

SECURITIES EXEMPTIONS AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian M. Greene

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions of the Utah Uniform Securities Act related to exemptions.

Highlighted Provisions:

This bill:

- ▶ enacts an intrastate exemption from registration and disclosure requirements; 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 2016, Chapter 25

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



28 instrumentality of one or more of the foregoing, or a certificate of deposit for any of the
29 foregoing;

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

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

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

41 (e) (i) a federal covered security specified in the Securities Act of 1933, Section
42 18(b)(1), 15 U.S.C. Sec. 77r(b)(1), or by rule adopted under that provision;

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

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

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

48 (B) a warrant; or

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

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

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

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

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

58 (vi) an option or a derivative security designated by the Securities and Exchange

59 Commission under Securities Exchange Act of 1934, Section 9(b), 15 U.S.C. Sec. 78i(b);

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

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

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

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

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

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

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

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

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

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

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

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

87 (e) a transaction in a bond or other evidence of indebtedness secured by a real or
88 chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the
89 entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of

90 indebtedness secured thereby, is offered and sold as a unit;

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

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

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

97 (i) a depository institution;

98 (ii) a trust company;

99 (iii) an insurance company;

100 (iv) an investment company as defined in [~~the Investment Company Act of 1940~~] 15
101 U.S.C. Sec. 80a-3;

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

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

104 (vii) a broker-dealer;

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

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

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

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

111 and

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

113 (j) subject to Subsection [~~(6)~~] (7), a transaction pursuant to an offer by an issuer of its
114 securities to its existing securities holders, if:

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

117 (ii) the transaction constitutes:

118 (A) the conversion of convertible securities;

119 (B) the exercise of nontransferable rights or warrants;

120 (C) the exercise of transferable rights or warrants if the rights or warrants are

121 exercisable not more than 90 days after their issuance;

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

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

124 (I) the division is furnished with:

125 (Aa) a general description of the transaction;

126 (Bb) the disclosure materials to be furnished to the issuer's securities holders in the

127 transaction; and

128 (Cc) a non-refundable fee; and

129 (II) the division does not, by order, deny or revoke the exemption within 20 working

130 days after the day on which the filing required by Subsection (2)(j)(ii)(E)(I) is complete;

131 (k) an offer, but not a sale, of a security for which a registration statement is filed under

132 both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and

133 no public proceeding or examination looking toward such an order is pending;

134 (l) a distribution of securities as a dividend if the person distributing the dividend is the

135 issuer of the securities distributed;

136 (m) a nonissuer transaction effected by or through a registered broker-dealer where the

137 broker-dealer or issuer files with the division, and the broker-dealer maintains in the

138 broker-dealer's records, and makes reasonably available upon request to a person expressing an

139 interest in a proposed transaction in the security with the broker-dealer information prescribed

140 by the division under its rules;

141 (n) a transaction not involving a public offering;

142 (o) an offer or sale of "condominium units" or "time period units" as those terms are

143 defined in Title 57, Chapter 8, Condominium Ownership Act, whether or not to be sold by

144 installment contract, if the following are complied with:

145 (i) Title 57, Chapter 8, Condominium Ownership Act, or if the units are located in

146 another state, the condominium act of that state;

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

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

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

150 (p) a transaction or series of transactions involving a merger, consolidation,

151 reorganization, recapitalization, reclassification, or sale of assets, if the consideration for

152 which, in whole or in part, is the issuance of securities of a person or persons, and if:

153 (i) the transaction or series of transactions is incident to a vote of the securities holders

154 of each person involved or by written consent or resolution of some or all of the securities

155 holders of each person involved;

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

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

158 (B) the controlling articles of incorporation, trust indenture, deed of trust, or

159 partnership agreement; or

160 (C) the controlling agreement among securities holders;

161 (iii) (A) one person involved in the transaction is required to file proxy or

162 informational materials under Section 14(a) or (c) of the Securities Exchange Act of 1934 or

163 Section 20 of the Investment Company Act of 1940 and has so filed;

164 (B) one person involved in the transaction is an insurance company that is exempt from

165 filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934, and has filed proxy or

166 informational materials with the appropriate regulatory agency or official of its domiciliary

167 state; or

168 (C) all persons involved in the transaction are exempt from filing under Section

169 12(g)(1) of the Securities Exchange Act of 1934, and file with the division such proxy or

170 informational material as the division requires by rule;

171 (iv) the proxy or informational material is filed with the division and distributed to all

172 securities holders entitled to vote in the transaction or series of transactions at least 10 working

173 days before any necessary vote by the securities holders or action on any necessary consent or

174 resolution; and

175 (v) the division does not, by order, deny or revoke the exemption within 10 working

176 days after filing of the proxy or informational materials;

177 (q) subject to Subsection [~~(7)~~] (8), a transaction pursuant to an offer to sell securities of

178 an issuer if:

179 (i) the transaction is part of an issue in which there are not more than 15 purchasers in

180 this state, other than those designated in Subsection (2)(h), during any 12 consecutive months;

181 (ii) no general solicitation or general advertising is used in connection with the offer to

182 sell or sale of the securities;

183 (iii) no commission or other similar compensation is given, directly or indirectly, to a
184 person other than a broker-dealer or agent licensed under this chapter, for soliciting a
185 prospective purchaser in this state;

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

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

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

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

193 (i) the transaction is:

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

195 (B) partly for cash and partly in exchange for one or more outstanding securities,
196 claims, or property interests; and

197 (ii) the terms and conditions are approved by the director after a hearing under Section
198 61-1-11.1;

