

**SECURITIES AMENDMENTS**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jim Bird**

Senate Sponsor: Kevin T. VanTassell

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**LONG TITLE**

**General Description:**

This bill modifies provisions addressing 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; and
- ▶ makes technical and conforming amendments.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

- 61-1-6**, as last amended by Laws of Utah 2003, Chapter 36
- 61-1-12**, as last amended by Laws of Utah 1990, Chapter 133
- 61-1-14**, as last amended by Laws of Utah 1997, Chapter 160
- 61-1-15.5**, as enacted by Laws of Utah 1997, Chapter 160
- 61-1-18.3**, as enacted by Laws of Utah 1983, Chapter 284
- 61-1-18.5**, as last amended by Laws of Utah 2002, Chapter 176



28 **61-1-18.6**, as enacted by Laws of Utah 1987, Chapter 161

29 **61-1-18.7**, as last amended by Laws of Utah 2002, Chapter 256

30 **61-1-19**, as last amended by Laws of Utah 1990, Chapter 133

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

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

34 **61-1-6. Denial, suspension, revocation, cancellation, or withdrawal of license --**  
35 **Sanctions.**

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

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

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

- 49 (i) it is in the public interest; and [~~finds, with respect to the~~]
- 50 (ii) one of the following engaged in an act described in Subsection (2)(b):
  - 51 (A) a person who is an applicant [~~or~~];
  - 52 (B) a person who is a licensee [~~or, in the case of a broker-dealer or investment adviser,~~
  - 53 ~~any~~];
  - 54 (C) a person who is a partner, officer, or director [~~, or any~~] of a broker-dealer or  
55 investment adviser;
  - 56 (D) a person occupying a similar status or performing similar functions [~~, or any~~] to a  
57 partner, officer, or director of a broker-dealer or investment adviser; or
  - 58 (E) a person directly or indirectly controlling the broker-dealer or investment adviser;

59 ~~that the person:~~].

60 (b) This Subsection (2) requires the director to find that a person described in

61 Subsection (2)(a)(ii):

62 ~~[(a)] (i)~~ (i) has filed an application for a license that, as of ~~[its]~~ the effective date of the  
63 application or as of any date after filing in the case of an order denying effectiveness~~[-];~~:

64 (A) was incomplete in any material respect; or

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

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

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

70 (A) any misdemeanor involving a security or any aspect of the securities business~~[-];~~ or

71 (B) any felony;

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

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

77 (A) a broker-dealer~~[-];~~

78 (B) an agent~~[-];~~

79 (C) an investment adviser~~[-];~~ or

80 (D) an investment adviser representative;

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

82 ~~[(i)] (A)~~ (A) an adjudication or determination, within the past five years by a securities or  
83 commodities agency or administrator of another state, Canadian province or territory, or a court  
84 of competent jurisdiction that the person has willfully violated;

85 (I) the Securities Act of 1933~~[-];~~

86 (II) the Securities Exchange Act of 1934~~[-];~~

87 (III) the Investment Advisers Act of 1940~~[-];~~

88 (IV) the Investment Company Act of 1940~~[-];~~

89 (V) the Commodity Exchange Act~~[-];~~ or

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

91 ~~[(ii)]~~ (B) subject to Subsection (2)(c), an order;

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

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

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

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

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

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

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

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

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

114 (B) investment adviser representatives or employees if the person is an investment  
115 adviser; or

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

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

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

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

127 (i) revokes any license;

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

131 (iii) imposes a fine[-];

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

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

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

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

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

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

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

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

146 (ii) an agent of the broker-dealer.

147 (b) The director may not enter an order against an investment adviser on the basis of  
148 the lack of qualification of any person other than:

149 (i) the investment adviser ~~[himself]~~ if ~~[he]~~ the investment adviser is an individual; or

150 (ii) an investment adviser representative.

151 (c) The director may not enter an order solely on the basis of lack of experience if the

152 applicant or licensee is qualified by training or knowledge.

