

SECURITIES AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rich Cunningham

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the Utah Uniform Securities Act.

Highlighted Provisions:

This bill:

- ▶ amends an exemption from licensing as an investment adviser in the state;

§→ [→ ~~grants rulemaking authority to impose continuing education requirements for investment adviser representatives;~~ ←§

- ▶ expands the sanctions that may be imposed by the Securities Commission;
- ▶ clarifies that the division commences agency action;
- ▶ provides that it is an unlawful act for a person to make a false or misleading statement during an examination or investigation;
- ▶ modifies provisions applicable to registration by coordination;
- ▶ repeals the cap on fines for violations that may be imposed by a court;
- ▶ allows the aggregation of amounts of property, money, or other things unlawfully obtained through a series of acts or continuing course of business;
- ▶ imposes a 10 year statute of limitation for administrative actions;
- ▶ for a series of acts or continuing course of business, provides that the statute of limitations begins to run after the last act in the series of acts or course of business;
- ▶ codifies factors that the commission or a court may consider when determining the amount of a fine; and

H.B. 106



28 ▶ makes technical changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **61-1-3**, as last amended by Laws of Utah 2011, Chapter 317

36 **61-1-5**, as last amended by Laws of Utah 2007, Chapter 292

37 **61-1-6**, as last amended by Laws of Utah 2009, Chapter 351

38 **61-1-9**, as last amended by Laws of Utah 2009, Chapter 351

39 **61-1-16**, as last amended by Laws of Utah 1983, Chapter 284

40 **61-1-20**, as last amended by Laws of Utah 2011, Chapter 319

41 **61-1-21**, as last amended by Laws of Utah 2011, Chapter 319

42 **61-1-21.1**, as last amended by Laws of Utah 2008, Chapter 3

43 ~~§→ [—**61-1-24**, as last amended by Laws of Utah 2009, Chapters 347 and 351] ←§~~

44 ENACTS:

45 **61-1-31**, Utah Code Annotated 1953



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

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

49 **61-1-3. Licensing of broker-dealers, agents, investment advisers, and investment**
50 **adviser representatives.**

51 (1) It is unlawful for a person to transact business in this state as a broker-dealer or
52 agent unless the person is licensed under this chapter.

53 (2) (a) It is unlawful for a broker-dealer or issuer to employ or engage an agent unless
54 the agent is licensed. The license of an agent is not effective during any period when the agent
55 is not associated with:

56 (i) a particular broker-dealer licensed under this chapter; or

57 (ii) a particular issuer.

58 (b) When an agent begins or terminates an association with a broker-dealer or issuer, or

183 representatives of the division, within or without this state, as the division considers necessary
 184 or appropriate in the public interest or for the protection of investors.

185 (b) For the purpose of avoiding unnecessary duplication of examination, the division
 186 may cooperate with:

187 (i) the securities administrators of other states;

188 (ii) the Securities and Exchange Commission; and

189 (iii) national securities exchanges or national securities associations registered under
 190 the Securities Exchange Act of 1934.

191 ~~§→ [(6) An investment adviser representative licensed under this chapter shall meet a~~
 192 ~~continuing education requirement if a continuing education requirement is established by the~~
 193 ~~division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative~~
 194 ~~Rulemaking Act.] ←§~~

195 Section 3. Section 61-1-6 is amended to read:

196 **61-1-6. Sanctions.**

197 (1) Subject to the other provisions of this section and by means of an adjudicative
 198 proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act:

199 (a) the commission may issue an order:

200 (i) suspending or revoking a license;

201 (ii) barring or censuring a licensee or an officer, director, partner, or person occupying
 202 a similar status or performing similar functions for a licensee from employment with a licensed
 203 broker-dealer or investment adviser;

204 (iii) restricting or limiting a licensee as to a function or activity of the business for
 205 which a license is required in this state;

206 (iv) imposing a fine in an amount determined after considering the factors set forth in
 207 Section 61-1-31; [or]

208 (v) requiring disgorgement;

209 (vi) requiring restitution;

210 (vii) requiring rescission; or

211 ~~[(v)]~~ (viii) taking any combination of actions under this Subsection (1)(a); or

212 (b) the director may deny a license.

213 (2) (a) The commission may impose a sanction in accordance with Subsection (1)(a) or

524 same or several sources, the amounts may be aggregated in determining the level of offense.