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

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

202 (ii) partly for cash and partly in exchange for one or more outstanding securities,
203 claims, or property interests;

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

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

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

210 (i) the transaction is part of an issue that is subject to an offering memorandum that
211 requires that the net proceeds from the issue are used to directly purchase real estate;

212 (ii) the transaction is exempt under 15 U.S.C. Sec. 77c(a)(11);

213 (iii) the transaction is part of an issue in which the issuer:

214 (A) except as provided in Subsection (2)(w)(iii)(B), accepts no more than \$25,000
215 from each nonaccredited investor;

216 (B) has no limit for a nonaccredited investor who acquires the issue as replacement
217 property in an exchange under 26 U.S.C. Sec. 1031; and

218 (C) has no limit for an accredited investor, as defined by Rule 501 of Securities
219 Exchange Commission Regulation D, 17 C.F.R. 230.501, except the total limit under
220 Subsection (2)(w)(v);

221 (iv) the issuer reasonably believes that all the purchasers in the state are purchasing the
222 security for investment purposes;

223 (v) the sum of all cash and other consideration that the issuer receives for the sale of
224 securities in a 12-month period does not exceed \$5,000,000;

225 (vi) each purchaser and each offeree is a resident of the state;

226 (vii) the issuer provides each prospective purchaser an offering memorandum that
227 includes the following disclosures:

228 (A) a description of the issuer's company, including the type of entity, address, phone
229 number, and principal place of business;

230 (B) the name of each executive officer, director, managing member, or other person
231 who occupies a similar status or performs similar functions in the name of or on behalf of the
232 issuer;

233 (C) the terms and conditions of the securities being offered;

234 (D) any outstanding securities of the company;

235 (E) the percentage ownership of the company represented by the offered securities or
236 the valuation of the company implied by the price of the offered securities;

237 (F) the price per share, unit, or interest of the securities being offered;

238 (G) the general proposed use of the proceeds of the offering;

239 (H) the reporting that the issuer will provide each purchaser;

240 (I) any restrictions on the transfer of the securities being offered;

241 (J) any anticipated future issuance of securities that may dilute the value of the
242 securities being offered;

243 (K) a description of any litigation, legal proceedings, or pending regulatory actions that
244 involve the issuer or the issuer's management;

245 (L) a description of the parcel of real estate that the proceeds will be used to acquire,
246 including, if applicable, a copy of any lease or sublease that affects the real estate; a copy of
247 any environmental or engineering reports related to the real estate; a copy of any loan document
248 related to the real estate; a copy of any management agreement related to the real estate; a copy
249 of any rent rolls, operating history, or tenant financials; and any other information that an
250 ordinarily prudent real estate purchaser would consider material in deciding to acquire real
251 property; and

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

260 (viii) the issuer of the securities:

261 (A) is a business entity organized under the laws of the state;

262 (B) is authorized to do business in the state;

263 (C) is not an investment company as defined in 15 U.S.C. Sec. 80a-3, either before or
264 as a result of the offering;

265 (D) pays no commission or compensation based on the offering size or dollar amount
266 of the transaction, directly or indirectly, to a person other than a broker-dealer or agent licensed
267 under this chapter; and

268 (E) offers or sells the securities through the issuer's own efforts, through one or more
269 agents licensed under this chapter, or through the issuer's owners, members, officers,
270 employees, or affiliates.

271 (3) In a transaction described in Subsection (2)(w), the issuer may advertise through
272 any medium, including television, radio, newspaper, the issuer's website or portal, or a third
273 party's website or portal.

274 [~~3~~] (4) A person filing an exemption notice or application shall pay a filing fee as
275 determined under Section 61-1-18.4.

276 [~~(4)~~] (5) With the concurrence of the commission, the director, by means of an
277 adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative
278 Procedures Act, may deny or revoke an exemption specified in Subsection (1)(f) or (g) or in
279 Subsection (2) with respect to:

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

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

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

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

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

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

294 (C) an underwriter;

295 (iii) subject to Subsection [~~(8)~~] (9), the security for which the exemption is sought is
296 the subject of an administrative stop order or similar order, or a permanent or temporary
297 injunction or a court of competent jurisdiction entered under another federal or state act
298 applicable to the offering or exemption;

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

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

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

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

307 exemption; or

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

309 ~~[(5)]~~ (6) (a) An order under Subsection ~~[(4)]~~ (5) may not operate retroactively.

310 (b) A person may not be considered to have violated Section 61-1-7 or 61-1-15 by
311 reason of an offer or sale effected after the entry of an order under this Subsection ~~[(5)]~~ (6) if
312 the person sustains the burden of proof that the person did not know, and in the exercise of
313 reasonable care could not have known, of the order.

314 ~~[(6)]~~ (7) The exemption created by Subsection (2)(j) is not available for an offer or sale
315 of a security to an existing securities holder who has acquired the holder's security from the
316 issuer in a transaction in violation of Section 61-1-7.

317 ~~[(7)]~~ (8) As to a security, a transaction, or a type of security or transaction, the division
318 may:

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

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

321 ~~[(8)]~~ (9) (a) The director may not institute a proceeding against an effective exemption
322 under Subsection ~~[(4)]~~ (5)(b) more than one year from the day on which the order or injunction
323 on which the director relies is issued.

324 (b) The director may not enter an order under Subsection ~~[(4)]~~ (5)(b) on the basis of an
325 order or injunction entered under another state act unless that order or injunction is issued on
326 the basis of facts that would constitute a ground for a stop order under this section at the time
327 the director enters the order.

Legislative Review Note
Office of Legislative Research and General Counsel