

1 **REVISOR'S STATUTE**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brad L. Dee**

5 Senate Sponsor: Scott K. Jenkins

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7 **LONG TITLE**

8 **General Description:**

9 This bill modifies parts of the Utah Code to make technical corrections including  
10 eliminating references to repealed provisions, making minor wording changes, updating  
11 cross references, and correcting numbering.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ modifies parts of the Utah Code to make technical corrections including eliminating  
15 references to repealed provisions, making minor wording changes, updating cross  
16 references, correcting numbering, and fixing errors that were created from the  
17 previous year's session.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **13-5a-102**, as last amended by Laws of Utah 2010, Chapter 334

25 **17-22-2.5**, as last amended by Laws of Utah 2010, Chapters 75 and 254

26 **17B-1-202**, as last amended by Laws of Utah 2010, Chapters 150 and 159

27 **19-5-115**, as last amended by Laws of Utah 2010, Chapter 324

28 **20A-1-503**, as last amended by Laws of Utah 2010, Chapter 165

29 **20A-7-801**, as enacted by Laws of Utah 2007, Chapter 83

- 30           **20A-11-104**, as enacted by Laws of Utah 2010, Chapter 246
- 31           **23-19-14.5**, as enacted by Laws of Utah 2007, Chapter 355
- 32           **26-52-202**, as enacted by Laws of Utah 2010, Chapter 69
- 33           **31A-1-106**, as last amended by Laws of Utah 2007, Chapter 309
- 34           **31A-4-101**, as enacted by Laws of Utah 1985, Chapter 242
- 35           **31A-14-106**, as last amended by Laws of Utah 1995, Chapter 20
- 36           **31A-20-102**, as enacted by Laws of Utah 1985, Chapter 242
- 37           **31A-22-722.5**, as last amended by Laws of Utah 2010, Chapters 10, 149 and last
- 38 amended by Coordination Clause, Laws of Utah 2010, Chapter 149
- 39           **31A-22-1011**, as enacted by Laws of Utah 2008, Chapter 263
- 40           **31A-40-303**, as enacted by Laws of Utah 2008, Chapter 318
- 41           **41-1a-102**, as last amended by Laws of Utah 2009, Chapter 171
- 42           **48-1-3**, as last amended by Laws of Utah 1994, Chapter 61
- 43           **48-2a-1105**, as enacted by Laws of Utah 1990, Chapter 233
- 44           **53-2-105**, as last amended by Laws of Utah 2008, Chapter 382
- 45           **53-2-106**, as last amended by Laws of Utah 2008, Chapter 382
- 46           **53-7-103**, as last amended by Laws of Utah 2010, Chapter 310
- 47           **53A-11-102.6**, as enacted by Laws of Utah 2010, Chapter 210
- 48           **53A-17a-156**, as enacted by Laws of Utah 2008, Chapter 397
- 49           **54-3-29**, as enacted by Laws of Utah 2010, Chapter 272
- 50           **54-8a-11**, as enacted by Laws of Utah 1993, Chapter 87
- 51           **54-13-7**, as enacted by Laws of Utah 1995, Chapter 91
- 52           **54-14-303**, as last amended by Laws of Utah 2009, Chapter 316
- 53           **54-14-305**, as last amended by Laws of Utah 2009, Chapter 316
- 54           **57-11-11**, as last amended by Laws of Utah 2010, Chapter 90
- 55           **58-31b-503**, as last amended by Laws of Utah 2010, Chapter 278
- 56           **58-37f-102**, as enacted by Laws of Utah 2010, Chapter 287
- 57           **58-38a-203**, as enacted by Laws of Utah 2010, Chapter 231

- 58           **58-55-503**, as last amended by Laws of Utah 2010, Chapters 278 and 387
- 59           **58-57-7**, as last amended by Laws of Utah 2010, Chapter 324
- 60           **61-1-10**, as last amended by Laws of Utah 2010, Chapter 324
- 61           **63G-2-204**, as last amended by Laws of Utah 2010, Chapter 380
- 62           **63G-2-502**, as last amended by Laws of Utah 2010, Chapters 258 and 286
- 63           **67-5a-8**, as last amended by Laws of Utah 2010, Chapter 286
- 64           **67-19-6.7**, as last amended by Laws of Utah 2010, Chapter 249
- 65           **67-19-15**, as last amended by Laws of Utah 2010, Chapters 103 and 249
- 66           **73-29-202**, as enacted by Laws of Utah 2010, Chapter 410
- 67           **76-5-107.5**, as last amended by Laws of Utah 2010, Chapter 248
- 68           **76-6-101**, as last amended by Laws of Utah 2010, Chapter 193
- 69           **77-23a-4**, as last amended by Laws of Utah 2010, Chapter 324
- 70           **78B-4-515**, as enacted by Laws of Utah 2010, Chapter 396

71 RENUMBERS AND AMENDS:

- 72           **57-16-15**, (Renumbered from 57-16-15.1, as last amended by Laws of Utah 2008,
- 73 Chapter 3)

74 REPEALS:

- 75           **53A-20c-101**, as enacted by Laws of Utah 2007, Chapter 335
- 76           **73-2-22.1**, as enacted by Laws of Utah 1985, Chapter 172



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

79 Section 1. Section **13-5a-102** is amended to read:

80 **13-5a-102. Definitions.**

81 As used in this chapter:

- 82 (1) "Control" means:
- 83 (a) ownership of more than 5% of the voting shares or ownership interests of an entity;
- 84 (b) the power to vote more than 5% of the voting shares of an entity; or
- 85 (c) the ability to influence the management of an entity.

- 86 (2) "Depository institution" is as defined in Section 7-1-103.
- 87 (3) "Malicious cyber activity" means:
- 88 (a) the unlawful use of computing resources to intimidate or coerce others;
- 89 (b) accessing a computer without authorization or exceeding authorized access;
- 90 (c) willfully communicating, delivering, or causing the transmission of a program,  
91 information, code, or command without authorization or exceeding authorized access; and
- 92 (d) intentionally or recklessly:
- 93 (i) intends to defraud or materially cause damage or disruption to any computing  
94 resources or to the owner of any computing resources; or
- 95 (ii) intends to materially cause damage or disruption to any computing resources  
96 indirectly through another party's computing resources.
- 97 (4) (a) Except as provided in Subsection (4)(b), "unfair competition" means an  
98 intentional business act or practice that:
- 99 (i) (A) is unlawful, unfair, or fraudulent; and
- 100 (B) leads to a material diminution in value of intellectual property; and
- 101 (ii) is one of the following:
- 102 (A) malicious cyber activity;
- 103 (B) infringement of a patent, trademark, or trade name;
- 104 (C) a software license violation; or
- 105 (D) predatory hiring practices.
- 106 (b) Notwithstanding Subsection (4)(a), "unfair competition" does not include the  
107 departure and hiring of an employee by a competitor.
- 108 Section 2. Section **17-22-2.5** is amended to read:
- 109 **17-22-2.5. Fees of sheriff.**
- 110 (1) (a) The legislative body of a county may set a fee for a service described in this  
111 section and charged by the county sheriff:
- 112 (i) in an ordinance adopted under Section 17-53-223; and
- 113 (ii) in an amount reasonably related to, but not exceeding, the actual cost of providing

114 the service.

115 (b) If the legislative body of a county does not under Subsection (1)(a) set a fee  
116 charged by the county sheriff, the sheriff shall charge a fee in accordance with Subsections (2)  
117 through (7).