153 (d) The director shall consider that:

154 (i) an agent who will work under the supervision of a licensed broker-dealer need not  
155 have the same qualifications as a broker-dealer; and ~~that~~

156 (ii) an investment adviser representative who will work under the supervision of a  
157 licensed investment adviser need not have the same qualifications as an investment adviser.

158 (e) (i) The director shall consider that an investment adviser is not necessarily qualified  
159 solely on the basis of experience as a broker-dealer or agent.

160 (ii) When the director finds that an applicant for a license as a broker-dealer is not  
161 qualified as an investment adviser, the director may condition the applicant's license as a  
162 broker-dealer upon the applicant's not transacting business in this state as an investment  
163 adviser.

164 (f) (i) The division may by rule provide for examinations, which may be written or oral  
165 or both, to be taken by any class of or all applicants.

166 (ii) The division may by rule or order waive the examination requirement as to a person  
167 or class of persons if the division determines that the examination is not necessary for the  
168 protection of investors.

169 (7) If the director finds that any licensee or applicant for a license is no longer in  
170 existence, has ceased to do business as a broker-dealer, agent, investment adviser, or  
171 investment adviser representative, or is subject to an adjudication of mental incompetence or to  
172 the control of a committee, conservator, or guardian, or cannot be located after reasonable  
173 search, the division may summarily cancel or deny the license or application according to the  
174 procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

175 (8) (a) Withdrawal from license as a broker-dealer, agent, investment adviser, or  
176 investment adviser representative becomes effective 30 days after receipt of an application to  
177 withdraw or within a shorter period of time as determined by the director, unless:

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

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

181 (iii) additional information is requested by the division regarding the withdrawal  
182 application.

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

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

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

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

193 (9) (a) As used in this Subsection (9):

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

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

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

198 (iv) "Proceeding" means:

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

200 (B) a proceeding conducted under Subsection 61-1-20(1) for an action against a  
201 licensee.

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

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

207 (A) the name of the person;

208 (B) the proceeding for which the person is requesting the appointment of a  
209 nondepartmental hearing officer; and

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

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

214 (i) the person requesting the appointment of a nondepartmental hearing officer  
215 complies with Subsection (9)(b);  
216 (ii) there is a reasonable basis for the person's belief that without the appointment of a  
217 nondepartmental hearing officer, the proceeding could be biased; and  
218 (iii) the request for the appointment of a nondepartmental hearing officer is not made  
219 in bad faith, including the motion not being filed to:  
220 (A) harass;  
221 (B) cause unnecessary delay; or  
222 (C) cause needless increase in the cost of proceeding.  
223 (d) If the board approves the appointment of a nondepartmental hearing officer, the  
224 division shall appoint a nondepartmental hearing officer:  
225 (i) before the division takes any further action with regard to the proceeding;  
226 (ii) subject to the approval of the appointment by the board in accordance with a  
227 procedure established by the division with the concurrence of the board; and  
228 (iii) who is an individual who:  
229 (A) is not an employee of the department;  
230 (B) does not represent the:  
231 (I) department as an attorney general or assistant attorney general; or  
232 (II) division in accordance with Section 61-1-21.5; and  
233 (C) unless agreed to in writing by the person requesting the nondepartmental hearing  
234 officer, has never:  
235 (I) been employed by the department; or  
236 (II) represented the:  
237 (Aa) department as an attorney general or an assistant attorney general; or  
238 (Bb) division in accordance with Section 61-1-21.5.  
239 (e) A nondepartmental hearing officer appointed under this Subsection (9):  
240 (i) conducts a proceeding on behalf of the director; and  
241 (ii) shall submit to the director a report including:  
242 (A) findings of fact;  
243 (B) conclusions of law; and  
244 (C) a recommended order.



245 (f) A decision of the board under this Subsection (9) may be appealed under this  
246 chapter and Title 63, Chapter 46b, Administrative Procedures Act, only as part of an appeal of  
247 an order issued by the director:

248 (i) under Subsection (1); or

249 (ii) to impose a sanction under Section 61-1-20 against a licensee.

