~[(a)]~~ (i) review the order; and

140 ~~[(b)]~~ (ii) if a majority of the Securities [Advisory] Board approves the order, authorize  
141 the director to issue [it] the order.

142 (4) The division may enter a denial order under Subsection (2)~~[(j) or (k)]~~ (b)(x) or (xi),  
143 but shall vacate the order when the deficiency ~~[has been]~~ is corrected.

144 (5) The division may not institute a suspension or revocation proceeding on the basis  
145 of a fact or transaction known to ~~[it]~~ the division when the license became effective unless the  
146 proceeding is instituted within ~~[the next]~~ 120 days of the day on which the license takes effect.

147 (6) The following provisions govern the application of Subsection (2)~~[(j)]~~ (b)(ix):

148 (a) The director may not enter an order against a broker-dealer on the basis of the lack  
149 of qualification of any person other than:

150 (i) the broker-dealer ~~[himself]~~ if ~~[he]~~ the broker-dealer is an individual; or

- 151 (ii) an agent of the broker-dealer.
- 152 (b) The director may not enter an order against an investment adviser on the basis of  
153 the lack of qualification of any person other than:
- 154 (i) the investment adviser [~~himself~~] if [~~he~~] the investment adviser is an individual; or  
155 (ii) an investment adviser representative.
- 156 (c) The director may not enter an order solely on the basis of lack of experience if the  
157 applicant or licensee is qualified by training or knowledge.
- 158 (d) The director shall consider that:
- 159 (i) an agent who will work under the supervision of a licensed broker-dealer need not  
160 have the same qualifications as a broker-dealer; and [~~that~~]
- 161 (ii) an investment adviser representative who will work under the supervision of a  
162 licensed investment adviser need not have the same qualifications as an investment adviser.
- 163 (e) (i) The director shall consider that an investment adviser is not necessarily qualified  
164 solely on the basis of experience as a broker-dealer or agent.
- 165 (ii) When the director finds that an applicant for a license as a broker-dealer is not  
166 qualified as an investment adviser, the director may condition the applicant's license as a  
167 broker-dealer upon the applicant's not transacting business in this state as an investment  
168 adviser.
- 169 (f) (i) The division may by rule provide for examinations, which may be written or oral  
170 or both, to be taken by any class of or all applicants.
- 171 (ii) The division may by rule or order waive the examination requirement as to a person  
172 or class of persons if the division determines that the examination is not necessary for the  
173 protection of investors.
- 174 (7) If the director finds that any licensee or applicant for a license is no longer in  
175 existence, has ceased to do business as a broker-dealer, agent, investment adviser, or  
176 investment adviser representative, or is subject to an adjudication of mental incompetence or to  
177 the control of a committee, conservator, or guardian, or cannot be located after reasonable  
178 search, the division may summarily cancel or deny the license or application according to the  
179 procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.
- 180 (8) (a) Withdrawal from license as a broker-dealer, agent, investment adviser, or  
181 investment adviser representative becomes effective 30 days after receipt of an application to

182 withdraw or within a shorter period of time as determined by the director, unless:

183 (i) a revocation or suspension proceeding is pending when the application is filed;

184 (ii) a proceeding to revoke or suspend or to impose conditions upon the withdrawal is  
185 instituted within 30 days after the application is filed; or

186 (iii) additional information is requested by the division regarding the withdrawal  
187 application.

188 (b) (i) If a proceeding described in Subsection (8)(a) is pending or instituted, the  
189 director shall designate by order when and under what conditions the withdrawal becomes  
190 effective.

191 (ii) If additional information is requested, withdrawal is effective 30 days after the  
192 additional information is filed.

193 (c) (i) If no proceeding is pending or instituted, and withdrawal automatically becomes  
194 effective, the director may initiate a revocation or suspension proceeding under this section  
195 within one year after withdrawal [~~became~~] becomes effective.

196 (ii) The director shall enter any order under Subsection (2)(b) as of the last date on  
197 which the license was effective.

198 (9) (a) As used in this section:

199 (i) "Board" means the Securities Board.

200 (ii) "Department" means the Department of Commerce.

201 (iii) "Nondepartmental hearing officer" means an individual appointed by the division  
202 in accordance with this Subsection (9).

203 (iv) "Proceeding" means:

204 (A) an adjudicative proceeding brought under this section; or

205 (B) a proceeding conducted under Section 61-1-20 for an action against a licensee.

