

UTAH UNIFORM SECURITIES ACT ENFORCEMENT

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Benjamin M. McAdams

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Uniform Securities Act to address enforcement.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ requires consideration of certain factors in specific enforcement actions;
- ▶ provides for criminal penalty enhancements under certain circumstances;
- ▶ addresses an affirmative defense; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

61-1-13, as last amended by Laws of Utah 2010, Chapter 379

61-1-20, as last amended by Laws of Utah 2009, Chapter 351

61-1-21, as last amended by Laws of Utah 2009, Chapters 347 and 351

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



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

29 **61-1-13. Definitions.**

30 (1) As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (A) an agent;

55 (B) an issuer;

56 (C) a depository institution or trust company;

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

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

- 59 (Aa) the issuers of the securities involved in the transactions;
- 60 (Bb) other broker-dealers;
- 61 (Cc) a depository institution, whether acting for itself or as a trustee;
- 62 (Dd) a trust company, whether acting for itself or as a trustee;
- 63 (Ee) an insurance company, whether acting for itself or as a trustee;
- 64 (Ff) an investment company, as defined in the Investment Company Act of 1940,
- 65 whether acting for itself or as a trustee;
- 66 (Gg) a pension or profit-sharing trust, whether acting for itself or as a trustee; or
- 67 (Hh) another financial institution or institutional buyer, whether acting for itself or as a
- 68 trustee; or
- 69 (Ii) during any period of 12 consecutive months the person does not direct more than
- 70 15 offers to sell or buy into this state in any manner to persons other than those specified in
- 71 Subsection (1)(c)(ii)(D)(I), whether or not the offeror or an offeree is then present in this state;
- 72 (E) a general partner who organizes and effects transactions in securities of three or
- 73 fewer limited partnerships, of which the person is the general partner, in any period of 12
- 74 consecutive months;
- 75 (F) a person whose participation in transactions in securities is confined to those
- 76 transactions made by or through a broker-dealer licensed in this state;
- 77 (G) a person who is a principal broker or associate broker licensed in this state and
- 78 who effects transactions in a bond or other evidence of indebtedness secured by a real or chattel
- 79 mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire
- 80 mortgage, deed of trust, or agreement, together with all the bonds or other evidences of
- 81 indebtedness secured thereby, is offered and sold as a unit;
- 82 (H) a person effecting transactions in commodity contracts or commodity options;
- 83 (I) a person described in Subsection (3); or
- 84 (J) other persons as the division, by rule or order, may designate, consistent with the
- 85 public interest and protection of investors, as not within the intent of this Subsection (1)(c).
- 86 (d) "Buy" or "purchase" means a contract for purchase of, contract to buy, or
- 87 acquisition of a security or interest in a security for value.
- 88 (e) "Commission" means the Securities Commission created in Section 61-1-18.5.
- 89 (f) "Commodity" means, except as otherwise specified by the division by rule:

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

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

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

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

98 (v) a foreign currency; and

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

102 (g) (i) "Commodity contract" means an account, agreement, or contract for the
103 purchase or sale, primarily for speculation or investment purposes and not for use or
104 consumption by the offeree or purchaser, of one or more commodities, whether for immediate
105 or subsequent delivery or whether delivery is intended by the parties, and whether characterized
106 as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures
107 contract, installment or margin contract, leverage contract, or otherwise.

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

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

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

119 (h) (i) "Commodity option" means an account, agreement, or contract giving a party to
120 the option the right but not the obligation to purchase or sell one or more commodities or one

121 or more commodity contracts, or both whether characterized as an option, privilege, indemnity,
122 bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

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

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

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

128 (i) "Depository institution" is as defined in Section 7-1-103.

129 (j) "Director" means the director of the division appointed in accordance with Section
130 61-1-18.

131 (k) "Division" means the Division of Securities established by Section 61-1-18.

132 (l) "Executive director" means the executive director of the Department of Commerce.

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

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

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

137 (n) "Federal covered security" means a security that is a covered security under Section
138 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section 18(b) of
139 the Securities Act of 1933.

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

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

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

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

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

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

150 (A) as an integral component of other financially related services, provides the
151 investment advisory services described in Subsection (1)(q)(i) to others for compensation and

152 as part of a business; or

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

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

156 (A) an investment adviser representative;

157 (B) a depository institution or trust company;

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

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

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

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

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

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

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

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

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

178 (B) does any of the following:

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

180 (II) manages accounts or portfolios of clients;

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

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

183 or

184 (V) supervises employees who perform any of the acts described in this Subsection

185 (1)(r)(i)(B).

186 (ii) "Investment adviser representative" does not include a person described in

187 Subsection (3).

188 (s) "Investment contract" includes:

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

191 (ii) an investment by which:

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

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

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

198 (D) the offeree does not receive the right to exercise practical or actual control over the
199 managerial decisions of the enterprise.