118 (2) Unless under Subsection (1) the legislative body of a county sets a fee amount for a  
119 fee described in this Subsection (2), the sheriff shall charge the following fees:

120 (a) for serving a notice, rule, order, subpoena, garnishment, summons, or summons and  
121 complaint, or garnishee execution, or other process by which an action or proceeding is  
122 commenced, on each defendant, including copies when furnished by plaintiff, \$20;

123 (b) for taking or approving a bond or undertaking in any case in which he is authorized  
124 to take or approve a bond or undertaking, including justification, \$5;

125 (c) for a copy of any writ, process or other paper when demanded or required by law,  
126 for each folio, 50 cents;

127 (d) for serving an attachment on property, or levying an execution, or executing an  
128 order of arrest or an order for the delivery of personal property, including copies when  
129 furnished by plaintiff, \$50;

130 (e) for taking and keeping possession of and preserving property under attachment or  
131 execution or other process, the amount the court orders to a maximum of \$15 per day;

132 (f) for advertising property for sale on execution, or any judgment, or order of sale,  
133 exclusive of the cost of publication, \$15;

134 (g) for drawing and executing a sheriff's deed or a certificate of redemption, exclusive  
135 of acknowledgment, \$15, to be paid by the grantee;

136 (h) for recording each deed, conveyance, or other instrument affecting real estate,  
137 exclusive of the cost of recording, \$10, to be paid by the grantee;

138 (i) for serving a writ of possession or restitution, and putting any person entitled to  
139 possession into possession of premises, and removing occupant, \$50;

140 (j) for holding each trial of right of property, to include all services in the matter,  
141 except mileage, \$35;

- 142 (k) for conducting, postponing, or canceling a sale of property, \$15;
- 143 (l) for taking a prisoner in civil cases from prison before a court or magistrate, for each
- 144 mile necessarily traveled, in going only, to a maximum of 100 miles, \$2.50;
- 145 (m) for taking a prisoner from the place of arrest to prison, in civil cases, or before a
- 146 court or magistrate, for each mile necessarily traveled, in going only, to a maximum of 100
- 147 miles, \$2.50;
- 148 (n) for receiving and paying over money on execution or other process, as follows:
- 149 (i) if the amount collected does not exceed \$1,000, 2% of this amount, with a
- 150 minimum of \$1; and
- 151 (ii) if the amount collected exceeds \$1,000, 2% on the first \$1,000 and 1-1/2% on the
- 152 balance; and
- 153 (o) for executing in duplicate a certificate of sale, exclusive of filing it, \$10.
- 154 (3) The fees allowed by Subsection (2)(f) for the levy of execution and for advertising
- 155 shall be collected from the judgment debtor as part of the execution in the same manner as the
- 156 sum directed to be made.
- 157 (4) When serving an attachment on property, an order of arrest, or an order for the
- 158 delivery of personal property, the sheriff may only collect traveling fees for the distance
- 159 actually traveled beyond the distance required to serve the summons if the attachment or those
- 160 orders:
- 161 (a) accompany the summons in the action; and
- 162 (b) may be executed at the time of the service of the summons.
- 163 (5) (a) (i) When traveling generally to serve notices, orders, process, or other papers,
- 164 the sheriff may receive, except as otherwise provided under Subsection (1)(a), \$2.50 for each
- 165 mile necessarily traveled, in going only, computed from the courthouse for each person served,
- 166 to a maximum of 100 miles.
- 167 (ii) When transmitting notices, orders, process, or other papers by mail, the sheriff may
- 168 receive, except as otherwise provided under Subsection (1)(a), \$2.50 for each mile necessarily
- 169 traveled, in going only, computed from the post office where received for each person served,

170 to a maximum of 100 miles.

171 (b) The sheriff may only charge one mileage fee if any two or more papers are required  
172 to be served in the same action or proceeding at the same time and at the same address.

173 (c) If it is necessary to make more than one trip to serve any notice, order, process, or  
174 other paper, the sheriff may not collect more than two additional mileage charges.

175 (6) (a) For delivering a patient to the Utah State Hospital, when the cost of delivery is  
176 payable by private individuals, the sheriff may collect, except as otherwise provided under  
177 Subsection (1)(a), \$2.50 per mile for the distance from the county seat of the sheriff's county to  
178 the Utah State Hospital, to a maximum of 100 miles.

179 (b) If the sheriff requires assistance to deliver the person to the Utah State Hospital, the  
180 sheriff may also charge the actual and necessary cost of that assistance.

181 (7) (a) Subject to Subsection (7)(b), for obtaining a saliva DNA specimen under  
182 Section 53-10-404, the sheriff shall collect the fee of \$100 in accordance with Section  
183 53-10-404.

184 (b) The fee amount described in Subsection (7)(a) [~~cannot~~] may not be changed by a  
185 county legislative body under Subsection (1).

186 Section 3. Section **17B-1-202** is amended to read:

187 **17B-1-202. Local district may be created -- Services that may be provided --**  
188 **Limitations.**

189 (1) (a) A local district may be created as provided in this part to provide within its  
190 boundaries service consisting of:

- 191 (i) the operation of an airport;
- 192 (ii) the operation of a cemetery;
- 193 (iii) fire protection, paramedic, and emergency services;
- 194 (iv) garbage collection and disposal;
- 195 (v) health care, including health department or hospital service;
- 196 (vi) the operation of a library;
- 197 (vii) abatement or control of mosquitos and other insects;

- 198 (viii) the operation of parks or recreation facilities or services;
- 199 (ix) the operation of a sewage system;
- 200 (x) street lighting;
- 201 (xi) the construction and maintenance of a right-of-way, including:
- 202 (A) a curb;
- 203 (B) a gutter;
- 204 (C) a sidewalk;
- 205 (D) a street;
- 206 (E) a road;
- 207 (F) a water line;
- 208 (G) a sewage line;
- 209 (H) a storm drain;
- 210 (I) an electricity line;
- 211 (J) a communications line; or
- 212 (K) a natural gas line;
- 213 (xii) transportation, including public transit and providing streets and roads;
- 214 (xiii) the operation of a system, or one or more components of a system, for the
- 215 collection, storage, retention, control, conservation, treatment, supplying, distribution, or
- 216 reclamation of water, including storm, flood, sewage, irrigation, and culinary water, whether
- 217 the system is operated on a wholesale or retail level or both;
- 218 (xiv) in accordance with Subsection (1)(c), the development and execution of a
- 219 groundwater management plan in cooperation with and approved by the state engineer in
- 220 accordance with Section 73-5-15;
- 221 (xv) law enforcement service; or
- 222 (xvi) subject to Subsection (1)(b), the underground installation of an electric utility line
- 223 or the conversion to underground of an existing electric utility line.
- 224 (b) Each local district that provides the service of the underground installation of an
- 225 electric utility line or the conversion to underground of an existing electric utility line shall, in



226 installing or converting the line, provide advance notice to and coordinate with the utility that  
227 owns the line.

228 (c) A groundwater management plan described in Subsection (1)(a)(xiv) may include  
229 the banking of groundwater rights by a local district in a critical management area as defined in  
230 Section 73-5-15 following the adoption of a groundwater management plan by the state  
231 engineer under Section 73-5-15.

232 (i) A local district may manage the groundwater rights it acquires under Subsection  
233 17B-1-103(2)(a) or (b) consistent with the provisions of a groundwater management plan  
234 described in Subsection (1)(c).

235 (ii) A groundwater right held by a local district to satisfy the provisions of a  
236 groundwater management plan is not subject to the forfeiture provisions of Section 73-1-4.

237 (iii) (A) A local district may divest itself of a groundwater right subject to a  
238 determination that the groundwater right is not required to facilitate the groundwater  
239 management plan described in Subsection (1)(c).

240 (B) The groundwater right described in Subsection (1)(c)(iii)(A) is subject to Section  
241 73-1-4 beginning on the date of divestiture.

242 (iv) Upon a determination by the state engineer that an area is no longer a critical  
243 management area, a groundwater right held by the local district is subject to Section 73-1-4.

244 (2) For purposes of this section:

245 (a) "Operation" means all activities involved in providing the indicated service  
246 including acquisition and ownership of property reasonably necessary to provide the indicated  
247 service and acquisition, construction, and maintenance of facilities and equipment reasonably  
248 necessary to provide the indicated service.

249 (b) "System" means the aggregate of interrelated components that combine together to  
250 provide the indicated service including, for a sewage system, collection and treatment.

251 (3) (a) A local district may not be created to provide and may not after its creation  
252 provide more than four of the services listed in Subsection (1).

