

Representative Brian M. Greene proposes the following substitute bill:

SECURITIES EXEMPTION AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian M. Greene

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies securities provisions to address exemptions from certain registration and disclosure requirements.

Highlighted Provisions:

This bill:

- ▶ enacts a new intrastate exemption from registration and disclosure requirements;
- ▶ addresses intrastate portals or websites; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

61-1-14, as last amended by Laws of Utah 2010, Chapter 218

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

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



26 **61-1-14. Exemptions.**

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

28 (a) a security, including a revenue obligation, issued or guaranteed by the United
29 States, a state, a political subdivision of a state, or an agency or corporate or other
30 instrumentality of one or more of the foregoing, or a certificate of deposit for any of the
31 foregoing;32 (b) a security issued or guaranteed by Canada, a Canadian province, a political
33 subdivision of a Canadian province, an agency or corporate or other instrumentality of one or
34 more of the foregoing, or another foreign government with which the United States currently
35 maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer
36 or guarantor;37 (c) a security issued by and representing an interest in or a debt of, or guaranteed by, a
38 depository institution organized under the laws of the United States, or a depository institution
39 or trust company supervised under the laws of a state;40 (d) a security issued or guaranteed by a public utility or a security regulated in respect
41 of its rates or in its issuance by a governmental authority of the United States, a state, Canada,
42 or a Canadian province;43 (e) (i) a federal covered security specified in the Securities Act of 1933, Section
44 18(b)(1), 15 U.S.C. [Section] Sec. 77r(b)(1), or by rule adopted under that provision;45 (ii) a security listed or approved for listing on another securities market specified by
46 rule under this chapter;47 (iii) any of the following with respect to a security described in Subsection (1)(e)(i) or
48 (ii):

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

50 (B) a warrant; or

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

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

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

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

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

60 (vi) an option or a derivative security designated by the Securities and Exchange
61 Commission under Securities Exchange Act of 1934, Section 9(b), 15 U.S.C. [~~Section~~] Sec.
62 78i(b);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

100 (i) a depository institution;

101 (ii) a trust company;

102 (iii) an insurance company;

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

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

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

106 (vii) a broker-dealer;

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

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

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

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

113 and

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

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

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

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

- 150 (iii) Title 57, Chapter 19, Timeshare and Camp Resort Act; and
151 (iv) Title 70C, Utah Consumer Credit Code;
- 152 (p) a transaction or series of transactions involving a merger, consolidation,
153 reorganization, recapitalization, reclassification, or sale of assets, if the consideration for
154 which, in whole or in part, is the issuance of securities of a person or persons, and if:
- 155 (i) the transaction or series of transactions is incident to a vote of the securities holders
156 of each person involved or by written consent or resolution of some or all of the securities
157 holders of each person involved;
- 158 (ii) the vote, consent, or resolution is given under a provision in:
- 159 (A) the applicable corporate statute or other controlling statute;
- 160 (B) the controlling articles of incorporation, trust indenture, deed of trust, or
161 partnership agreement; or
- 162 (C) the controlling agreement among securities holders;
- 163 (iii) (A) one person involved in the transaction is required to file proxy or
164 informational materials under Section 14(a) or (c) of the Securities Exchange Act of 1934 or
165 Section 20 of the Investment Company Act of 1940 and has so filed;
- 166 (B) one person involved in the transaction is an insurance company that is exempt from
167 filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934, and has filed proxy or
168 informational materials with the appropriate regulatory agency or official of its domiciliary
169 state; or
- 170 (C) all persons involved in the transaction are exempt from filing under Section
171 12(g)(1) of the Securities Exchange Act of 1934, and file with the division such proxy or
172 informational material as the division requires by rule;
- 173 (iv) the proxy or informational material is filed with the division and distributed to all
174 securities holders entitled to vote in the transaction or series of transactions at least 10 working
175 days prior to any necessary vote by the securities holders or action on any necessary consent or
176 resolution; and
- 177 (v) the division does not, by order, deny or revoke the exemption within 10 working
178 days after filing of the proxy or informational materials;
- 179 (q) subject to Subsection (7), a transaction pursuant to an offer to sell securities of an
180 issuer if:

- 181 (i) the transaction is part of an issue in which there are not more than 15 purchasers in
182 this state, other than those designated in Subsection (2)(h), during any 12 consecutive months;
- 183 (ii) no general solicitation or general advertising is used in connection with the offer to
184 sell or sale of the securities;
- 185 (iii) no commission or other similar compensation is given, directly or indirectly, to a
186 person other than a broker-dealer or agent licensed under this chapter, for soliciting a
187 prospective purchaser in this state;
- 188 (iv) the seller reasonably believes that all the purchasers in this state are purchasing for
189 investment; and
- 190 (v) the transaction is part of an aggregate offering that does not exceed \$1,000,000, or a
191 greater amount as prescribed by a division rule, during any 12 consecutive months;
- 192 (r) a transaction involving a commodity contract or commodity option;
- 193 (s) a transaction in a security, whether or not the security or transaction is otherwise
194 exempt if:
- 195 (i) the transaction is:
- 196 (A) in exchange for one or more outstanding securities, claims, or property interests; or
197 (B) partly for cash and partly in exchange for one or more outstanding securities,
198 claims, or property interests; and
- 199 (ii) the terms and conditions are approved by the director after a hearing under Section
200 [61-1-11.1](#);
- 201 (t) a transaction incident to a judicially approved reorganization in which a security is
202 issued:
- 203 (i) in exchange for one or more outstanding securities, claims, or property interests; or
204 (ii) partly for cash and partly in exchange for one or more outstanding securities,
205 claims, or property interests;
- 206 (u) a nonissuer transaction by a federal covered investment adviser with investments
207 under management in excess of \$100,000,000 acting in the exercise of discretionary authority
208 in a signed record for the account of others; [~~and~~]
- 209 (v) a transaction as to which the division finds that registration is not necessary or
210 appropriate for the protection of investors[~~;~~]; and
- 211 (w) a transaction pursuant to an offer to sell securities of an issuer if:

212 (i) the transaction is part of an issue in which the issuer does not accept more than
213 \$5,000 from a non-accredited investor, and has no limit for an accredited investor, as defined
214 by Rule 501 of Securities Exchange Commission Regulation D, 17 C.F.R. 230.501, except the
215 total limit under Subsection (2)(w)(v);

216 (ii) as part of the transaction, the issuer may offer, advertise, solicit, and sell the
217 security through the issuer's own efforts, the efforts of its owners, members, officers,
218 employees, and affiliates and may advertise through any medium, including television, radio,
219 newspaper, or the issuer's own or third party websites or portals, provided that the
220 advertisement shall state in clear language a notice that the offer, advertisement, solicitation,
221 and sale is intended only for residents of this state;

222 (iii) no commission or compensation based on the offering size or dollar amount of the
223 transaction is given, directly or indirectly, to a person other than a broker-dealer or agent
224 licensed under this chapter;

225 (iv) the seller reasonably believes that all the purchasers in this state are purchasing the
226 security for investment purposes;

227 (v) the sum of all cash and other consideration to be received for sales of the securities
228 in a 12-month period does not exceed \$2,000,000;

229 (vi) the transaction meets the requirements of Section 3(a)(11) of the Securities Act of
230 1933, 15 U.S.C. Sec. 77c(a)(11);

231 (vii) all purchasers and offerees are residents of the state;

232 (viii) the issuer provides the following disclosures to a prospective purchaser of the
233 security:

234 (A) a description of the issuer's company, its entity type, and the address and phone
235 number of the issuer's principal office;

236 (B) the identity of the executive officers, directors, managing members, and other
237 persons occupying a similar status or performing similar functions in the name of and on behalf
238 of the issuer;

239 (C) the terms and conditions of the securities being offered, any outstanding securities
240 of the company, the percentage ownership of the company represented by the offered securities
241 or the valuation of the company implied by the price of the offered securities, the price per
242 share, unit, or interest of the securities being offered, the general proposed use of the proceeds

243 of the offering, the reporting to be provided to purchasers, any restrictions on the transfer of the
244 securities being offered, and any anticipated future issuance of securities that may dilute the
245 value of the securities being offered;

246 (D) a description of any litigation, legal proceedings, or pending regulatory action
247 involving the issuer or the issuer's management;

248 (E) whether the issuer or any person affiliated with the issuer or offering is subject to
249 disqualification by rule contained in the Securities Act of 1933, 17 C.F.R. 230.262;