206 (b) (i) In a proceeding, a person who is the subject of the proceeding may make a  
207 motion to the board requesting that a nondepartmental hearing officer be appointed to conduct  
208 the proceeding in accordance with this section.

209 (ii) The person described in Subsection (9)(b)(i) shall make the motion by filing with  
210 the division a written filing that includes:

211 (A) the name of the person;

212 (B) the proceeding for which the person is requesting the appointment of a

213 nondepartmental hearing officer; and

214 (C) support for the person's belief that there is a reasonable likelihood or potential that  
215 without the appointment of a nondepartmental hearing officer, the proceeding could be biased.

216 (c) The board shall approve the appointment of a nondepartmental hearing officer if the  
217 board finds that:

218 (i) the person requesting the appointment of a nondepartmental hearing officer  
219 complies with Subsection (9)(b);

220 (ii) there is a reasonable basis for the person's belief that without the appointment of a  
221 nondepartmental hearing officer, the proceeding could be biased; and

222 (iii) the request for the appointment of a nondepartmental hearing officer is not made  
223 in bad faith including the motion not being filed to:

224 (A) harass;

225 (B) cause unnecessary delay; or

226 (C) cause needless increase in the cost of proceeding.

227 (d) If the board approves the appointment of a nondepartmental hearing officer, the  
228 division shall appoint a nondepartmental hearing officer:

229 (i) before taking any further action with regard to the proceeding;

230 (ii) subject to the approval of the appointment by the board in accordance with a  
231 procedure established by the division with the concurrence of the board; and

232 (iii) who is an individual who:

233 (A) is not an employee of the department;

234 (B) does not represent the:

235 (I) department as an attorney general or assistant attorney general; or

236 (II) division in accordance with Section 61-1-21.5; and

237 (C) unless agreed to in writing by the person requesting the nondepartmental hearing  
238 officer, has never:

239 (I) been employed by the department; or

240 (II) represented the:

241 (Aa) department as an attorney general or an assistant attorney general; or

242 (Bb) division in accordance with Section 61-1-21.5.

243 (e) A nondepartmental hearing officer appointed under this Subsection (9):



- 244 (i) conducts a proceeding on behalf of the director; and  
245 (ii) shall submit to the director a report including:  
246 (A) findings of fact;  
247 (B) conclusions of law; and  
248 (C) a recommended order.
- 249 (f) A decision of the board under this Subsection (9) may be appealed under this  
250 chapter and Title 63, Chapter 46b, Administrative Procedures Act, only as part of an appeal of  
251 an order issued by the director:
- 252 (i) under Subsection (1); or  
253 (ii) to impose a sanction under Section 61-1-20 against a licensee.
- 254 Section 2. Section **61-1-12** is amended to read:
- 255 **61-1-12. Denial, suspension, and revocation of registration.**
- 256 (1) Upon approval by a majority of the Securities [~~Advisory~~] Board, the director, by  
257 means of adjudicative proceedings conducted in accordance with Title 63, Chapter 46b, [~~the~~]  
258 Administrative Procedures Act, may issue a stop order that denies effectiveness to, or suspends  
259 or revokes the effectiveness of, any securities registration statement and may impose a fine if  
260 [~~he~~] the director finds that the order is in the public interest and that:
- 261 (a) the registration statement, as of its effective date or as of any earlier date in the case  
262 of an order denying effectiveness, or any amendment under Subsection 61-1-11(10) as of its  
263 effective date, or any report under Subsection 61-1-11(9), is incomplete in any material respect,  
264 or contains any statement that was, in the light of the circumstances under which it was made,  
265 false or misleading with respect to any material fact;
- 266 (b) any provision of this chapter, or any rule, order, or condition lawfully imposed  
267 under this chapter, [~~has been~~] is willfully violated, in connection with the offering, by:
- 268 (i) the person filing the registration statement;  
269 (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a  
270 similar status or performing similar functions, or any person directly or indirectly controlling or  
271 controlled by the issuer, but only if the person filing the registration statement is directly or  
272 indirectly controlled by or acting for the issuer; or
- 273 (iii) any underwriter;
- 274 (c) subject to Subsection (5), the security registered or sought to be registered is the