253 (b) Subsection (3)(a) may not be construed to prohibit a local district from providing

254 more than four services if, before April 30, 2007, the local district was authorized to provide  
255 those services.

256 (4) (a) Except as provided in Subsection (4)(b), a local district may not be created to  
257 provide and may not after its creation provide to an area the same service already being  
258 provided to that area by another political subdivision, unless the other political subdivision  
259 gives its written consent.

260 (b) For purposes of Subsection (4)(a), a local district does not provide the same service  
261 as another political subdivision if it operates a component of a system that is different from a  
262 component operated by another political subdivision but within the same:

263 (i) sewage system; or

264 (ii) water system.

265 (5) (a) Except for a local district in the creation of which an election is not required  
266 under Subsection 17B-1-214(3)(c), the area of a local district may include all or part of the  
267 unincorporated area of one or more counties and all or part of one or more municipalities.

268 (b) The area of a local district need not be contiguous.

269 (6) For a local district created before May 5, 2008, the authority to provide fire  
270 protection service also includes the authority to provide:

271 (a) paramedic service; and

272 (b) emergency service, including hazardous materials response service.

273 (7) A local district created before May 11, 2010, authorized to provide the construction  
274 and maintenance of curb, gutter, or sidewalk may provide a service described in Subsection  
275 (1)(a)(xi) on or after May 11, 2010.

276 Section 4. Section **19-5-115** is amended to read:

277 **19-5-115. Violations -- Penalties -- Civil actions by board -- Ordinances and rules**  
278 **of political subdivisions.**

279 (1) The terms "knowingly," "willfully," and "criminal negligence" shall mean as  
280 defined in Section 76-2-103.

281 (2) Any person who violates this chapter, or any permit, rule, or order adopted under it,

282 upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not  
283 to exceed \$10,000 per day of violation.

284 (3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment  
285 under Section 76-3-204 and a fine not exceeding \$25,000 per day who with criminal  
286 negligence:

287 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any  
288 condition or limitation included in a permit issued under Subsection 19-5-107(3);

289 (ii) violates Section 19-5-113;

290 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned  
291 treatment works; or

292 (iv) manages sewage sludge in violation of this chapter or rules adopted under it.

293 (b) A person is guilty of a third degree felony and is subject to imprisonment under  
294 Section 76-3-203 and a fine not to exceed \$50,000 per day of violation who knowingly:

295 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any  
296 condition or limitation included in a permit issued under Subsection 19-5-107(3);

297 (ii) violates Section 19-5-113;

298 (iii) violates a pretreatment standard or toxic effluent standard for publicly-owned  
299 treatment works; or

300 (iv) manages sewage sludge in violation of this chapter or rules adopted under it.

301 (4) A person is guilty of a third degree felony and subject to imprisonment under  
302 Section 76-3-203 and shall be punished by a fine not exceeding \$10,000 per day of violation if  
303 that person knowingly:

304 (a) makes a false material statement, representation, or certification in any application,  
305 record, report, plan, or other document filed or required to be maintained under this chapter, or  
306 by any permit, rule, or order issued under it; or

307 (b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or  
308 method required to be maintained under this chapter.

309 (5) (a) As used in this section:

310 (i) "Organization" means a legal entity, other than a government, established or  
311 organized for any purpose, and includes a corporation, company, association, firm, partnership,  
312 joint stock company, foundation, institution, trust, society, union, or any other association of  
313 persons.

314 (ii) "Serious bodily injury" means bodily injury which involves a substantial risk of  
315 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or  
316 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

317 (b) A person is guilty of a second degree felony and, upon conviction, is subject to  
318 imprisonment under Section 76-3-203 and a fine of not more than \$250,000 if that person:

319 (i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and

320 (ii) knows at that time that he is placing another person in imminent danger of death or  
321 serious bodily injury.

322 (c) If a person is an organization, it shall, upon conviction of violating Subsection  
323 (5)~~(a)~~(b), be subject to a fine of not more than \$1,000,000.

324 (d) (i) A defendant who is an individual is considered to have acted knowingly if:

325 (A) the defendant's conduct placed another person in imminent danger of death or  
326 serious bodily injury; and

327 (B) the defendant was aware of or believed that there was an imminent danger of death  
328 or serious bodily injury to another person.

329 (ii) Knowledge possessed by a person other than the defendant may not be attributed to  
330 the defendant.

331 (iii) Circumstantial evidence may be used to prove that the defendant possessed actual  
332 knowledge, including evidence that the defendant took affirmative steps to be shielded from  
333 receiving relevant information.

334 (e) (i) It is an affirmative defense to prosecution under this Subsection (5) that the  
335 conduct charged was consented to by the person endangered and that the danger and conduct  
336 charged were reasonably foreseeable hazards of:

337 (A) an occupation, a business, or a profession; or

338 (B) medical treatment or medical or scientific experimentation conducted by  
339 professionally approved methods and the other person was aware of the risks involved prior to  
340 giving consent.

341 (ii) The defendant has the burden of proof to establish any affirmative defense under  
342 this Subsection (5)(e) and must prove that defense by a preponderance of the evidence.

343 (6) For purposes of Subsections 19-5-115(3) through (5), a single operational upset  
344 which leads to simultaneous violations of more than one pollutant parameter shall be treated as  
345 a single violation.

346 (7) (a) The board may begin a civil action for appropriate relief, including a permanent  
347 or temporary injunction, for any violation or threatened violation for which it is authorized to  
348 issue a compliance order under Section 19-5-111.

349 (b) Actions shall be brought in the district court where the violation or threatened  
350 violation occurs.

351 (8) (a) The attorney general is the legal advisor for the board and its executive secretary  
352 and shall defend them in all actions or proceedings brought against them.

353 (b) The county attorney or district attorney as appropriate under Sections 17-18-1,  
354 17-18-1.5, and 17-18-1.7 in the county in which a cause of action arises, shall bring any action,  
355 civil or criminal, requested by the board, to abate a condition that exists in violation of, or to  
356 prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the  
357 board or the executive secretary issued under this chapter.

358 (c) The board may itself initiate any action under this section and be represented by the  
359 attorney general.

360 (9) If any person fails to comply with a cease and desist order that is not subject to a  
361 stay pending administrative or judicial review, the board may, through its executive secretary,  
362 initiate an action for and be entitled to injunctive relief to prevent any further or continued  
363 violation of the order.

364 (10) Any political subdivision of the state may enact and enforce ordinances or rules  
365 for the implementation of this chapter that are not inconsistent with this chapter.

366 (11) (a) Except as provided in Subsection (11)(b), all penalties assessed and collected  
367 under the authority of this section shall be deposited in the General Fund.

368 (b) The department may reimburse itself and local governments from money collected  
369 from civil penalties for extraordinary expenses incurred in environmental enforcement  
370 activities.

371 (c) The department shall regulate reimbursements by making rules that:

372 (i) define qualifying environmental enforcement activities; and

373 (ii) define qualifying extraordinary expenses.

374 Section 5. Section **20A-1-503** is amended to read:

375 **20A-1-503. Midterm vacancies in the Legislature.**

376 (1) As used in this section:

377 (a) "Filing deadline" means the final date for filing:

378 (i) a declaration of candidacy as provided in Section 20A-9-202; and

379 (ii) a certificate of nomination as provided in Section 20A-9-503.

380 (b) "Party liaison" means the political party officer designated to serve as a liaison with  
381 the lieutenant governor on all matters relating to the political party's relationship with the state  
382 as required by Section 20A-8-401.

383 (2) When a vacancy occurs for any reason in the office of representative in the  
384 Legislature, the governor shall fill the vacancy by immediately appointing the person whose  
385 name was submitted by the party liaison of the same political party as the prior representative.

386 (3) (a) Except as provided by Subsection (5), when a vacancy occurs for any reason in  
387 the office of senator in the Legislature, it shall be filled for the unexpired term at the next  
388 regular general election.

389 (b) The governor shall fill the vacancy until the next regular general election by  
390 immediately appointing the person whose name was submitted by the party liaison of the same  
391 political party as the prior senator.