250 (F) whether the issuer has been in business less than one year and does not have
251 financial reports, or if the issuer has been in business for at least a year and is seeking through
252 the sales of securities under this Subsection (2)(w):

253 (I) an amount that is less than \$500,000, the issuer shall provide a compilation
254 financial statement;

255 (II) an amount equal to or greater than \$500,000, but less than \$1,000,001 the issuer
256 shall provide a reviewed financial statement; or

257 (III) an amount equal to or in excess of \$1,000,001, the issuer shall provide an audited
258 financial statement;

259 (G) a narrative of any material or significant risk factors that might have a negative
260 effect on the securities being offered that includes the following statement: "In making an
261 investment decision, purchasers must rely on their own examination of the issuer and the terms
262 of the offering, including the merits and risks involved. These securities have not been
263 registered under federal or state law, nor have these securities been recommended or approved
264 by any federal or state regulatory authority. Furthermore, no government authority has
265 confirmed the accuracy or determined the adequacy of any disclosures pertaining to these
266 securities."; and

267 (H) a description of the business plan and the intended use of the offering proceeds,
268 including the maximum amount of the proceeds that will be used for compensation to any
269 owner, executive officer, director, managing member, or other person occupying a similar
270 status or performing similar functions on behalf of the issuer, and consideration being paid for
271 the purpose of conducting the offering and sale of the securities; and

272 (ix) the issuer of the securities:

273 (A) is a business entity organized under the laws of this state and authorized to do

274 business in the state;

275 (B) is not an investment company, as defined in the Investment Company Act of 1940,
276 either before or as a result of the offering;

277 (C) not less than 10 days before commencement of any solicitation or general
278 advertising of an offering of securities, files a one-page notification form created by the
279 division that is restricted to a description of the company, its entity type, the address and phone
280 number of its principal office, the identity of the executive officers, directors, managing
281 members, and other persons occupying a similar status or performing similar functions in the
282 name of and on behalf of the issuer, and the dollar amount of the offering;

283 (D) not less than 10 days before the commencement of any solicitation or general
284 advertising of an offering of securities, and notwithstanding Section [61-1-18.4](#), pays a filing fee
285 to the division of \$120; and

286 (E) segregates the cash and other consideration received from sales of securities under
287 this Subsection (2)(w) from other revenue of the issuer and accounts for the consideration
288 using generally accepted accounting procedures.

289 (3) A person filing an exemption notice or application shall pay a filing fee as
290 determined under Section [61-1-18.4](#).

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

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

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

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

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

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

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

309 (C) an underwriter;

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

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

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

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

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

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

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

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

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

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

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

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

335 (8) (a) The director may not institute a proceeding against an effective exemption under

336 Subsection (4)(b) more than one year from the day on which the order or injunction on which
337 the director relies is issued.

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

342 (9) An intrastate portal or website described in Subsection (2)(w) through which an
343 offer or sale of securities under Subsection (2)(w) is made is not subject to the broker-dealer,
344 investment advisor, or investment adviser representative registration requirements under this
345 chapter if the intrastate portal or website:

346 (a) does not offer investment advice or recommendations;

347 (b) is a business entity organized under the laws of Utah and authorized to do business
348 in the state;

349 (c) acts as a conduit for money invested by purchasers of issuer securities, and does not
350 hold, manage, or possess purchaser money or securities;

351 (d) does not receive compensation based on the offering size or dollar amount of the
352 transaction, but may charge the issuer and receive a reasonable fee for services such as the
353 posting and processing of the offering, vetting an issuer, advertising the website, verifying
354 resident status of a potential purchaser, processing transactions, or other similar acts;

355 (e) files a simple one-page notification form with the division before advertising or
356 posting its first offering that is a one-time filing and is restricted to a description of the
357 company, its entity type, the address and phone number of its principal office, the identity of
358 the executive officers, directors, managing members, and other persons occupying similar
359 status or performing similar functions in the name of and on behalf of the company;

360 (f) notwithstanding Section [61-1-18.4](#), pays a one-time filing fee of \$250 to the
361 division before advertising or posting its first offering; and

362 (g) prominently displays on the intrastate portal or website in clear language a notice to
363 potential purchasers that the intrastate portal or website is intended only for residents of this
364 state.

365