275 subject of an administrative stop order or similar order, or a permanent or temporary injunction  
276 of any court of competent jurisdiction entered under any other federal or state act applicable to  
277 the offering; [~~except that the division may not commence agency action against an effective~~  
278 ~~registration statement under this subsection more than one year from the date of the order or~~  
279 ~~injunction relied on, and it may not enter an order under this subsection on the basis of an order~~  
280 ~~or injunction entered under the securities act of any other state unless that order or injunction~~  
281 ~~was based on facts that would currently constitute a ground for a stop order under this section;]~~

282 (d) the issuer's enterprise or method of business includes or would include activities  
283 that are illegal where performed;

284 (e) the offering [~~has worked~~] works or [~~tended~~] tends to work a fraud upon purchasers  
285 or would so operate;

286 (f) the offering [~~has been~~] is or would be made with unreasonable amounts of  
287 underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits  
288 or participation, or unreasonable amounts or kinds of options;

289 (g) when a security is sought to be registered by notification, it is not eligible for such  
290 registration;

291 (h) when a security is sought to be registered by coordination, there [~~has been~~] is a  
292 failure to comply with the undertaking required by Subsection 61-1-9(2)(d); or

293 (i) the applicant or registrant [~~has failed~~] fails to pay the proper filing fee.

294 (2) The director may enter an order under this section, but may vacate the order if [~~he~~]  
295 the director finds that the conditions that prompted its entry have changed or that it is otherwise  
296 in the public interest to do so.

297 (3) The director may not issue a stop order against an effective registration statement  
298 on the basis of a fact or transaction known to the division when the registration statement  
299 became effective unless the proceeding is instituted within [~~the next~~] 120 days after the day on  
300 which the registration statement becomes effective.

301 (4) [~~No~~] A person may not be considered to have violated Section 61-1-7 or 61-1-15 by  
302 reason of any order or sale effected after the entry of an order under this section if that person  
303 proves by a preponderance of the evidence that [~~he~~] the person did not know, and in the  
304 exercise of reasonable care could not have known, of the order.

305 (5) (a) The division may not commence agency action against an effective registration

306 statement under Subsection (1)(c) more than one year from the date on which the order or  
307 injunction relied on to commence the agency action is entered.

308 (b) The division may not enter an order under Subsection (1)(c) on the basis of an order  
309 or injunction entered under the securities act of any other state unless that order or injunction is  
310 issued on the basis of facts that would constitute a ground for a stop order under this section on  
311 the day on which the order is issued under Subsection (1)(c).

312 Section 3. Section **61-1-14** is amended to read:

313 **61-1-14. Exemptions.**

314 (1) The following securities are exempted from Sections 61-1-7 and 61-1-15:

315 (a) any security, including a revenue obligation, issued or guaranteed by the United  
316 States, any state, any political subdivision of a state, or any agency or corporate or other  
317 instrumentality of one or more of the foregoing, or any certificate of deposit for any of the  
318 foregoing;

319 (b) any security issued or guaranteed by Canada, any Canadian province, any political  
320 subdivision of any Canadian province, any agency or corporate or other instrumentality of one  
321 or more of the foregoing, or any other foreign government with which the United States  
322 currently maintains diplomatic relations, if the security is recognized as a valid obligation by  
323 the issuer or guarantor;

324 (c) any security issued by and representing an interest in or a debt of, or guaranteed by,  
325 any bank organized under the laws of the United States, or any bank, savings institution, or  
326 trust company supervised under the laws of any state;

327 (d) any security issued by and representing an interest in or a debt of, or guaranteed by,  
328 any federal savings and loan association, or any building and loan or similar association  
329 organized under the laws of any state and authorized to do business in this state;

330 (e) any security issued or guaranteed by any federal credit union or any credit union,  
331 industrial loan association, or similar association organized and supervised under the laws of  
332 this state;

333 (f) any security issued or guaranteed by any public utility or holding company which is  
334 a registered holding company under the Public Utility Holding Company Act of 1935 or a  
335 subsidiary of such a company within the meaning of that act, or any security regulated in  
336 respect of its rates or in its issuance by a governmental authority of the United States, any state,

337 Canada, or any Canadian province;

338 (g) (i) any security listed on the National Association of Securities Dealers Automated  
339 Quotation National Market System, the New York Stock Exchange, the American Stock  
340 Exchange, or on any other stock exchange or medium approved by the division, except that the  
341 director may at any time suspend or revoke this exemption for any particular stock exchange,  
342 medium, security, or securities under Subsection (4);

