

# HB0050S01 compared with HB0050

~~{deleted text}~~ shows text that was in HB0050 but was deleted in HB0050S01.

inserted text shows text that was not in HB0050 but was inserted into HB0050S01.

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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: \_\_\_\_\_

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### LONG TITLE

#### General Description:

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

#### Highlighted Provisions:

This bill:

- ▶ ~~{modifies an existing exemption to provide for an}~~ enacts a new intrastate exemption from registration and disclosure requirements;

~~{~~ ▶ ~~modifies the division's authority with regard to the exemption;~~

- ▶ addresses intrastate portals or websites; and
- ▶ makes technical changes.

#### Money Appropriated in this Bill:

None

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### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

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

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- (A) a put or a call option contract;
- (B) a warrant; or
- (C) a subscription right on or with respect to the security;
- (iv) an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency that is:
  - (A) registered under the Securities Exchange Act of 1934; and
  - (B) listed or designated for trading on a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934;
  - (v) an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or
  - (vi) an option or a derivative security designated by the Securities and Exchange Commission under Securities Exchange Act of 1934, Section 9(b), 15 U.S.C. [~~Section~~] Sec. 78i(b);
  - (f) (i) a security issued by a person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association; and
  - (ii) a security issued by a corporation organized under Title 3, Chapter 1, General Provisions Relating to Agricultural Cooperative Associations, and a security issued by a corporation to which that chapter is made applicable by compliance with Section 3-1-21;
  - (g) an investment contract issued in connection with an employees' stock purchase, option, savings, pension, profit-sharing, or similar benefit plan;
  - (h) a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940; and
  - (i) a security as to which the director, by rule or order, finds that registration is not necessary or appropriate for the protection of investors.
- (2) The following transactions are exempt from Sections 61-1-7 and 61-1-15:
  - (a) an isolated nonissuer transaction, whether effected through a broker-dealer or not;
  - (b) a nonissuer transaction in an outstanding security, if as provided by rule of the division:
    - (i) information about the issuer of the security as required by the division is currently

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listed in a securities manual recognized by the division, and the listing is based upon such information as required by rule of the division; or

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

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

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

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

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

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

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

(i) a depository institution;

(ii) a trust company;

(iii) an insurance company;

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

(v) a pension or profit-sharing trust;

(vi) other financial institution or institutional investor; or

(vii) a broker-dealer;

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

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

(ii) the number of subscribers acquiring a legal or beneficial interest therein does not

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exceed 10;

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

and

(iv) no payment is made by a subscriber;

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

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

(ii) the transaction constitutes:

(A) the conversion of convertible securities;

(B) the exercise of nontransferable rights or warrants;

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

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

(E) a transaction other than one specified in Subsections (2)(j)(ii)(A) through (D) if:

(I) the division is furnished with:

(Aa) a general description of the transaction;

(Bb) the disclosure materials to be furnished to the issuer's securities holders in the transaction; and

(Cc) a non-refundable fee; and

(II) the division does not, by order, deny or revoke the exemption within 20 working days after the day on which the filing required by Subsection (2)(j)(ii)(E)(I) is complete;

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

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

(m) a nonissuer transaction effected by or through a registered broker-dealer where the broker-dealer or issuer files with the division, and the broker-dealer maintains in the broker-dealer's records, and makes reasonably available upon request to a person expressing an interest in a proposed transaction in the security with the broker-dealer information prescribed

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by the division under its rules;

(n) a transaction not involving a public offering;

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

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

(ii) Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

(iii) Title 57, Chapter 19, Timeshare and Camp Resort Act; and

(iv) Title 70C, Utah Consumer Credit Code;

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

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

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

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

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

(C) the controlling agreement among securities holders;

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

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

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

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

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

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

(i) the transaction is part of an issue in which ~~{ }~~there are not more than 15 purchasers in this state, other than those designated in Subsection (2)(h), during any 12 consecutive months; ~~{ } the issuer does not accept more than \$5,000 from a non-accredited investor, and has no limit for an accredited investor, as defined by Rule 501 of Securities Exchange Commission Regulation D, 17 C.F.R. 230.501, except the total limit under Subsection (2)(q)(v);~~

