

1 SENATE BILL 151

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

3 INTRODUCED BY

4 Mark Boitano

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9  
10 AN ACT

11 RELATING TO SECURITIES; MAKING A PERMANENT APPROPRIATION FROM  
12 THE SECURITIES ENFORCEMENT AND INVESTOR EDUCATION FUND.

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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 58-13C-601 NMSA 1978 (being Laws 2009,  
16 Chapter 82, Section 601) is amended to read:

17 "58-13C-601. ADMINISTRATION.--

18 A. The director shall administer the New Mexico  
19 Uniform Securities Act. The director shall be appointed by the  
20 superintendent of regulation and licensing subject to  
21 confirmation by the senate. The director shall be chosen  
22 solely on the basis of fitness to perform the duties of the  
23 office and shall have a minimum of five years relevant  
24 experience in the securities or finance field, relevant  
25 education and demonstrable knowledge of securities laws and

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1 regulations. The division is under the supervision and control  
2 of the superintendent of regulation and licensing, subject,  
3 however, to the exemptions set forth in Section 9-16-11 NMSA  
4 1978. The director shall, with the approval of the  
5 superintendent of regulation and licensing, hire pursuant to  
6 the Personnel Act and assign duties to employees necessary to  
7 assist the director in the director's duties, and the director  
8 may, with the approval of the superintendent of regulation and  
9 licensing, appoint commissioned peace officers who shall have  
10 the powers of police officers for the purpose of investigating  
11 and enforcing the provisions of the New Mexico Uniform  
12 Securities Act. Such peace officers shall comply with the  
13 certification provisions of Section 29-7-6 NMSA 1978.

14 B. The director may by rule impose fees as  
15 necessary for examination, claims of exemption, requests for  
16 advisory opinions and other miscellaneous filings for which no  
17 fees are specified elsewhere in the New Mexico Uniform  
18 Securities Act and may also require payment of reasonable costs  
19 of investigation resulting from enforcement actions taken  
20 pursuant to Section [~~602, 603 or 604 of that act~~] 58-13C-602,  
21 58-13C-603 or 58-13C-604 NMSA 1978.

22 C. It is unlawful for the director or an officer,  
23 employee or designee of the director to use for personal  
24 benefit or the benefit of others records or other information  
25 obtained by or filed with the director that are not public

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1 pursuant to Subsection B of Section [~~607 of the New Mexico~~  
2 ~~Uniform Securities Act~~] 58-13C-607 NMSA 1978. The New Mexico  
3 Uniform Securities Act does not authorize the director or an  
4 officer, employee or designee of the director to disclose the  
5 record or information, except in accordance with Section [~~602~~  
6 ~~of that act~~] 58-13C-602 NMSA 1978, Subsection C of Section [~~607~~  
7 ~~of that act~~] 58-13C-607 NMSA 1978 or Section [~~608 of that act~~]  
8 58-13C-608 NMSA 1978.

9 D. Except as stated in the New Mexico Uniform  
10 Securities Act, that act does not create or diminish a  
11 privilege or exemption that exists at common law, by statute or  
12 by rule or otherwise.

13 E. The director may develop and implement investor  
14 education initiatives to inform the public about investing in  
15 securities, with particular emphasis on the prevention and  
16 detection of securities fraud. In developing and implementing  
17 these initiatives, the director may collaborate with public and  
18 nonprofit organizations with an interest in investor education.  
19 The director may accept a grant or donation to the securities  
20 enforcement and investor education fund established in  
21 Subsection F of this section from a person that is not  
22 affiliated with the securities industry or from a nonprofit  
23 organization, regardless of whether the organization is  
24 affiliated with the securities industry, to develop and  
25 implement investor education initiatives. This subsection does

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1 not authorize the director to require participation or monetary  
2 contributions of a registrant in an investor education program.

3 F. The "securities enforcement and investor  
4 education fund" is created as a nonreverting fund in the state  
5 treasury to provide money for the purposes specified in  
6 Subsections E and G of this section. The division may  
7 establish and adopt rules as required to administer the fund.  
8 The securities enforcement and investor education fund shall be  
9 administered by the division. The fund shall consist of:

10 (1) five dollars (\$5.00) of each fee collected  
11 from registrants pursuant to Subsections B and D of Section  
12 [~~410 of the New Mexico Uniform Securities Act~~] 58-13C-410 NMSA  
13 1978;

14 (2) all or any portion of civil penalties,  
15 costs of investigation and other administrative assessments  
16 collected by the division through enforcement actions pursuant  
17 to the New Mexico Uniform Securities Act;

18 (3) appropriations, grants or donations to the  
19 fund; and

20 (4) income from investment of the fund.

21 G. Money in the securities enforcement and investor  
22 education fund [~~shall be~~] is appropriated [~~by the legislature~~]  
23 to the division and shall be used for consumer education and  
24 training in matters concerning securities laws and investment  
25 issues; education and training of investigative and

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1 prosecutorial staff of the division; and costs incurred for the  
2 investigation and prosecution of civil and criminal violations  
3 of the New Mexico Uniform Securities Act, including expert and  
4 other consultant fees, witness fees, deposition costs and  
5 travel and training expenses. Money shall be disbursed from  
6 the fund only on warrant of the secretary of finance and  
7 administration upon vouchers signed by the director or the  
8 director's authorized representative. Any unexpended or  
9 unencumbered balance remaining at the end of a fiscal year  
10 shall not revert to the general fund."