250 Section 2. Section **61-1-12** is amended to read:

251 **61-1-12. Denial, suspension, and revocation of registration.**

252 (1) Upon approval by a majority of the Securities [~~Advisory~~] Board, the director, by  
253 means of adjudicative proceedings conducted in accordance with Title 63, Chapter 46b, [~~the~~]  
254 Administrative Procedures Act, may issue a stop order that denies effectiveness to, or suspends  
255 or revokes the effectiveness of, any securities registration statement and may impose a fine if  
256 [~~he~~] the director finds that the order is in the public interest and that:

257 (a) the registration statement, as of its effective date or as of any earlier date in the case  
258 of an order denying effectiveness, or any amendment under Subsection 61-1-11(10) as of its  
259 effective date, or any report under Subsection 61-1-11(9), is incomplete in any material respect,  
260 or contains any statement that was, in the light of the circumstances under which it was made,  
261 false or misleading with respect to any material fact;

262 (b) any provision of this chapter, or any rule, order, or condition lawfully imposed  
263 under this chapter, has been willfully violated, in connection with the offering, by:

264 (i) the person filing the registration statement;

265 (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a  
266 similar status or performing similar functions, or any person directly or indirectly controlling or  
267 controlled by the issuer, but only if the person filing the registration statement is directly or  
268 indirectly controlled by or acting for the issuer; or

269 (iii) any underwriter;

270 (c) subject to Subsection (5), the security registered or sought to be registered is the  
271 subject of an administrative stop order or similar order, or a permanent or temporary injunction  
272 of any court of competent jurisdiction entered under any other federal or state act applicable to  
273 the offering; [~~except that the division may not commence agency action against an effective~~  
274 ~~registration statement under this subsection more than one year from the date of the order or~~  
275 ~~injunction relied on, and it may not enter an order under this subsection on the basis of an order~~

276 ~~or injunction entered under the securities act of any other state unless that order or injunction~~  
277 ~~was based on facts that would currently constitute a ground for a stop order under this section;]~~

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

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

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

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

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

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

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

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

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

301 (5) (a) The division may not commence agency action against an effective registration  
302 statement under Subsection (1)(c) more than one year from the date on which the order or  
303 injunction relied on to commence the agency action is entered.

304 (b) The division may not enter an order under Subsection (1)(c) on the basis of an order  
305 or injunction entered under the securities act of any other state unless that order or injunction is  
306 issued on the basis of facts that would constitute a ground for a stop order under this section on

307 the day on which the order is issued under Subsection (1)(c).

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

309 **61-1-14. Exemptions.**

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

311 (a) any security, including a revenue obligation, issued or guaranteed by the United  
312 States, any state, any political subdivision of a state, or any agency or corporate or other  
313 instrumentality of one or more of the foregoing, or any certificate of deposit for any of the  
314 foregoing;

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

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

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

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

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

334 (g) (i) any security listed on the National Association of Securities Dealers Automated  
335 Quotation National Market System, the New York Stock Exchange, the American Stock  
336 Exchange, or on any other stock exchange or medium approved by the division, except that the  
337 director may at any time suspend or revoke this exemption for any particular stock exchange,

338 medium, security, or securities under Subsection (4);

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

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

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

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

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

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

355           (ii) either:

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

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

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

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

363           (i) (A) the issuer is advised by an investment adviser that is a depository institution  
364 exempt from registration under the Investment Advisers Act of 1940 or that is currently  
365 registered as an investment adviser, and has been registered, or is affiliated with an adviser that  
366 has been registered, as an investment adviser under the Investment Advisers Act of 1940 for at  
367 least three years next preceding an offer or sale of a security claimed to be exempt under this  
368 Subsection (1)(k); and

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

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

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

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

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

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

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

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

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

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

394 (b) any nonissuer transaction in an outstanding security, if as provided by rule of the  
395 division:

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

399 (ii) the security has a fixed maturity or a fixed interest or dividend provision and there