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

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

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

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

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

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

212 (iv) With respect to an equipment trust certificate, a conditional sales contract, or
213 similar securities serving the same purpose, "issuer" means the person by whom the equipment

214 or property is to be used.

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

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

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

223 (A) a policy; or

224 (B) the death benefit under a policy.

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

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

228 (x) "Person" means:

229 (i) an individual;

230 (ii) a corporation;

231 (iii) a partnership;

232 (iv) a limited liability company;

233 (v) an association;

234 (vi) a joint-stock company;

235 (vii) a joint venture;

236 (viii) a trust where the interests of the beneficiaries are evidenced by a security;

237 (ix) an unincorporated organization;

238 (x) a government; or

239 (xi) a political subdivision of a government.

240 (y) "Precious metal" means the following, whether in coin, bullion, or other form:

241 (i) silver;

242 (ii) gold;

243 (iii) platinum;

244 (iv) palladium;

- 245 (v) copper; and
- 246 (vi) such other substances as the division may specify by rule.
- 247 (z) "Promoter" means a person who, acting alone or in concert with one or more
- 248 persons, takes initiative in founding or organizing the business or enterprise of a person.
- 249 (aa) (i) Except as provided in Subsection (1)(aa)(ii), "record" means information that
- 250 is:
- 251 (A) inscribed in a tangible medium; or
- 252 (B) (I) stored in an electronic or other medium; and
- 253 (II) retrievable in perceivable form.
- 254 (ii) This Subsection (1)(aa) does not apply when the context requires otherwise,
- 255 including when "record" is used in the following phrases:
- 256 (A) "of record";
- 257 (B) "official record"; or
- 258 (C) "public record."
- 259 (bb) (i) "Sale" or "sell" includes a contract for sale of, contract to sell, or disposition of,
- 260 a security or interest in a security for value.
- 261 (ii) "Offer" or "offer to sell" includes an attempt or offer to dispose of, or solicitation of
- 262 an offer to buy, a security or interest in a security for value.
- 263 (iii) The following are examples of the definitions in Subsection (1)(bb)(i) or (ii):
- 264 (A) a security given or delivered with or as a bonus on account of a purchase of a
- 265 security or any other thing, is part of the subject of the purchase, and is offered and sold for
- 266 value;
- 267 (B) a purported gift of assessable stock is an offer or sale as is each assessment levied
- 268 on the stock;
- 269 (C) an offer or sale of a security that is convertible into, or entitles its holder to acquire
- 270 or subscribe to another security of the same or another issuer is an offer or sale of that security,
- 271 and also an offer of the other security, whether the right to convert or acquire is exercisable
- 272 immediately or in the future;
- 273 (D) a conversion or exchange of one security for another constitutes an offer or sale of
- 274 the security received in a conversion or exchange, and the offer to buy or the purchase of the
- 275 security converted or exchanged;

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

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

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

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

286 (A) a good faith gift;

287 (B) a transfer by death;

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

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

290 (E) a securities split or reverse split.

291 (cc) "Securities Act of 1933," "Securities Exchange Act of 1934," and "Investment
292 Company Act of 1940" mean the federal statutes of those names as amended before or after the
293 effective date of this chapter.

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

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

297 (A) note;

298 (B) stock;

299 (C) treasury stock;

300 (D) bond;

301 (E) debenture;

302 (F) evidence of indebtedness;

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

304 (H) collateral-trust certificate;

305 (I) preorganization certificate or subscription;

306 (J) transferable share;

- 307 (K) investment contract;
- 308 (L) burial certificate or burial contract;
- 309 (M) voting-trust certificate;
- 310 (N) certificate of deposit for a security;
- 311 (O) certificate of interest or participation in an oil, gas, or mining title or lease or in
- 312 payments out of production under such a title or lease;
- 313 (P) commodity contract or commodity option;
- 314 (Q) interest in a limited liability company;
- 315 (R) life settlement interest; or
- 316 (S) in general, an interest or instrument commonly known as a "security," or a
- 317 certificate of interest or participation in, temporary or interim certificate for, receipt for,
- 318 guarantee of, or warrant or right to subscribe to or purchase an item listed in Subsections
- 319 (1)(ee)(i)(A) through (R).
- 320 (ii) "Security" does not include:
- 321 (A) an insurance or endowment policy or annuity contract under which an insurance
- 322 company promises to pay money in a lump sum or periodically for life or some other specified
- 323 period;
- 324 (B) an interest in a limited liability company in which the limited liability company is
- 325 formed as part of an estate plan where all of the members are related by blood or marriage, or
- 326 the person claiming this exception can prove that all of the members are actively engaged in the
- 327 management of the limited liability company; or
- 328 (C) (I) a whole long-term estate in real property;
- 329 (II) an undivided fractionalized long-term estate in real property that consists of 10 or
- 330 fewer owners; or
- 331 (III) an undivided fractionalized long-term estate in real property that consists of more
- 332 than 10 owners if, when the real property estate is subject to a management agreement:
- 333 (Aa) the management agreement permits a simple majority of owners of the real
- 334 property estate to not renew or to terminate the management agreement at the earlier of the end
- 335 of the management agreement's current term, or 180 days after the day on which the owners
- 336 give notice of termination to the manager;
- 337 (Bb) the management agreement prohibits, directly or indirectly, the lending of the