392 (4) (a) If a vacancy described in Subsection (3)(a) occurs after the filing deadline but  
393 before September 1 of an even-numbered year in which the term of office does not expire, the

394 lieutenant governor shall:

395 (i) establish a date, [~~that~~] which is before the date for a candidate to be certified for the  
396 ballot under Section 20A-9-701 and no later than 21 days after the day on which the vacancy  
397 occurred, by which a person intending to obtain a position on the ballot for the vacant office  
398 shall file:

399 (A) a declaration of candidacy; or

400 (B) a certificate of nomination; and

401 (ii) give notice of the vacancy and the date described in Subsection (4)(a)(i):

402 (A) on the lieutenant governor's website; and

403 (B) to each registered political party.

404 (b) A person intending to obtain a position on the ballot for the vacant office shall:

405 (i) by the date specified in Subsection (4)(a)(i), file a declaration of candidacy or  
406 certificate of nomination according to the procedures and requirements of Chapter 9, Candidate  
407 Qualifications and Nominating Procedures; and

408 (ii) run in the regular general election if:

409 (A) nominated as a party candidate; or

410 (B) qualified as an unaffiliated candidate as provided by Chapter 9, Candidate  
411 Qualifications and Nominating Procedures.

412 (c) If a vacancy described in Subsection (3)(a) occurs on or after May 1 and before  
413 September 1 of an even-numbered year in which the term of office does not expire, a party  
414 liaison from each registered political party may submit a name of a person described in  
415 Subsection (4)(b) to the lieutenant governor by August 31 for placement on the regular general  
416 election ballot.

417 (5) If a vacancy described in Subsection (3)(a) occurs on or after September 1 of an  
418 even-numbered year in which a term does not expire, the governor shall fill the vacancy for the  
419 unexpired term by immediately appointing the person whose name was submitted by the party  
420 liaison of the same political party as the prior senator.

421 Section 6. Section **20A-7-801** is amended to read:

422           **20A-7-801. Statewide Electronic Voter Information Website Program -- Duties of**  
423 **the lieutenant governor -- Content -- Duties of local election officials -- Deadlines --**  
424 **Frequently asked voter questions -- Other elections.**

425           (1) There is established the Statewide Electronic Voter Information Website Program  
426 administered by the lieutenant governor in cooperation with the county clerks for general  
427 elections and municipal authorities for municipal elections.

428           (2) In accordance with this section, and as resources become available, the lieutenant  
429 governor, in cooperation with county clerks, shall develop, establish, and maintain a  
430 state-provided Internet website designed to help inform the voters of the state of:

- 431           (a) the offices and candidates up for election; and
- 432           (b) the content, effect, operation, fiscal impact, and supporting and opposing arguments  
433 of ballot propositions submitted to the voters.

434           (3) Except as provided under Subsection (6), the website shall include:

- 435           (a) all information currently provided in the Utah voter information pamphlet under  
436 Title 20A, Chapter 7, Part 7, Voter Information Pamphlet, including a section prepared,  
437 analyzed, and submitted by the Judicial Council describing the judicial selection and retention  
438 process;

- 439           (b) all information submitted by election officers under Subsection (4) on local office  
440 races, local office candidates, and local ballot propositions; and

- 441           (c) other information determined appropriate by the lieutenant governor that is  
442 currently being provided by law, rule, or ordinance in relation to candidates and ballot  
443 questions.

444           (4) (a) An election official shall submit the following information for each ballot label  
445 under the election official's direct responsibility under this title:

- 446           (i) a list of all candidates for each office;
- 447           (ii) if submitted by the candidate to the election official's office on or before August 20  
448 at 5 p.m.:

- 449           (A) a statement of qualifications, not exceeding 200 words in length, for each



450 candidate;

451 (B) the following biographical information if desired by the candidate, current:

452 (I) age;

453 (II) occupation;

454 (III) city of residence;

455 (IV) years of residence in current city; and

456 (V) email address; and

457 (C) a single web address where voters may access more information about the

458 candidate and the candidate's views; and

459 (iii) factual information pertaining to all ballot propositions submitted to the voters,

460 including:

461 (A) a copy of the number and ballot title of each ballot proposition;

462 (B) the final vote cast for each ballot proposition, if any, by a legislative body if the

463 vote was required to place the ballot proposition on the ballot;

464 (C) a complete copy of the text of each ballot proposition, with all new language

465 underlined and all deleted language placed within brackets; and

466 (D) other factual information determined helpful by the election official.

467 (b) The information under Subsection (4)(a) shall be submitted to the lieutenant

468 governor no later than one business day after the deadline under Subsection (4)(a) for each

469 general election year and each municipal election year.

470 (c) The lieutenant governor shall:

471 (i) review the information submitted under this section prior to placing it on the

472 website to determine compliance under this section;

473 (ii) refuse to post information submitted under this section on the website if it is not in

474 compliance with the provisions of this section; and

475 (iii) organize, format, and arrange the information submitted under this section for the

476 website.

477 (d) The lieutenant governor may refuse to include information the lieutenant governor

478 determines is not in keeping with:

- 479 (i) Utah voter needs;
- 480 (ii) public decency; or
- 481 (iii) the purposes, organization, or uniformity of the website.

482 (e) A refusal under Subsection (4)(d) is subject to appeal in accordance with  
483 Subsection (5).

484 (5) (a) A person whose information is refused under Subsection (4), and who is  
485 aggrieved by the determination, may appeal by submitting a written notice of appeal to the  
486 lieutenant governor within 10 business days after the date of the determination. A notice of  
487 appeal submitted under this Subsection (5)(a) shall contain:

- 488 (i) a listing of each objection to the lieutenant governor's determination; and
- 489 (ii) the basis for each objection.

490 (b) The lieutenant governor shall review the notice of appeal and shall issue a written  
491 response within 10 business days after the notice of appeal is submitted.

492 (c) An appeal of the response of the lieutenant governor shall be made to the district  
493 court, which shall review the matter de novo.

494 (6) (a) The lieutenant governor shall ensure that each voter will be able to conveniently  
495 enter the voter's address information on the website to retrieve information on which offices,  
496 candidates, and ballot propositions will be on the voter's ballot at the next general election or  
497 municipal election.

498 (b) The information on the website will anticipate and answer frequent voter questions  
499 including the following:

- 500 (i) what offices are up in the current year for which the voter may cast a vote;
- 501 (ii) who is running for what office and who is the incumbent, if any;
- 502 (iii) what address each candidate may be reached at and how the candidate may be  
503 contacted;
- 504 (iv) for partisan races only, what, if any, is each candidate's party affiliation;
- 505 (v) what qualifications have been submitted by each candidate;

506 (vi) where additional information on each candidate may be obtained;

507 (vii) what ballot propositions will be on the ballot; and

508 (viii) what judges are up for retention election.

509 (7) By not later than March 1, 2008, the lieutenant governor shall have the Statewide  
510 Electronic Voter Information Website Program ready for use in the next election in accordance  
511 with this section.

512 (8) As resources are made available and in cooperation with the county clerks, the  
513 lieutenant governor may expand the electronic voter information website program to include  
514 the same information as provided under this section for special elections and primary elections.

515 Section 7. Section **20A-11-104** is amended to read:

516 **20A-11-104. Personal use expenditure -- Authorized and prohibited uses of**  
517 **campaign funds -- Enforcement -- Penalties.**

518 (1) (a) As used in this chapter, "personal use expenditure" means an expenditure that:

519 (i) (A) is not excluded from the definition of personal use expenditure by Subsection  
520 (2); and

521 (B) primarily furthers a personal interest of a candidate or officeholder or a candidate's  
522 or officeholder's family, which interest is not connected with the performance of an activity as  
523 a candidate or an activity or duty of an officeholder; or

524 (ii) would cause the candidate or officeholder to recognize the expenditure as taxable  
525 income under federal law.