400 has been no default during the current fiscal year or within the three preceding fiscal years, or  
401 during the existence of the issuer and any predecessors if less than three years, in the payment  
402 of principal, interest, or dividends on the security;

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

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

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

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

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

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

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

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

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

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

425 (j) any transaction pursuant to an offer by an issuer of its securities to its existing  
426 securities holders, if:

427 (i) no commission or other remuneration, other than a standby commission is paid or  
428 given directly or indirectly for soliciting any security holders in this state and the transaction  
429 constitutes [either]:

430 (A) the conversion of convertible securities;

- 431 (B) the exercise of nontransferable rights or warrants;
- 432 (C) the exercise of transferable rights or warrants if the rights or warrants are  
433 exercisable not more than 90 days after their issuance; or
- 434 (D) the purchase of securities under a preemptive right; and
- 435 (ii) the exemption created by Subsection (2)(j) is not available for an offer or sale of  
436 securities to existing securities holders who have acquired their securities from the issuer in a  
437 transaction in violation of Section 61-1-7;
- 438 (k) any offer, but not a sale, of a security for which registration statements have been  
439 filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is  
440 in effect and no public proceeding or examination looking toward such an order is pending;
- 441 (l) a distribution of securities as a dividend if the person distributing the dividend is the  
442 issuer of the securities distributed;
- 443 (m) any nonissuer transaction effected by or through a registered broker-dealer where  
444 the broker-dealer or issuer files with the division, and the broker-dealer maintains in [~~his~~] the  
445 broker-dealer's records, and makes reasonably available upon request to any person expressing  
446 an interest in a proposed transaction in the security with the broker-dealer information  
447 prescribed by the division under its rules;
- 448 (n) any transactions not involving a public offering;
- 449 (o) any offer or sale of "condominium units" or "time period units" as those terms are  
450 defined in [~~the~~] Title 57, Chapter 8, Condominium Ownership Act, whether or not to be sold  
451 by installment contract, if the [~~provisions of the Condominium Ownership Act~~] following are  
452 complied with:
- 453 (i) Title 57, Chapter 8, Condominium Ownership Act, or if the units are located in  
454 another state, the condominium act of that state[~~, the~~];
- 455 (ii) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act[~~, the~~];
- 456 (iii) Title 57, Chapter 19, Timeshare and Camp Resort Act[~~;~~]; and [~~the Utah~~]
- 457 (iv) Title 70C, Utah [Uniform] Consumer Credit Code[~~are complied with~~];
- 458 (p) any transaction or series of transactions involving a merger, consolidation,  
459 reorganization, recapitalization, reclassification, or sale of assets, if the consideration for  
460 which, in whole or in part, is the issuance of securities of a person or persons, and if:
- 461 (i) the transaction or series of transactions is incident to a vote of the securities holders

462 of each person involved or by written consent or resolution of some or all of the securities  
463 holders of each person involved;

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

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

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

468 (C) the controlling agreement among securities holders;

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

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

476 (C) all persons involved in the transaction are exempt from filing under Section  
477 12(g)(1) of the Securities Exchange Act of 1934, and file with the division such proxy or  
478 informational material as the division requires by rule;

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

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

485 (q) subject to Subsection (6), any transaction pursuant to an offer to sell securities of an  
486 issuer if:

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

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

491 (iii) no commission or other similar compensation is given, directly or indirectly, to a  
492 person other than a broker-dealer or agent licensed under this chapter, for soliciting a



493 prospective purchaser in this state;

494 (iv) the seller reasonably believes that all the purchasers in this state are purchasing for  
495 investment; and

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

498 [~~(vi) the director, as to a security or transaction, or a type of security or transaction,  
499 may withdraw or further condition this exemption or waive one or more of the conditions in  
500 Subsection(q);~~]

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

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

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

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

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

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

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

517 (ii) any provision of this chapter, or any rule, order, or condition lawfully imposed  
518 under this chapter [~~has been~~] is willfully violated in connection with the offering or exemption  
519 by:

520 (A) the person filing any application for or notice of exemption;