338 proceeds earned from the real property estate or the use or pledge of its assets to a person or
339 entity affiliated with or under common control of the manager; and

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

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

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

348 (gg) (i) "Undivided fractionalized long-term estate" means an ownership interest in real
349 property by two or more persons that is [a]:

350 (A) a tenancy in common; or

351 (B) any other legal form of undivided estate in real property including:

352 (I) a fee estate;

353 (II) a life estate; or

354 (III) other long-term estate.

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

356 (hh) "Undue influence" means that a person uses a relationship or position of authority,
357 trust, or confidence to:

358 (i) exploit the trust, dependence, or fear of another person;

359 (ii) knowingly assist or cause another to exploit the trust, dependence, or fear of
360 another person; or

361 (iii) gain control deceptively over the decision making of another person.

362 (ii) "Vulnerable adult" means an individual whose age or mental or physical
363 impairment substantially affects that individual's ability to:

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

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

366 [~~hh~~] (jj) "Whole long-term estate" means a person owns or persons through joint
367 tenancy own real property through:

368 (i) a fee estate;

369 (ii) a life estate; or

370 (iii) other long-term estate.

371 [~~(ii)~~] (kk) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive
372 of legal holidays listed in Section 63G-1-301.

373 (2) A term not defined in this section shall have the meaning as established by division
374 rule. The meaning of a term neither defined in this section nor by rule of the division shall be
375 the meaning commonly accepted in the business community.

376 (3) (a) This Subsection (3) applies to:

377 (i) the offer or sale of a real property estate exempted from the definition of security
378 under Subsection (1)(ee)(ii)(C); or

379 (ii) the offer or sale of an undivided fractionalized long-term estate that is the offer of a
380 security.

381 (b) A person who, directly or indirectly receives compensation in connection with the
382 offer or sale as provided in this Subsection (3) of a real property estate is not an agent,
383 broker-dealer, investment adviser, or investment adviser representative under this chapter if
384 that person is licensed under Chapter 2f, Real Estate Licensing and Practices Act, as:

385 (i) a principal broker;

386 (ii) an associate broker; or

387 (iii) a sales agent.

388 (4) The list of real property estates excluded from the definition of securities under
389 Subsection (1)(ee)(ii)(C) is not an exclusive list of real property estates or interests that are not
390 a security.

391 Section 2. Section **61-1-20** is amended to read:

392 **61-1-20. Enforcement.**

393 (1) Whenever it appears to the director that a person has engaged, is engaging, or is
394 about to engage in an act or practice constituting a violation of this chapter or a rule or order
395 under this chapter, in addition to specific powers granted in this chapter:

396 [~~(H)~~] (a) the director may issue an order directing the person to appear before the
397 commission and show cause why an order should not be issued directing the person to cease
398 and desist from engaging in the act or practice, or doing an act in furtherance of the activity;

399 (b) the order to show cause shall state the reasons for the order and the date of the

400 hearing;

401 (c) the director shall promptly serve a copy of the order to show cause upon a person
402 named in the order;

403 (d) the commission shall hold a hearing on the order to show cause no sooner than 10
404 business days after the order is issued;

405 (e) after a hearing, the commission may issue an order to cease and desist from
406 engaging in an act or practice constituting a violation of this chapter or a rule or order under
407 this chapter;

408 (f) the commission may impose a fine;

409 (g) the commission may bar or suspend that person from associating with a licensed
410 broker-dealer or investment adviser in this state; and

411 (h) the commission may impose a combination of sanctions in Subsections (1)(e)
412 through (g).

413 (2) (a) The director may bring an action in the appropriate district court of this state or
414 the appropriate court of another state to enjoin an act or practice and to enforce compliance
415 with this chapter or a rule or order under this chapter[;].

416 (b) Upon a proper showing in an action brought under this section, the court may:

417 (i) issue a permanent or temporary, prohibitory or mandatory injunction;

418 (ii) issue a restraining order or writ of mandamus;

419 (iii) enter a declaratory judgment;

420 (iv) appoint a receiver or conservator for the defendant or the defendant's assets;

421 (v) order disgorgement;

422 (vi) order rescission;

423 (vii) order restitution;

424 (viii) impose a fine of not more than \$10,000 for each violation of the chapter; and

425 (ix) enter any other relief the court considers just[; ~~and~~].