526 (b) "Personal use expenditure" includes:

527 (i) a mortgage, rent, utility, or vehicle payment;

528 (ii) a household food item or supply;

529 (iii) clothing, except for clothing:

530 (A) bearing the candidate's name or campaign slogan or logo; and

531 (B) used in the candidate's campaign;

532 (iv) an admission to a sporting, artistic, or recreational event or other form of  
533 entertainment;

- 534 (v) dues, fees, or gratuities at a country club, health club, or recreational facility;
- 535 (vi) a salary payment made to:
  - 536 (A) a candidate or officeholder; or
  - 537 (B) a person who has not provided a bona fide service to a candidate or officeholder;
- 538 (vii) a vacation;
- 539 (viii) a vehicle expense;
- 540 (ix) a meal expense;
- 541 (x) a travel expense;
- 542 (xi) a payment of an administrative, civil, or criminal penalty;
- 543 (xii) a satisfaction of a personal debt;
- 544 (xiii) a personal service, including the service of an attorney, accountant, physician, or
- 545 other professional person;
- 546 (xiv) a membership fee for a professional or service organization; and
- 547 (xv) a payment in excess of the fair market value of the item or service purchased.
- 548 (2) As used in this chapter, "personal use expenditure" does not mean an expenditure
- 549 made:
  - 550 (a) for a political purpose;
  - 551 (b) for candidacy for public office;
  - 552 (c) to fulfill a duty or activity of an officeholder;
  - 553 (d) for a donation to a registered political party;
  - 554 (e) for a contribution to another candidate's campaign account, including sponsorship
  - 555 of or attendance at an event, the primary purpose of which is to solicit a contribution for
  - 556 another candidate's campaign account;
  - 557 (f) to return all or a portion of a contribution to a contributor;
  - 558 (g) for the following items, if made in connection with the candidacy for public office
  - 559 or an activity or duty of an officeholder:
    - 560 (i) (A) a mileage allowance at the rate established by the Division of Finance under
    - 561 Section 63A-3-107; or

- 562 (B) for motor fuel or special fuel, as defined in Section 59-13-102;
- 563 (ii) a meal expense;
- 564 (iii) a travel expense, including an expense incurred for airfare or a rental vehicle;
- 565 (iv) a payment for a service provided by an attorney or accountant;
- 566 (v) a tuition payment or registration fee for participation in a meeting or conference;
- 567 (vi) a gift;
- 568 (vii) a payment for the following items in connection with an office space:
- 569 (A) rent;
- 570 (B) utilities;
- 571 (C) a supply; or
- 572 (D) furnishing;
- 573 (viii) a booth at a meeting or event; or
- 574 (ix) educational material;
- 575 (h) to purchase or mail informational material, a survey, or a greeting card;
- 576 (i) for a donation to a charitable organization, as defined by Section 13-22-2, including
- 577 admission to or sponsorship of an event, the primary purpose of which is charitable solicitation,
- 578 as defined in Section 13-22-2;
- 579 (j) to repay a loan a candidate makes from the candidate's personal account to the
- 580 candidate's campaign account;
- 581 (k) to pay membership dues to a national organization whose primary purpose is to
- 582 address general public policy;
- 583 (l) for admission to or sponsorship of an event, the primary purpose of which is to
- 584 promote the social, educational, or economic well-being of the state or the candidate's or
- 585 officeholder's community; or
- 586 (m) for one or more guests of an officeholder or candidate to attend an event, meeting,
- 587 or conference described in this Subsection (2).
- 588 (3) (a) The lieutenant governor shall enforce this section by:
- 589 (i) evaluating a financial statement to identify a personal use expenditure; and

590 (ii) commencing an informal adjudicative proceeding in accordance with Title 63G,  
591 Chapter 4, Administrative Procedures Act, if the lieutenant governor has probable cause to  
592 believe a candidate or officeholder has made a personal use expenditure.

593 (b) Following the proceeding, the lieutenant governor may issue a signed order  
594 requiring a candidate or officeholder who has made a personal use expenditure to:

595 (i) remit an administrative penalty of an amount equal to 50% of the personal use  
596 expenditure to the lieutenant governor; and

597 (ii) deposit the amount of the personal use expenditure in the campaign account from  
598 which the personal use expenditure was disbursed.

599 (c) The lieutenant governor shall deposit money received under Subsection (3)(b)(i) in  
600 the General Fund.

601 Section 8. Section **23-19-14.5** is amended to read:

602 **23-19-14.5. Persons participating in youth organization activity authorized to fish**  
603 **without license.**

604 (1) As used in this section, "youth organization" means:

605 (a) the Boy Scouts of America;

606 (b) the Girls Scouts of the USA; or

607 (c) an organization that:

608 (i) is exempt from taxation under Section 501(c)(3), Internal Revenue Code; and

609 (ii) promotes character building through outdoor activities.

610 (2) The Division of Wildlife Resources shall permit a resident to fish without a license  
611 during a youth organization activity if:

612 (a) the resident is:

613 (i) a member of a youth organization; and

614 (ii) younger than 14 years old;

615 (b) the fishing is in compliance with all fishing statutes and rules; and

616 (c) the adult leader obtains from the youth organization:

617 (i) a valid tour permit; or

- 618 (ii) official documentation that specifies:
- 619 (A) the date and place of the fishing;
- 620 (B) the name of the adult leader that will supervise the fishing; and
- 621 (C) that the activity is officially sanctioned by the youth organization.
- 622 (3) (a) The adult leader shall instruct the members on fishing statutes and rules.
- 623 (b) The division shall provide educational materials on its website to assist the adult
- 624 leader in complying with Subsection (3)(a).

625 (4) By following the procedures and requirements of Title [63] 63G, Chapter [46a] 3,

626 Utah Administrative Rulemaking Act, the Wildlife Board shall adopt rules specifying the form

627 of the official documentation required by Subsection (2)(c)(ii).

628 Section 9. Section **26-52-202** is amended to read:

629 **26-52-202. Autism Treatment Account Advisory Committee -- Membership --**

630 **Time limit.**

631 (1) (a) There is created an Autism Treatment Account Advisory Committee consisting

632 of five members appointed by the governor to two-year terms of office as follows:

633 (i) one person holding a doctorate degree who has experience in treating persons with

634 an autism spectrum disorder;

635 (ii) one person who is a physician licensed under Title 58, Chapter 67, Utah Medical

636 Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, who has

637 completed a residency program in pediatrics;

638 (iii) one person who is employed in the Department of Health; and

639 (iv) two persons from the community who are familiar with autism spectrum disorders

640 and their effects, diagnosis, treatment, rehabilitation, and support needs, including:

641 (A) family members of a person with an autism spectrum disorder;

642 (B) representatives of an association which advocates for persons with an autism

643 spectrum disorder; and

644 (C) specialists or professionals [~~that~~] who work with persons with autism spectrum

645 disorders.

646 (b) Notwithstanding the requirements of Subsection (1)(a), the governor shall, at the  
647 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
648 committee members are staggered so that approximately half of the committee is appointed  
649 every year.

650 (c) If a vacancy occurs in the committee membership for any reason, a replacement  
651 may be appointed for the unexpired term.

652 (2) The department shall provide staff support to the committee.

653 (3) (a) The committee shall elect a chair from the membership on an annual basis.

654 (b) A majority of the committee constitutes a quorum at any meeting, and, if a quorum  
655 exists, the action of the majority of members present shall be the action of the committee.

656 (c) The executive director may remove a committee member:

657 (i) if the member is unable or unwilling to carry out the member's assigned  
658 responsibilities; or

659 (ii) for good cause.

660 (4) The committee may, in accordance with Title 63G, Chapter 3, Utah Administrative  
661 Rulemaking Act, make rules governing the committee's activities, which rules shall:

662 (a) comply with the requirements of this title; and

663 (b) include:

664 (i) qualification criteria and procedures for selecting service and treatment providers  
665 that receive disbursements from the account, which criteria shall give additional consideration  
666 to providers that are willing to use low interest loans when providing services to individuals;  
667 and

668 (ii) provisions to address and avoid conflicts of interest that may arise in relation to:

669 (A) the committee's selection of providers and persons that receive referrals,  
670 disbursements, or assistance from the account; and

671 (B) other matters that may constitute a conflict of interest.