~~\_\_\_\_\_ { }~~

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

~~\_\_\_\_\_ (ii) as part of the transaction, the issuer may offer, advertise, solicit, and sell the security through the issuer's own efforts, the efforts of its owners, members, officers, employees, and affiliates and may advertise through any medium, including television, radio, newspaper, or the issuer's own or third party websites or portals;~~

~~\_\_\_\_\_ }~~

(iii) no commission or ~~{ }~~other similar ~~{ }~~ compensation ~~{ based on the offering size or dollar amount of the transaction }~~ is given, directly or indirectly, to a person other than a broker-dealer or agent licensed under this chapter ~~{ }~~, for soliciting a prospective purchaser in this state ~~{ }~~;

(iv) the seller reasonably believes that all the purchasers in this state are purchasing ~~{ the security }~~ for investment ~~{ purposes }~~; ~~{ }~~ and ~~{ }~~

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

~~{ }~~

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

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

(i) the transaction is:

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

(B) partly for cash and partly in exchange for one or more outstanding securities,

claims, or property interests; and

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

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

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

(ii) partly for cash and partly in exchange for one or more outstanding securities,

claims, or property interests;

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

(v) a transaction as to which the division finds that registration is not necessary or appropriate for the protection of investors[-]; and

(w) a transaction pursuant to an offer to sell securities of an issuer if:

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

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

(iii) no commission or compensation based on the offering size or dollar amount of the transaction is given, directly or indirectly, to a person other than a broker-dealer or agent



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licensed under this chapter:

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

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

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

(vii) ~~the purchaser is a resident~~ all purchasers and offerees are residents of the state:

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

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

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

(C) the terms and conditions of the securities being offered, any outstanding securities of the company, the percentage ownership of the company represented by the offered securities or the valuation of the company implied by the price of the offered securities, the price per share, unit, or interest of the securities being offered, the general proposed use of the proceeds of the offering, the reporting to be provided to purchasers, any restrictions on the transfer of the securities being offered, and any anticipated future issuance of securities that may dilute the value of the securities being offered:

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

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

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

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

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

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

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

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

(ix) the issuer of the securities:

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

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

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

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

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~~{(r) a transaction involving a commodity contract or commodity option;~~  
~~—— (s) a transaction in a security, whether or not the security or transaction is otherwise exempt if:~~  
~~—— (i) the transaction is:~~  
~~—— (A) in exchange for one or more outstanding securities, claims, or property interests; or~~  
~~—— (B) partly for cash and partly in exchange for one or more outstanding securities, claims, or property interests; and~~  
~~—— (ii) the terms and conditions are approved by the director after a hearing under Section 61-1-11.1;~~  
~~—— (t) a transaction incident to a judicially approved reorganization in which a security is issued:~~  
~~—— (i) in exchange for one or more outstanding securities, claims, or property interests; or~~  
~~—— (ii) partly for cash and partly in exchange for one or more outstanding securities, claims, or property interests;~~  
~~—— (u) a nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others; and~~  
~~—— (v) a transaction as to which the division finds that registration is not necessary or appropriate for the protection of investors.}~~ (E) segregates the cash and other consideration received from sales of securities under this Subsection (2)(w) from other revenue of the issuer and accounts for the consideration using generally accepted accounting procedures.

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

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

(a) a specific security, transaction, or series of transactions; or  
(b) a person or issuer, an affiliate or successor to a person or issuer, or an entity subsequently organized by or on behalf of a person or issuer generally and may impose a fine if the director finds that the order is in the public interest and that:

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

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

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

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

(C) an underwriter;

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

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

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

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

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

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

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

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

(6) The exemption created by Subsection (2)(j) is not available for an offer or sale of a

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security to an existing securities holder who has acquired the holder's security from the issuer in a transaction in violation of Section 61-1-7.

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

(a) withdraw or further condition the exemption described in Subsection (2)(q); or ~~{}: {}~~

(b) ~~{}: {}~~ waive one or more of the conditions described in Subsection (2)(q).

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

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

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

(a) does not offer investment advice or recommendations;

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

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

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

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

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

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

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**Legislative Review Note**

~~as of 11-13-14 2:36 PM~~

~~Office of Legislative Research and General Counsel~~