525 ~~[(5)]~~ (6) It is an affirmative defense under this section against a claim that the person
526 violated an order issued under this chapter for the person to prove that the person had no
527 knowledge of the order.

528 ~~[(6)]~~ (7) In addition to any other penalty for a criminal violation of this chapter, the
529 sentencing judge may impose a penalty or remedy provided for in Subsection 61-1-20(2)(b).

530 Section 8. Section 61-1-21.1 is amended to read:

531 **61-1-21.1. Limitation of prosecutions.**

532 (1) ~~[No]~~ An indictment or information may not be returned or civil complaint filed
533 under this chapter more than five years after the alleged violation.

534 (2) An administrative action filed under this chapter may be commenced within 10
535 years after the violation occurs.

536 (3) When a violation is based on a series of acts or continuing course of business, the
537 conduct may be considered as one continuing offense and the period of limitation described in
538 Subsection (1) or (2) does not begin to run until the last act in the series of acts or course of
539 business is completed.

540 ~~[(2)]~~ (4) As to causes of action arising from violations of this chapter, the limitation of
541 prosecutions provided in this section supersedes the limitation of actions provided in Section
542 76-1-302 and Title 78B, Chapter 2, Statutes of Limitations.

543 **§→ [Section 9. Section 61-1-24 is amended to read:**

544 ~~———— 61-1-24. Rules, forms, and orders.~~

545 ~~———— (1) (a) Subject to Subsection (1)(c), the division may make, amend, or rescind a rule,~~
546 ~~form, or order when necessary to carry out this chapter.~~

547 ~~———— (b) For the purpose of a rule or form, the division may:~~

548 ~~———— (i) classify securities, persons, and matters within the jurisdiction of the commission or~~
549 ~~division; [and]~~

550 ~~———— (ii) prescribe different requirements for different classes[-]; and~~

551 ~~———— (iii) by rule, establish a continuing education requirement for investment adviser~~
552 ~~representatives.~~

553 ~~———— (c) The division shall make rules in accordance with Title 63G, Chapter 3, Utah~~
554 ~~Administrative Rulemaking Act, except that the division may not make, amend, or rescind a~~ ☉

555 ~~☉ rule or form under this chapter without the concurrence of the commission:~~

556 ~~—— (d) In prescribing a rule or form, the division may cooperate with the securities~~
 557 ~~administrators of the other states and the Securities and Exchange Commission to achieve~~
 558 ~~maximum uniformity in the form and content of registration statements, applications, and~~
 559 ~~reports wherever practicable:~~

560 ~~—— (2) (a) The division may prescribe:~~

561 ~~—— (i) the form and content of a financial statement required under this chapter;~~

562 ~~—— (ii) the circumstances under which a consolidated financial statement shall be filed;~~
 563 ~~and~~

564 ~~—— (iii) whether or not a required financial statement shall be certified by an independent~~
 565 ~~public accountant:~~

566 ~~—— (b) A financial statement under this chapter shall be prepared in accordance with~~
 567 ~~generally accepted accounting principles:~~

568 ~~—— (3) A provision of this chapter that imposes liability does not apply to an act done or~~
 569 ~~omitted in good faith in conformity with a rule, form, or order of the division or an order of the~~
 570 ~~commission, notwithstanding that the rule, form, or order may later be amended or rescinded or~~
 571 ~~be determined by judicial or other authority to be invalid for any reason:] ←§~~

572 Section ~~§~~→ [10] 9 ←§ . Section 61-1-31 is enacted to read:

573 **61-1-31. Determining amount of fine.**

574 For the purpose of determining the amount of a fine imposed under this chapter, the
 575 commission or court shall consider the following factors:

576 (1) the seriousness, nature, circumstances, extent, and persistence of the conduct
 577 constituting the violation;

578 (2) the harm to other persons resulting either directly or indirectly from the violation;

579 (3) (a) the cooperation by the person in any inquiry conducted by the division
 580 concerning the violation;

581 (b) efforts by the person to prevent future occurrences of the violation; and

582 (c) efforts by the person to mitigate the harm caused by the violation, including any
 583 disgorgement or restitution made to other persons injured by the acts of the person;

584 (4) the history of previous violations by the person;

585 (5) the need to deter the person or other persons from committing the violation in the