672 (5) The committee shall meet as necessary to carry out its duties and shall meet upon a  
673 call of the committee chair or a call of a majority of the committee members, but no more than



674 four times per year.

675 (6) The committee shall comply with the procedures and requirements of:

676 (a) Title 52, Chapter 4, Open and Public Meetings Act; and

677 (b) Title 63G, Chapter 2, Government Records Access and Management Act.

678 (7) Committee members shall receive no compensation or per diem allowance for their  
679 services.

680 (8) Not later than November 30 of each year, the committee shall provide a written  
681 report summarizing the activities of the committee to:

682 (a) the executive director of the department;

683 (b) the Health and Human Services Interim Committee; and

684 (c) the Health and Human Services Appropriations Subcommittee.

685 Section 10. Section **31A-1-106** is amended to read:

686 **31A-1-106. Residual unlicensed domestic insurers.**

687 (1) Every person doing an insurance business in Utah not covered under another  
688 section of this title, that does not hold a valid certificate of authority or license under this title  
689 shall, by July 1, 1987, complete one of the actions prescribed in Subsections (2) through (5).  
690 This section does not apply to an unauthorized foreign insurer doing an insurance business in  
691 Utah in full compliance with Section 31A-15-103.

692 (2) An insurer under Subsection (1) may incorporate and apply, or if already  
693 incorporated, may apply for a certificate of authority under Chapter 5, Domestic Stock and  
694 Mutual Insurance Corporations, [6;] Chapter 7, Nonprofit Health Service Insurance  
695 Corporations, Chapter 8, Health Maintenance Organizations and Limited Health Plans, or  
696 Chapter 9, Insurance Fraternals. If the commissioner is satisfied that the insurer substantially  
697 complies with the requirements of the appropriate chapter necessary for the protection of  
698 insureds and the public, the commissioner shall issue a certificate of authority.

699 (3) An insurer under Subsection (1) may transfer all its obligations to a corporation  
700 authorized under this title to assume them, according to a plan approved by the commissioner.  
701 The commissioner may disapprove the plan on a finding, after a hearing, that it is contrary to

702 the interests of insureds, the public, or the law.

703 (4) An insurer under Subsection (1) may adopt a plan to run off existing obligations  
704 without accepting any new policyholders or new obligations. The commissioner may  
705 disapprove the plan on a finding, after a hearing, that it is contrary to the interests of insureds,  
706 the public, or the law.

707 (5) The commissioner may, by order, exempt an insurer from the requirements of  
708 Subsection (1) or extend the deadline under Subsection (1) on a finding that:

709 (a) incorporation, licensing, reinsurance, or run off would cause disproportionate  
710 expense, loss, or substantial hardship; and

711 (b) the nature of the existing and prospective business, the assets, or the business plan  
712 of the insurer can be reasonably expected to continue to operate in a sound manner and can be  
713 subjected to adequate regulatory controls.

714 (6) Whenever the commissioner grants an exemption under Subsection (5), the  
715 commissioner shall issue to the insurer a certificate of authority. The commissioner may  
716 amend the certificate at any time, specifying the business that the insurer may transact and  
717 specifying in detail the controls to which the insurer shall be subject. These controls shall  
718 correspond as nearly as practicable to the controls applicable to corporations transacting a like  
719 business.

720 (7) It is a ground for liquidation under Section 31A-27a-207 if an insurer has not  
721 completed action under one of Subsections (2) through (4) and has not applied for and been  
722 granted exemption under Subsection (5) before July 1, 1987.

723 Section 11. Section **31A-4-101** is amended to read:

724 **31A-4-101. Solicitation permit.**

725 (1) No person may advertise for or solicit or receive any funds, subscriptions for  
726 securities, or membership fees, dues, or contributions in Utah or from any person present in  
727 Utah for the purpose of forming or financing the formation or enlargement of an insurer,  
728 holding company to form or acquire one or more insurers, or any corporation or unincorporated  
729 association to do or facilitate the doing of an insurance business in Utah or elsewhere, unless

730 the person has obtained the appropriate organization or solicitation permit under Chapter 5,  
731 Domestic Stock and Mutual Insurance Corporations, [~~6~~] Chapter 6a, Service Contracts,  
732 Chapter 7, Nonprofit Health Service Insurance Corporations, Chapter 8, Health Maintenance  
733 Organizations and Limited Health Plans, or Chapter 9, Insurance Fraternals, and filed any  
734 required statement under Chapter 16, Insurance Holding Companies.

735 (2) Any person obtaining the appropriate organization or solicitation permit under this  
736 code is exempt from compliance with Title 61, Securities Division - Real Estate Division.

737 Section 12. Section **31A-14-106** is amended to read:

738 **31A-14-106. Applicability of corporation provisions.**

739 Except to the extent made applicable by reference under this title, Title 16, [~~Chapters 6~~]  
740 Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised  
741 Business Corporation Act, do not apply to insurers licensed under this chapter.

742 Section 13. Section **31A-20-102** is amended to read:

743 **31A-20-102. Joint underwriting.**

744 (1) Every group, association, or other organization of insurers that engages in joint  
745 underwriting or joint reinsurance shall file with the commissioner:

746 (a) a copy of its constitution, articles of incorporation, or agreement of association, and  
747 its bylaws or rules governing its activities, all certified by the custodian of the originals;

748 (b) a list of its members; and

749 (c) the name and address of its resident process agent.

750 (2) Every group, association, or other organization shall promptly notify the  
751 commissioner of every change in its constitution, articles of incorporation, agreement of  
752 association, bylaws, rules, its list of members, and its resident process agent.

753 (3) (a) If all members of a group of insurers under this section are authorized to do  
754 business in Utah, the business done by the group shall be allocated for regulatory purposes to  
755 individual members of the group.

756 (b) The group itself is subject only to [~~Chapters 1, 2, 4, 20, 21, 22, 23, and 26~~]:

757 (i) Chapter 1, General Provisions;

758           (ii) Chapter 2, Administration of the Insurance Laws;  
759           (iii) Chapter 4, Insurers in General;  
760           (iv) Chapter 20, Underwriting Restrictions;  
761           (v) Chapter 21, Insurance Contracts in General;  
762           (vi) Chapter 22, Contracts in Specific Lines;  
763           (vii) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and  
764 Reinsurance Intermediaries; and  
765           (viii) Chapter 26, Insurance Adjusters.  
766           (c) If any member of the group is not authorized to do business in Utah, the group shall  
767 obtain authorization to do business under Chapter 14, Foreign Insurers, and is subject to  
768 regulation under that chapter.  
769           Section 14. Section **31A-22-722.5** is amended to read:  
770           **31A-22-722.5. Mini-COBRA election -- American Recovery and Reinvestment**  
771 **Act.**  
772           (1) (a) If the provisions of Subsection (1)(b) are met, an individual has a right to  
773 contact the individual's employer or the insurer for the employer to participate in a transition  
774 period for mini-COBRA benefits under Section 31A-22-722 in accordance with Section 3001  
775 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended.  
776           (b) An individual has the right under Subsection (1)(a) if the individual:  
777           (i) was involuntarily terminated from employment during the period of time identified  
778 in Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as  
779 amended;  
780           (ii) is eligible for COBRA premium assistance under Section 3001 of the American  
781 Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended;  
782           (iii) was eligible for Utah mini-COBRA as provided in Section 31A-22-722 at the time  
783 of termination;  
784           (iv) elected Utah mini-Cobra; and  
785           (v) voluntarily dropped coverage, which includes dropping coverage through

786 non-payment of premiums, between December 1, 2009<sub>2</sub> and February 1, 2010.

787 (2) (a) An individual or the employer of the individual shall contact the insurer and  
788 inform the insurer that the individual wants to maintain coverage and pay retroactive premiums  
789 under a transition period for mini-COBRA coverage in accordance with the provisions of  
790 Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as  
791 amended.