521 (B) the issuer, any partner, officer, or director of the issuer, any person occupying a  
522 similar status or performing similar functions, or any person directly or indirectly controlling or  
523 controlled by the issuer, but only if the person filing the application for or notice of exemption

524 is directly or indirectly controlled by or acting for the issuer; or  
525 (C) any underwriter;  
526 (iii) subject to Subsection (7), the security for which the exemption is sought is the  
527 subject of an administrative stop order or similar order, or a permanent or temporary injunction  
528 or any court of competent jurisdiction entered under any other federal or state act applicable to  
529 the offering or exemption; [the division may not institute a proceeding against an effective  
530 exemption under this subsection more than one year from the date of the order or injunction  
531 relied on, and it may not enter an order under this subsection on the basis of an order or  
532 injunction entered under any other state act unless that order or injunction was based on facts  
533 that would currently constitute a ground for a stop order under this section;]  
534 (iv) the issuer's enterprise or method of business includes or would include activities  
535 that are illegal where performed;  
536 (v) the offering [~~has worked, has tended~~] works, tends to work, or would operate to  
537 work a fraud upon purchasers;  
538 (vi) the offering [~~has been~~] is or was made with unreasonable amounts of underwriters'  
539 and sellers' discounts, commissions, or other compensation, or promoters' profits or  
540 participation, or unreasonable amounts or kinds of options;  
541 (vii) an exemption is sought for a security or transaction [~~which~~] that is not eligible for  
542 the exemption; or  
543 (viii) the proper filing fee, if required, [~~has~~] is not [~~been~~] paid.  
544 (5) (a) [~~No~~] An order under Subsection (4) may not operate retroactively.  
545 (b) [~~No~~] A person may not be considered to have violated Section 61-1-7 or 61-1-15 by  
546 reason of any offer or sale effected after the entry of an order under [~~this~~] Subsection (4) if [~~he~~]  
547 the person sustains the burden of proof that [~~he~~] the person did not know, and in the exercise of  
548 reasonable care could not have known, of the order.  
549 (6) The director, as to a security or transaction, or a type of security or transaction,  
550 may:  
551 (a) withdraw or further condition the exemption described in Subsection (2)(q); or  
552 (b) waive one or more of the conditions described in Subsection (2)(q).  
553 (7) (a) The division may not institute a proceeding against an effective exemption  
554 under Subsection (4)(b)(iii) more than one year from the day on which the order or injunction

555 relied on in instituting the proceeding is entered.

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

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

561 **61-1-15.5. Federal covered securities.**

562 (1) The division by rule or order may require the filing of any of the following  
563 documents with respect to a covered security under Section 18(b)(2) of the Securities Act of  
564 1933:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

634            (b) [~~No~~] A member of the board may not serve more than two consecutive terms.

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

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

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

644            (b) [~~All members~~] A member of the board shall serve until [~~their respective successors~~  
645 ~~are~~] the member's successor is appointed and qualified.

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

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

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

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

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

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

663 **61-1-18.6. Procedures -- Adjudicative proceedings.**

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

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

669 **61-1-18.7. Funding of securities investor education and training.**

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

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

677 (3) The special revenue fund may include any fines collected by the division after July  
678 1, 1989, pursuant to voluntary settlements or administrative orders.

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

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

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

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

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

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

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

693 (c) investigation and litigation.

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

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

697 **61-1-19. Investigations authorized.**

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

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

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

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

- 710 appointed under Section 61-1-6 may:
- 711 (a) administer [~~oaths and affirmations~~] an oath or affirmation;
- 712 (b) subpoena [~~witnesses~~] a witness and compel [~~their~~] the attendance of a witness;
- 713 (c) take evidence; and
- 714 (d) require the production of any books, papers, correspondence, memoranda,
- 715 agreements, or other documents or records relevant or material to the investigation.

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**Legislative Review Note**  
**as of 8-9-07 1:56 PM**

**Office of Legislative Research and General Counsel**



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**H.B. 83 - Securities Amendments**

**Fiscal Note**

2008 General Session  
State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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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.

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