343 (ii) any other security of the same issuer which is of senior or substantially equal rank  
344 to any security [sø] listed and approved by the director[;]; or

345 (iii) any security called for by subscription rights or warrants so listed or approved, or  
346 any warrant or right to purchase or subscribe to any of the foregoing;

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

350 (ii) any security issued by a corporation organized under Title 3, Chapter 1, General  
351 Provisions Relating to Agricultural Cooperative Associations, and any security issued by a  
352 corporation to which the provisions of that chapter are made applicable by compliance with the  
353 requirements of Section 3-1-21;

354 (i) a promissory note, draft, bill of exchange, or banker's acceptance that evidences an  
355 obligation to pay cash within nine months after the date of issuance, exclusive of days of grace,  
356 or a renewal of such an obligation that is likewise limited, or a guarantee of such an obligation  
357 or of a renewal:

358 (i) issued in denominations of at least \$50,000; and

359 (ii) either:

360 (A) receives a rating in one of the three highest rating categories from a nationally  
361 recognized statistical rating organization; or

362 (B) the issuer satisfies requirements established by rule or order of the division;

363 (j) any investment contract issued in connection with an employees' stock purchase,  
364 option, savings, pension, profit-sharing, or similar benefit plan;

365 (k) a security issued by an issuer registered as an open-end management investment  
366 company or unit investment trust under Section 8 of the Investment Company Act of 1940, if:

367 (i) (A) the issuer is advised by an investment adviser that is a depository institution

368 exempt from registration under the Investment Advisers Act of 1940 or that is currently  
369 registered as an investment adviser, and has been registered, or is affiliated with an adviser that  
370 has been registered, as an investment adviser under the Investment Advisers Act of 1940 for at  
371 least three years next preceding an offer or sale of a security claimed to be exempt under this  
372 Subsection (1)(k); and

373 (B) the adviser has acted, or is affiliated with an investment adviser that has acted as  
374 investment adviser to one or more registered investment companies or unit investment trusts  
375 for at least three years next preceding an offer or sale of a security claimed to be exempt under  
376 this Subsection (1)(k); or

377 (ii) the issuer has a sponsor that has at all times throughout the three years before an  
378 offer or sale of a security claimed to be exempt under this Subsection (1)(k) sponsored one or  
379 more registered investment companies or unit investment trusts the aggregate total assets of  
380 which have exceeded \$100,000,000;

381 (iii) in addition to Subsection (1)(k)(i) or (ii), the division has received prior to any sale  
382 exempted [~~herein~~] by this Subsection (1)(k):

383 (A) a notice of intention to sell which has been executed by the issuer and which sets  
384 forth the name and address of the issuer and the title of the securities to be offered in this state;  
385 and

386 (B) a filing fee as determined under Section 61-1-18.4;

387 (iv) in the event any offer or sale of a security of an open-end management investment  
388 company is to be made more than 12 months after the date on which the notice and fee under  
389 Subsection (1)(k)(iii) is received by the director, another notice and payment of the applicable  
390 fee shall be required;

391 (v) for the purpose of this Subsection (1)(k), an investment adviser is affiliated with  
392 another investment adviser if [~~it~~] the investment adviser controls, is controlled by, or is under  
393 common control with the other investment adviser; and

394 (l) any security as to which the director, by rule or order, finds that registration is not  
395 necessary or appropriate for the protection of investors.

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

397 (a) any isolated transaction, whether effected through a broker-dealer or not;

398 (b) any nonissuer transaction in an outstanding security, if as provided by rule of the

399 division:

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

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

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

409 (d) any transaction between the issuer or other person on whose behalf the offering is  
410 made and an underwriter, or among underwriters;

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

415 (f) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in  
416 bankruptcy, guardian, or conservator;

417 (g) any transaction executed by a bona fide pledgee without any purpose of evading  
418 this chapter;

419 (h) any offer or sale to a bank, savings institution, trust company, insurance company,  
420 investment company as defined in the Investment Company Act of 1940, pension or  
421 profit-sharing trust, or other financial institution or institutional investor, or to a broker-dealer,  
422 whether the purchaser is acting for itself or in some fiduciary capacity;

423 (i) any offer or sale of a preorganization certificate or subscription if:

424 (i) no commission or other remuneration is paid or given directly or indirectly for  
425 soliciting any prospective subscriber;