792 (b) An individual or an employer on behalf of an eligible individual must submit the  
793 applicable forms and premiums for coverage under Subsection (1) to the insurer in accordance  
794 with the provisions of Section 3001 of the American Recovery and Reinvestment Act of 2009  
795 (Pub. L. [~~11-5~~] 111-5), as amended.

796 (3) An insured has the right to extend the employee's coverage under mini-cobra with  
797 the current employer's group policy beyond the 12 months to the period of time the insured is  
798 eligible to receive assistance in accordance with Section 3001 of the American Recovery and  
799 Reinvestment Act of 2009 (Pub. L. 111-5) as amended.

800 (4) An insurer that violates this section is subject to penalties in accordance with  
801 Section 31A-2-308.

802 Section 15. Section **31A-22-1011** is amended to read:

803 **31A-22-1011. Workers' compensation coverage waivers.**

804 (1) As used in this section:

805 (a) "Business entity" means:

806 (i) a sole proprietorship;

807 (ii) a corporation;

808 (iii) a partnership;

809 (iv) a limited liability company; or

810 (v) an entity similar to one described in Subsections (1)(a)(i) through (iv).

811 (b) "Waiver" means a workers' compensation coverage waiver issued under this  
812 section.

813 (2) (a) Notwithstanding Section 31A-21-104, if the information required by Subsection

814 (3) is provided, an insurer authorized under this title to issue a workers' compensation policy  
815 may issue a workers' compensation coverage waiver to a business entity that:

816 (i) elects not to include an owner, partner, or corporate officer or director as an  
817 employee under a workers' compensation policy in accordance with Section 34A-2-103 and  
818 Subsection 34A-2-104(4); and

819 (ii) employs no other employee on the day on which the insurer issues the waiver to the  
820 business entity.

821 (b) As of the day on which a business entity described in Subsection (2)(a) employs an  
822 employee other than an owner, partner, or corporate officer or director described in Subsection  
823 (2)(a):

824 (i) the business entity's waiver is invalid; and

825 (ii) the business entity is required to provide workers' compensation coverage for that  
826 employee in accordance with Section 34A-2-201.

827 (3) To obtain a waiver, a business entity shall submit to the insurer that issues the  
828 waiver:

829 (a) a copy of two or more of the following:

830 (i) the business entity's federal or state income tax return that shows business income  
831 for the complete taxable year that immediately precedes the day on which the business entity  
832 submits the information;

833 (ii) a valid business license;

834 (iii) a license to engage in an occupation or profession, including a license under Title  
835 [59] 58, Occupations and Professions; or

836 (iv) documentation of an active liability insurance policy that covers the business  
837 entity's activities; or

838 (b) a copy of an item listed in Subsection (3)(a) and a copy of two or more of the  
839 following:

840 (i) proof of a bank account for the business entity;

841 (ii) proof that for the business entity there is:

- 842 (A) a telephone number; and
- 843 (B) a physical location; or
- 844 (iii) an advertisement of services in a newspaper of general circulation or telephone
- 845 directory showing the business entity's:
- 846 (A) name; and
- 847 (B) contact information.
- 848 (4) (a) An insurer that issues a waiver shall report to the Labor Commission for each
- 849 business entity to which the insurer issues a waiver:
- 850 (i) the name, address, and telephone number of the business entity;
- 851 (ii) a name of an individual who can be contacted on behalf of the business entity; and
- 852 (iii) other information required by the Labor Commission, by rule made in accordance
- 853 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 854 (b) The Labor Commission, by rule made in accordance with Title 63G, Chapter 3,
- 855 Utah Administrative Rulemaking Act, shall determine how frequently an insurer shall make a
- 856 report required by Subsection (4)(a), except that the Labor Commission shall require that a
- 857 report be submitted at least monthly.
- 858 (5) (a) The Labor Commission may investigate a business entity to determine whether
- 859 the business entity validly elects to not cover an owner, partner, or corporate officer or director
- 860 as an employee under a workers' compensation policy in accordance with Section 34A-2-103.
- 861 (b) If the Labor Commission determines that a business entity's election as provided in
- 862 this section is invalid, the Labor Commission may:
- 863 (i) prohibit a business entity from using a waiver obtained under this section; and
- 864 (ii) take any action provided for under Title 34A, Chapter 2, Workers' Compensation
- 865 Act, or Title 34A, Chapter 3, Utah Occupational Disease Act, for failure to obtain workers'
- 866 compensation coverage for an employee.
- 867 Section 16. Section **31A-40-303** is amended to read:
- 868 **31A-40-303. Licensed through an assurance organization.**
- 869 (1) (a) A person may comply with Section 31A-40-302 by:

870 (i) filing with the commissioner:  
871 (A) a certification that an assurance organization certifies the qualifications of the  
872 professional employer organization;  
873 (B) the information required by Subsections 31A-40-302(2)(a) through (d) and  
874 31A-40-302(2)(h); and  
875 (C) any changes to the information required by Subsection (1)(a)(i)(B) within 30 days  
876 of the day on which the information changes; and  
877 (ii) paying a license fee determined in accordance with Section 31A-3-103.  
878 (b) A professional employer organization that meets the requirements of Section  
879 31A-40-302 by complying with this section is not required to:  
880 (i) renew its license until the day on which the assurance organization no longer  
881 certifies the qualifications of the professional employer organization;  
882 (ii) provide the information in Subsections 31A-40-302(2)(e) through (g); or  
883 (iii) comply with Section 31A-40-205.  
884 (c) If a professional employer organization that meets the requirements of Section  
885 31A-40-302 by complying with this section receives a new or renewed certification by the  
886 assurance organization, the professional employer organization shall file with the  
887 commissioner a new certification within 30 days from the day on which the professional  
888 employer organization receives the new or renewed certification from the assurance  
889 organization.  
890 (d) (i) If a professional employer organization authorizes an assurance organization to  
891 act on behalf of the professional employer organization for purposes of licensure under this  
892 section, the commissioner shall accept the assurance organization's filing of the information  
893 required by Subsection (1)(a) or (1)(c) if the information otherwise complies with this section  
894 and commission rules.  
895 (ii) Notwithstanding Subsection (1)(d)(i), if the assurance organization fails to make a  
896 required filing under this section, the commissioner may not accept, not renew, or terminate the  
897 professional employer organization's license.



898 (2) The commissioner shall designate one or more assurance organizations by rule:

899 (a) consistent with this section;

900 (b) made in accordance with Title [~~63A~~] 63G, Chapter 3, Utah Administrative

901 Rulemaking Act; and

902 (c) that requires that an assurance organization designated by the commissioner be  
903 licensed by one or more states other than Utah to certify the qualifications of a professional  
904 employer organization.

905 (3) The qualifications certified by an assurance organization designated by the  
906 commissioner shall include at a minimum that a professional employer organization:

907 (a) ensure that each controlling person of the professional employer organization:

908 (i) be competent to manage a professional employer organization;

909 (ii) be responsible in the controlling person's finances; and

910 (iii) not have a history of or be engaged in unlawful activities;

911 (b) has a history that is verifiable that the professional employer organization:

912 (i) complies with regulatory requirements; and

913 (ii) engages in financially responsible conduct;

914 (c) has or is able to obtain audited financial statements;

915 (d) has an adjusted net worth equal to or in excess of the greater of:

916 (i) \$100,000; or

917 (ii) 5% of total adjusted liabilities;

918 (e) has liquid assets that are sufficient to pay short-term liabilities as demonstrated by a  
919 ratio determined by dividing current assets by current liabilities or a similar formula;

920 (f) has on its books adequate financial reserves for all local, state, and federal  
921 self-insurance and any insurance policy or plan in which the final cost of coverage is affected  
922 by claim losses;

923 (g) operates in conformity with all applicable laws and regulations including those laws  
924 and regulations in addition to this chapter;

925 (h) does not engage in deceptive trade practices or misrepresentations of an employer's

926 obligation or liability;

927 (i) has a written professional employer agreement with each client;

928 (j) has or is willing to obtain a written acknowledgment, as part of an existing form or  
929 separately, from each covered employee stating that the covered employee understands and  
930 accepts the nature, terms, and conditions of the coemployment relationship;

