

1 **SECURITIES FRAUD REPORTING PROGRAM ACT**

2 **AMENDMENTS**

3 2012 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Benjamin M. McAdams**

6 House Sponsor: Jim Bird

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Securities Fraud Reporting Program Act to address various
11 issues.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ modifies exemptions from protections for adverse actions;
- 15 ▶ addresses considerations for the amount of an award;
- 16 ▶ modifies exemptions from awards under the chapter; and
- 17 ▶ makes technical and conforming amendments.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **61-1-104**, as enacted by Laws of Utah 2011, Chapter 318

25 **61-1-106**, as enacted by Laws of Utah 2011, Chapter 318

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

28 Section 1. Section **61-1-104** is amended to read:

29 **61-1-104. Reporter protected from adverse action -- Exceptions.**

30 (1) An employer may not take adverse action against an employee who is a reporter
31 because of a lawful act of the employee, or a person authorized to act on behalf of the
32 employee, to:

33 (a) provide original information to the division or commission in accordance with
34 Section 61-1-103;

35 (b) initiate, testify in, or assist in any investigation, judicial action, or administrative
36 action based on or related to original information provided to the division or commission;

37 (c) disclose information required or protected under:

38 (i) Sarbanes-Oxley Act of 2002, 15 U.S.C. Sec. 7201 et seq.;

39 (ii) Securities Exchange Act of 1934, 15 U.S.C. Sec. 78a et seq.;

40 (iii) 18 U.S.C. Sec. 1513(e);

41 (iv) a regulation issued by the Securities Exchange Commission; or

42 (v) this chapter or a rule made under this chapter.

43 (2) Notwithstanding Subsection (1), an employee is not protected under this section if:

44 (a) the employee knowingly or recklessly makes a false, fictitious, or fraudulent
45 statement or misrepresentation;

46 (b) the employee uses a false writing or document knowing that, or with reckless
47 disregard as to whether, the writing or document contains false, fictitious, or fraudulent
48 information;

49 (c) the employee knows that, or has a reckless disregard as to whether, the disclosure is
50 of original information that is false or frivolous; or

51 (d) ~~[the employer or entity in the covered judicial or administrative action that relates~~
52 ~~to the information provided by the reporter is subject to the jurisdiction of the Securities and~~
53 ~~Exchange Commission under]~~ the employee is protected from adverse action as described in
54 Section 21F of the Securities Exchange Act, 15 U.S.C. Sec. 78u-6, and regulations issued
55 under that section.

56 Section 2. Section **61-1-106** is amended to read:

57 **61-1-106. Award for reporter.**

58 (1) Subject to Section 61-1-108 and the other provisions of this section, the
59 commission may award an award to one or more reporters who voluntarily provide original
60 information to the commission or division that leads to the successful enforcement of a covered
61 judicial or administrative action.

62 (2) The division shall pay an award under this section from the fund.

63 (3) (a) Subject to the other provisions of this section, the commission may determine
64 the amount of award paid under this section, except that in determining the amount the
65 commission shall consider:

66 (i) the significance of the original information provided by the reporter to the success
67 of the covered judicial or administrative action;

68 (ii) the degree of assistance provided by the reporter in relation to the covered judicial
69 or administrative action;

70 (iii) any costs of legal representation for the reporter in relation to the covered judicial
71 or administrative action;

72 (iv) the programmatic interest of the commission in deterring a violation of this chapter
73 by making an award to a reporter who provides original information that leads to the successful
74 enforcement of this chapter; ~~and~~

75 (v) whether, and the extent to which, the reporter or a legal representative of the
76 reporter participated in internal compliance systems, including:

77 (A) whether, and the extent to which, the reporter reported the possible securities
78 violation through internal reporting, legal, or compliance procedures before, or at the same
79 time as reporting the securities violation to the division or commission; and

80 (B) whether, and the extent to which, the reporter assisted an internal investigation or
81 inquiry concerning the reported securities violation; and

82 ~~(v)~~ (vi) any other relevant factor that the division may establish by rule.

83 (b) The aggregate amount of awards that the commission may award for a specific
84 covered judicial or administrative action may not exceed:

85 (i) the balance in the fund as of the date the awards are determined; or

86 (ii) 30%, in total, of what is collected of the monetary sanction imposed in the judicial
87 or administrative action.

88 (4) The commission may not award a reporter under this section if the reporter:

89 (a) is convicted of a criminal violation related to the covered judicial or administrative
90 action for which the reporter otherwise could receive an award;

91 (b) gains the original information through the performance of an audit of financial
92 statements required under securities laws and for whom providing the original information
93 would violate 15 U.S.C. Sec. 78j-1;

94 (c) fails to provide the original information to the commission or division in
95 accordance with Section 61-1-103;

96 (d) knowingly or recklessly makes a false, fictitious, or fraudulent statement or
97 misrepresentation;

98 (e) uses a false writing or document knowing that, or with reckless disregard as to
99 whether, the writing or document contains false, fictitious, or fraudulent information;

100 (f) knows that, or has a reckless disregard as to whether, the disclosure is of original
101 information that is false or frivolous;

102 (g) has a legal duty to report the original information to the commission or division; or

103 (h) ~~[the employer or entity in the covered judicial or administrative action that relates~~
104 ~~to the information provided by the reporter is subject to the jurisdiction of the Securities and~~
105 ~~Exchange Commission under] qualifies for an award as described in Section 21F of the~~
106 ~~Securities Exchange Act, 15 U.S.C. Sec. 78u-6, and regulations issued under this section.~~