426 (ii) the number of subscribers acquiring any legal or beneficial interest therein does not  
427 exceed ten; and

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

429 (j) any transaction pursuant to an offer by an issuer of its securities to its existing

430 securities holders, if:

431 (i) no commission or other remuneration, other than a standby commission is paid or  
432 given directly or indirectly for soliciting any security holders in this state and the transaction  
433 constitutes ~~either~~:

434 (A) the conversion of convertible securities;

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

436 (C) the exercise of transferable rights or warrants if the rights or warrants are  
437 exercisable not more than 90 days after their issuance; or

438 (D) the purchase of securities under a preemptive right; and

439 (ii) the exemption created by Subsection (2)(j) is not available for an offer or sale of  
440 securities to existing securities holders who have acquired their securities from the issuer in a  
441 transaction in violation of Section 61-1-7;

442 (k) any offer, but not a sale, of a security for which registration statements have been  
443 filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is  
444 in effect and no public proceeding or examination looking toward such an order is pending;

445 (l) a distribution of securities as a dividend if the person distributing the dividend is the  
446 issuer of the securities distributed;

447 (m) any nonissuer transaction effected by or through a registered broker-dealer where  
448 the broker-dealer or issuer files with the division, and the broker-dealer maintains in ~~his~~ the  
449 broker-dealer's records, and makes reasonably available upon request to any person expressing  
450 an interest in a proposed transaction in the security with the broker-dealer information  
451 prescribed by the division under its rules;

452 (n) any transactions not involving a public offering;

453 (o) any offer or sale of "condominium units" or "time period units" as those terms are  
454 defined in ~~the~~ Title 57, Chapter 8, Condominium Ownership Act, whether or not to be sold  
455 by installment contract, if the ~~provisions of the Condominium Ownership Act~~ following are  
456 complied with:

457 (i) Title 57, Chapter 8, Condominium Ownership Act, or if the units are located in  
458 another state, the condominium act of that state~~[-the]~~;

459 (ii) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act~~[-the]~~;

460 (iii) Title 57, Chapter 19, Utah Timeshare and Camp Resort Act~~[-]~~; and ~~the~~

461            (iv) Title 70C, Utah [Uniform] Consumer Credit Code~~[are complied with]~~;

462            (p) any transaction or series of transactions involving a merger, consolidation,  
463 reorganization, recapitalization, reclassification, or sale of assets, if the consideration for  
464 which, in whole or in part, is the issuance of securities of a person or persons, and if:

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

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

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

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

472            (C) the controlling agreement among securities holders;

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

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

480            (C) all persons involved in the transaction are exempt from filing under Section  
481 12(g)(1) of the Securities Exchange Act of 1934, and file with the division such proxy or  
482 informational material as the division requires by rule;

483            (iv) the proxy or informational material is filed with the division and distributed to all  
484 securities holders entitled to vote in the transaction or series of transactions at least ten working  
485 days prior to any necessary vote by the securities holders or action on any necessary consent or  
486 resolution; and

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

489            (q) any transaction pursuant to an offer to sell securities of an issuer if:

490            (i) the transaction is part of an issue in which there are not more than 15 purchasers in  
491 this state, other than those designated in Subsection (2)(h), during any 12 consecutive months;



492 (ii) no general solicitation or general advertising is used in connection with the offer to  
493 sell or sale of the securities;

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

497 (iv) the seller reasonably believes that all the purchasers in this state are purchasing for  
498 investment;

499 (v) the transaction is part of an aggregate offering that does not exceed \$500,000, or a  
500 greater amount as prescribed by a division rule, during any 12 consecutive months; and

501 (vi) the director, as to a security or transaction, or a type of security or transaction, may  
502 withdraw or further condition this exemption or waive one or more of the conditions in  
503 Subsection (2)(q);

504 (r) any transaction involving a commodity contract or commodity option; and

505 (s) any transaction as to which the division finds that registration is not necessary or  
506 appropriate for the protection of investors.

507 (3) Every person filing an exemption notice or application shall pay a filing fee as  
508 determined under Section 61-1-18.4.