426 (c) The court may not require the division to post a bond in an action brought under
427 this Subsection (2).

428 (3) An order issued under Subsection (1) shall be accompanied by written findings of
429 fact and conclusions of law.

430 (4) When determining the severity of a sanction to be imposed under this section, the

431 commission or director shall consider whether:

432 (a) the person against whom the sanction is to be imposed exercised undue influence
433 by using a relationship or position of authority, trust, or confidence that:

434 (i) is unrelated to a relationship created in the ordinary course of making investments
435 regulated under this chapter, including being unrelated to a relationship created because a
436 person provides services under a license issued under this chapter; and

437 (ii) results in the person having:

438 (A) a perception of heightened credibility, personal trustworthiness, or dependability;

439 or

440 (B) special access to the person's financial circumstances; or

441 (b) the person against whom the sanction is imposed under this section knows or
442 should know that an investor in the investment that is the grounds for the sanction is a
443 vulnerable adult.

444 Section 3. Section **61-1-21** is amended to read:

445 **61-1-21. Penalties for violations.**

446 (1) A person is guilty of a third degree felony who willfully violates:

447 (a) a provision of this chapter except Sections 61-1-1 and 61-1-16;

448 (b) an order issued under this chapter; or

449 (c) Section 61-1-16 knowing the statement made is false or misleading in a material
450 respect.

451 (2) A person who willfully violates Section 61-1-1:

452 (a) is guilty of a third degree felony if, at the time the crime was committed, the
453 property, money, or thing unlawfully obtained or sought to be obtained was worth less than
454 \$10,000;

455 (b) is guilty of a second degree felony if:

456 (i) at the time the crime was committed, the property, money, or thing unlawfully
457 obtained or sought to be obtained was worth \$10,000 or more; or

458 (ii) (A) at the time the crime was committed, the property, money, or thing unlawfully
459 obtained or sought to be obtained was worth less than \$10,000; and

460 (B) in connection with that violation, the violator knowingly accepted any money
461 representing:

- 462 (I) equity in a person's primary residence;
- 463 (II) a withdrawal from an individual retirement account; [or]
- 464 (III) a withdrawal from a qualified retirement plan as defined in the Internal Revenue
- 465 Code; [or]
- 466 (IV) an investment by a person over whom the violator exercises undue influence by
- 467 using a relationship or position of authority, trust, or confidence, that is unrelated to a
- 468 relationship created in the ordinary course of making investments regulated under this chapter,
- 469 including being unrelated to the relationship created because a person provides services under a
- 470 license issued under this chapter, and results in the violator having a perception of heightened
- 471 credibility, personal trustworthiness, or dependability, or having special access to the person's
- 472 financial circumstances; or
- 473 (V) an investment by a person that the violator knows or should know is a vulnerable
- 474 adult; or
- 475 (c) is guilty of [~~an enhanced~~] a second degree felony punishable by imprisonment for
- 476 an indeterminate term of not less than three years or more than 15 years if:
- 477 (i) at the time the crime was committed, the property, money, or thing unlawfully
- 478 obtained or sought to be obtained was worth \$10,000 or more; and
- 479 (ii) in connection with that violation, the violator knowingly accepted any money
- 480 representing:
- 481 (A) equity in a person's primary residence;
- 482 (B) a withdrawal from an individual retirement account; [or]
- 483 (C) a withdrawal from a qualified retirement plan as defined in the Internal Revenue
- 484 Code[-];
- 485 (D) an investment by a person over whom the violator exercises undue influence by
- 486 using a relationship or position of authority, trust, or confidence, that is unrelated to a
- 487 relationship created in the ordinary course of making investments regulated under this chapter,
- 488 including being unrelated to the relationship created because a person provides services under a
- 489 license issued under this chapter, and results in the violator having a perception of heightened
- 490 credibility, personal trustworthiness, or dependability, or having special access to the person's
- 491 financial circumstances; or
- 492 (E) an investment by a person that the violator knows or should know is a vulnerable

493 adult.

494 (3) A person [~~may not be imprisoned for the violation of~~] has an affirmative defense
495 under this section for a claim that the person violated an order issued under this chapter if the
496 person proves that the person had no knowledge of the order.

497 (4) In addition to any other penalty for a criminal violation of this chapter, the
498 sentencing judge may impose a penalty or remedy provided for in Subsection 61-1-20(2)(b).

Legislative Review Note
as of 12-27-10 9:45 AM

Office of Legislative Research and General Counsel