509 (4) Upon approval by a majority of the Securities [~~Advisory~~] Board, the director, by  
510 means of an adjudicative proceeding conducted in accordance with Title 63, Chapter 46b,  
511 Administrative Procedures Act, may deny or revoke any exemption specified in Subsection  
512 (1)(g), (h), or (j) or in Subsection (2) with respect to:

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

514 (b) any person or issuer, any affiliate or successor to a person or issuer, or any entity  
515 subsequently organized by or on behalf of a person or issuer generally and may impose a fine if  
516 ~~he~~ the director finds that the order is in the public interest and that:

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

520 (ii) any provision of this chapter, or any rule, order, or condition lawfully imposed  
521 under this chapter ~~has been~~ is willfully violated in connection with the offering or exemption  
522 by:

- 523 (A) the person filing any application for or notice of exemption;
- 524 (B) the issuer, any partner, officer, or director of the issuer, any person occupying a  
525 similar status or performing similar functions, or any person directly or indirectly controlling or  
526 controlled by the issuer, but only if the person filing the application for or notice of exemption  
527 is directly or indirectly controlled by or acting for the issuer; or
- 528 (C) any underwriter;
- 529 (iii) subject to Subsection (6), the security for which the exemption is sought is the  
530 subject of an administrative stop order or similar order, or a permanent or temporary injunction  
531 or any court of competent jurisdiction entered under any other federal or state act applicable to  
532 the offering or exemption; [~~the division may not institute a proceeding against an effective~~  
533 ~~exemption under this subsection more than one year from the date of the order or injunction~~  
534 ~~relied on, and it may not enter an order under this subsection on the basis of an order or~~  
535 ~~injunction entered under any other state act unless that order or injunction was based on facts~~  
536 ~~that would currently constitute a ground for a stop order under this section;~~]
- 537 (iv) the issuer's enterprise or method of business includes or would include activities  
538 that are illegal where performed;
- 539 (v) the offering [~~has worked, has tended~~] works, tends to work, or would operate to  
540 work a fraud upon purchasers;
- 541 (vi) the offering [~~has been~~] is or was made with unreasonable amounts of underwriters'  
542 and sellers' discounts, commissions, or other compensation, or promoters' profits or  
543 participation, or unreasonable amounts or kinds of options;
- 544 (vii) an exemption is sought for a security or transaction which is not eligible for the  
545 exemption; or
- 546 (viii) the proper filing fee, if required, [~~has~~] is not [~~been~~] paid.
- 547 (5) (a) [~~No~~] An order under Subsection (4) may not operate retroactively.
- 548 (b) [~~No~~] A person may not be considered to have violated Section 61-1-7 or 61-1-15 by  
549 reason of any offer or sale effected after the entry of an order under [~~this~~] Subsection (4) if [~~he~~]  
550 the person sustains the burden of proof that [~~he~~] the person did not know, and in the exercise of  
551 reasonable care could not have known, of the order.
- 552 (6) (a) The division may not institute a proceeding against an effective exemption  
553 under Subsection (4)(b)(iii) more than one year from the day on which the order or injunction

554 relied on in instituting the proceeding is entered.

555 (b) The division may not enter an order under Subsection (4)(b)(iii) on the basis of an  
556 order or injunction entered under any other state act unless that order or injunction is issued on  
557 the basis of facts that would constitute a ground for a stop order under this section at the time  
558 the order is issued under Subsection (4)(b)(iii).

559 Section 4. Section **61-1-15.5** is amended to read:

560 **61-1-15.5. Federal covered securities.**

561 (1) The division by rule or order may require the filing of any of the following  
562 documents with respect to a covered security under Section 18(b)(2) of the Securities Act of  
563 1933:

564 (a) prior to the initial offer of federal covered security in this state, a notice form as  
565 prescribed by the division or all documents that are part of a federal registration statement filed  
566 with the U.S. Securities and Exchange Commission under the Securities Act of 1933, together  
567 with a consent to service of process signed by the issuer and a filing fee as determined under  
568 Section 61-1-18.4;

569 (b) after the initial offer of such federal covered security in this state, all documents  
570 that are part of an amendment to a federal registration statement filed with the U.S. Securities  
571 and Exchange Commission under the Securities Act of 1933, which shall be filed concurrently  
572 with the division;

573 (c) a report of the value of federal covered securities offered or sold in this state,  
574 together with a filing fee as determined under Section 61-1-18.4; and

575 (d) a notice filing under this section shall be effective for one year and shall be  
576 renewed annually in order to continue to offer or sell the federal covered securities for which  
577 the notice was filed.

578 (2) With respect to any security that is a covered security under Section 18(b)(4)(D) of  
579 the Securities Act of 1933, the division by rule or order may require the issuer to file a notice  
580 on SEC Form D and a consent to service of process signed by the issuer no later than 15 days  
581 after the first sale of such covered security in this state, together with a filing fee as determined  
582 under Section 61-1-18.4.

583 (3) The division by rule or order may require the filing of any document filed with the  
584 U.S. Securities and Exchange Commission under the Securities Act of 1933, with respect to a

585 covered security under Section 18(b)(3) or (4) of the Securities Act of 1933, together with a  
586 filing fee as determined under Section 61-1-18.4.

587 (4) Upon approval by a majority of the Securities [Advisory] Board, the director, by  
588 means of adjudicative proceedings conducted in accordance with Title 63, Chapter 46b,  
589 Administrative Procedures Act, may issue a stop order suspending the offer and sale of any  
590 federal covered security, except a covered security under Section 18(b)(1) of the Securities Act  
591 of 1933, if the director finds that the order is in the public interest and there is a failure to  
592 comply with any condition established under this section.

593 (5) The division by rule or order may waive any or all of the provisions of this section.  
594 Section 5. Section **61-1-18.3** is amended to read:

595 **61-1-18.3. Information obtained by division -- Use for personal benefit prohibited**  
596 **-- Disclosure.**

597 (1) It is unlawful for any of the division's employees, a nondepartmental hearing officer  
598 appointed under Section 61-1-6, or any member of the Securities [Advisory] Board to use for  
599 personal benefit any nonpublic information which is filed with or obtained by the division. [~~No~~  
600 ~~provision of this~~]

601 (2) This chapter [~~authorizes~~] does not authorize the division or any of its officers or  
602 employees to disclose any such information except among themselves or when necessary or  
603 appropriate in a proceeding or investigation under this chapter.

604 (3) No provision of this chapter either creates or derogates from any privilege [~~which~~]  
605 that exists at common law or otherwise when documentary or other evidence is sought under  
606 subpoena directed to the division or any of its employees.

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

608 **61-1-18.5. Securities Board established -- Appointment -- Duties -- Qualifications**  
609 **-- Terms -- Vacancies -- Meetings -- Conflicts of interest -- Expenses.**

610 (1) (a) There is hereby established a Securities [Advisory] Board.

611 (b) Members of the board shall be appointed by the governor with the consent of the  
612 Senate.

613 (c) The board shall have the following duties:

614 (i) comply with Subsection 61-1-6(9) with regard to the appointment of a  
615 nondepartmental hearing officer;

616            [(i)] (ii) formulate and make recommendations to the director regarding policy and  
617 budgetary matters;

618            [(ii)] (iii) submit recommendations regarding registration requirements and division  
619 rules;

620            [(iii)] (iv) formulate and make recommendations to the director regarding the  
621 establishment of reasonable fees; and

622            [(iv)] (v) generally act in an advisory capacity to the director with respect to the  
623 exercise of [his] the director's duties, powers, and responsibilities.

624            (2) (a) The Securities [~~Advisory~~] Board shall be comprised of five members who shall  
625 be appointed in accordance with the following:

626            (i) two members from the securities brokerage community who have at least five years  
627 prior experience in securities matters;

628            (ii) one member from the securities section of the Utah Bar Association;

629            (iii) one member who is an officer or director of a corporation not subject to the  
630 reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934; and

631            (iv) one member from the public at large who has no active participation in the  
632 securities business.

633            (b) No member may serve more than two consecutive terms.

634            (3) (a) Except as required by Subsection (3)(b), as terms of current board members  
635 expire, the governor shall appoint each new member or reappointed member to a four-year  
636 term.

637            (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the  
638 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
639 commission members are staggered so that approximately half of the board is appointed every  
640 two years.

641            (4) (a) When a vacancy occurs in the membership for any reason, the replacement shall  
642 be appointed for the unexpired term.

643            (b) All members shall serve until their respective successors are appointed and  
644 qualified.

645            (5) The board shall meet at least quarterly on a regular date to be fixed by the board  
646 and at such other times at the call of the director or any two members of the board. A majority

647 of the board shall constitute a quorum for the transaction of business. Actions of the board  
648 shall require a vote of a majority of those present.

649 (6) Each member of the board shall, by sworn and written statement filed with the  
650 Department of Commerce and the lieutenant governor, disclose any position of employment or  
651 ownership interest that the member has with respect to any entity or business subject to the  
652 jurisdiction of the division. This statement shall be filed upon appointment and must be  
653 appropriately amended whenever significant changes occur in matters covered by the  
654 statement.

655 (7) (a) ~~[Members shall receive no]~~ A member of the board may not receive  
656 compensation or benefits for ~~[their]~~ the member's services, but may receive per diem and  
657 expenses incurred in the performance of the member's official duties at the rates established by  
658 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

659 (b) ~~[Members]~~ A member may decline to receive per diem and expenses for ~~[their]~~ the  
660 member's service.

661 Section 7. Section **61-1-18.6** is amended to read:

662 **61-1-18.6. Procedures -- Adjudicative proceedings.**

663 The ~~[Division of Securities]~~ division and any nondepartmental hearing officer  
664 appointed under Section 61-1-6 shall comply with ~~[the procedures and requirements of]~~ Title  
665 63, Chapter 46b, Administrative Procedures Act, in ~~[its]~~ adjudicative proceedings of the  
666 division.

667 Section 8. Section **61-1-18.7** is amended to read:

668 **61-1-18.7. Funding of securities investor education and training.**

669 (1) There is created a restricted special revenue fund known as the "Securities Investor  
670 Education and Training Fund" to provide revenue for educating the public and the securities  
671 industry as provided in this section.

672 (2) All money received by the state by reason of civil penalties ordered and  
673 administrative fines collected pursuant to this chapter shall be deposited in the Securities  
674 Investor Education and Training Fund, and subject to the requirements of Title 51, Chapter 5,  
675 Funds Consolidation Act.

676 (3) The special revenue fund may include any fines collected by the division after July  
677 1, 1989, pursuant to voluntary settlements or administrative orders.

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

679 (b) All interest earned on fund monies shall be deposited into the fund.

680 (5) Notwithstanding Title 63, Chapter 38, Budgetary Procedures Act, the director may  
681 use special revenue fund monies, upon concurrence of the Securities ~~[Advisory]~~ Board and the  
682 executive director of the Department of Commerce, in a manner consistent with the duties of  
683 the division under this chapter and only for any or all of the following and the expense of  
684 providing them:

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

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

688 (i) publication of this chapter and rules and policy statements and opinion letters of the  
689 division; and

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

692 (c) investigation and litigation.

693 (6) If the balance in the fund exceeds ~~[\$100,000]~~ \$250,000 at the close of any fiscal  
694 year, the excess shall be transferred to the General Fund.

695 Section 9. Section **61-1-19** is amended to read:

696 **61-1-19. Investigations authorized.**

697 (1) (a) The division ~~[in its discretion]~~ may make any public or private investigations  
698 within or without this state as ~~[it]~~ the division considers necessary to determine whether any  
699 person has violated, is violating, or is about to violate any provision of this chapter or any rule  
700 or order ~~[hereunder]~~ under this chapter.

701 (b) To aid in the enforcement of this chapter or in the prescribing of rules and forms  
702 ~~[hereunder]~~ under this chapter, the division may require or permit any person to file a statement  
703 in writing, under oath or otherwise as to all the facts and circumstances concerning the matter  
704 to be investigated.

705 (c) The division may publish information concerning any violation of this chapter or  
706 the violation of any rule or order ~~[hereunder]~~ under this chapter.

707 (2) For the purpose of any investigation or proceeding under this chapter, the division  
708 ~~[or]~~, any employee designated by ~~[it]~~ the division, or a nondepartmental hearing officer

709 appointed under Section 61-1-6 may:

710 (a) administer [~~oaths and affirmations~~] an oath or affirmation;

711 (b) subpoena [~~witnesses~~] a witness and compel [~~their~~] the attendance of a witness;

712 (c) take evidence; and

713 (d) require the production of any books, papers, correspondence, memoranda,

714 agreements, or other documents or records relevant or material to the investigation.



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**H.B. 153 1st Sub. (Buff) - Securities Amendments**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations. The provision that raises the cap on the Securities Investor Education and Training Fund balance at the end of any fiscal year by \$150,000 may reduce the amount that is transferred to the General Fund by \$150,000 beginning with FY 2007.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>
General Fund	\$0	\$0	\$0	(\$150,000)	(\$150,000)	(\$150,000)
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>(\$150,000)</b>	<b>(\$150,000)</b>	<b>(\$150,000)</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.