931 (k) establishes and maintains a coemployment relationship by assuming key employer  
932 attributes with respect to covered employees as demonstrated by the professional employer  
933 agreement and employment forms, policies, and procedures;

934 (l) provides all covered employees with a written copy of the professional employer  
935 organization's employment policies and procedures;

936 (m) ensures that all covered employees are covered in a regulatory compliant manner  
937 by workers' compensation insurance;

938 (n) does not knowingly use the coemployment relationship to assist a client to evade or  
939 avoid the client's obligations under:

940 (i) the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq.;

941 (ii) the federal Railway Labor Act, 45 U.S.C. Sec. 151 et seq.; or

942 (iii) any collective bargaining agreement;

943 (o) except through a licensed insurance agent, does not:

944 (i) represent or imply that it can sell insurance;

945 (ii) attempt to sell insurance; or

946 (iii) sell insurance;

947 (p) markets and provides, or is willing to market and provide professional employer  
948 service under a separate and distinct trade name from any affiliated professional employer  
949 organization that is not certified by the assurance organization;

950 (q) does not allow any person not certified by the assurance organization to use the  
951 professional employer organization's trade name in the sale or delivery of the professional  
952 employer organization's professional employer service;

953 (r) does not guarantee, participate in, transfer between, or otherwise share liabilities

954 with any other professional employer organization that is not certified by the assurance  
955 organization:

- 956 (i) in the employment of covered employees; or
- 957 (ii) in any employee benefit or insurance policy or plan that is not fully insured and  
958 fully funded; and

959 (s) has the ability to provide a regulatory agency or insurance carrier upon request with:

960 (i) a client's name, address, and federal tax identification number;

961 (ii) payroll data by:

962 (A) client;

963 (B) (I) client SIC Code of the 1987 Standard Industrial Classification Manual of the  
964 federal Executive Office of the President, Office of Management and Budget; or

965 (II) client classification under the 2002 North American Industry Classification System  
966 of the federal Executive Office of the President, Office of Management and Budget; and

967 (C) workers' compensation classification;

968 (iii) the names of covered employees by:

969 (A) the worksite of a client; and

970 (B) workers' compensation classification; and

971 (iv) workers' compensation certificates of insurance.

972 (4) This section does not modify the commissioner's authority or responsibility to  
973 accept, renew, or terminate a license.

974 Section 17. Section **41-1a-102** is amended to read:

975 **41-1a-102. Definitions.**

976 As used in this chapter:

977 (1) "Actual miles" means the actual distance a vehicle has traveled while in operation.

978 (2) "Actual weight" means the actual unladen weight of a vehicle or combination of  
979 vehicles as operated and certified to by a weighmaster.

980 (3) "Affidavit of Mobile Home Affixture" means the affidavit of affixture described in  
981 [~~Title 59, Chapter 2, Part 6, Mobile Homes~~] Section 41-1a-503.

982 (4) "All-terrain type I vehicle" has the same meaning provided in Section 41-22-2.

983 (5) "All-terrain type II vehicle" has the same meaning provided in Section 41-22-2.

984 (6) "Amateur radio operator" means any person licensed by the Federal

985 Communications Commission to engage in private and experimental two-way radio operation

986 on the amateur band radio frequencies.

987 (7) "Branded title" means a title certificate that is labeled:

988 (a) rebuilt and restored to operation;

989 (b) flooded and restored to operation; or

990 (c) not restored to operation.

991 (8) "Camper" means any structure designed, used, and maintained primarily to be

992 mounted on or affixed to a motor vehicle that contains a floor and is designed to provide a

993 mobile dwelling, sleeping place, commercial space, or facilities for human habitation or for

994 camping.

995 (9) "Certificate of title" means a document issued by a jurisdiction to establish a record

996 of ownership between an identified owner and the described vehicle, vessel, or outboard motor.

997 (10) "Certified scale weigh ticket" means a weigh ticket that has been issued by a

998 weighmaster.

999 (11) "Commercial vehicle" means a motor vehicle, trailer, or semitrailer used or

1000 maintained for the transportation of persons or property that operates:

1001 (a) as a carrier for hire, compensation, or profit; or

1002 (b) as a carrier to transport the vehicle owner's goods or property in furtherance of the

1003 owner's commercial enterprise.

1004 (12) "Commission" means the State Tax Commission.

1005 (13) "Dealer" means a person engaged or licensed to engage in the business of buying,

1006 selling, or exchanging new or used vehicles, vessels, or outboard motors either outright or on

1007 conditional sale, bailment, lease, chattel mortgage, or otherwise or who has an established

1008 place of business for the sale, lease, trade, or display of vehicles, vessels, or outboard motors.

1009 (14) "Division" means the Motor Vehicle Division of the commission, created in

1010 Section 41-1a-106.

1011 (15) "Essential parts" means all integral and body parts of a vehicle of a type required  
1012 to be registered in this state, the removal, alteration, or substitution of which would tend to  
1013 conceal the identity of the vehicle or substantially alter its appearance, model, type, or mode of  
1014 operation.

1015 (16) "Farm tractor" means every motor vehicle designed and used primarily as a farm  
1016 implement for drawing plows, mowing machines, and other implements of husbandry.

1017 (17) (a) "Farm truck" means a truck used by the owner or operator of a farm solely for  
1018 his own use in the transportation of:

1019 (i) farm products, including livestock and its products, poultry and its products,  
1020 floricultural and horticultural products;

1021 (ii) farm supplies, including tile, fence, and every other thing or commodity used in  
1022 agricultural, floricultural, horticultural, livestock, and poultry production; and

1023 (iii) livestock, poultry, and other animals and things used for breeding, feeding, or  
1024 other purposes connected with the operation of a farm.

1025 (b) "Farm truck" does not include the operation of trucks by commercial processors of  
1026 agricultural products.

1027 (18) "Fleet" means one or more commercial vehicles.

1028 (19) "Foreign vehicle" means a vehicle of a type required to be registered, brought into  
1029 this state from another state, territory, or country other than in the ordinary course of business  
1030 by or through a manufacturer or dealer, and not registered in this state.

1031 (20) "Gross laden weight" means the actual weight of a vehicle or combination of  
1032 vehicles, equipped for operation, to which shall be added the maximum load to be carried.

1033 (21) "Highway" or "street" means the entire width between property lines of every way  
1034 or place of whatever nature when any part of it is open to the public, as a matter of right, for  
1035 purposes of vehicular traffic.

1036 (22) (a) "Identification number" means the identifying number assigned by the  
1037 manufacturer or by the division for the purpose of identifying the vehicle, vessel, or outboard

1038 motor.

1039 (b) "Identification number" includes a vehicle identification number, state assigned  
1040 identification number, hull identification number, and motor serial number.

1041 (23) "Implement of husbandry" means every vehicle designed or adapted and used  
1042 exclusively for an agricultural operation and only incidentally operated or moved upon the  
1043 highways.

1044 (24) (a) "In-state miles" means the total number of miles operated in this state during  
1045 the preceding year by fleet power units.

1046 (b) If fleets are composed entirely of trailers or semitrailers, "in-state miles" means the  
1047 total number of miles that those vehicles were towed on Utah highways during the preceding  
1048 year.

1049 (25) "Interstate vehicle" means any commercial vehicle operated in more than one  
1050 state, province, territory, or possession of the United States or foreign country.

1051 (26) "Jurisdiction" means a state, district, province, political subdivision, territory, or  
1052 possession of the United States or any foreign country.

1053 (27) "Lienholder" means a person with a security interest in particular property.

1054 (28) "Manufactured home" means a transportable factory built housing unit constructed  
1055 on or after June 15, 1976, according to the Federal Home Construction and Safety Standards  
1056 Act of 1974 (HUD Code), in one or more sections, which, in the traveling mode, is eight body  
1057 feet or more in width or 40 body feet or more in length, or when erected on site, is 400 or more  
1058 square feet, and which is built on a permanent chassis and designed to be used as a dwelling  
1059 with or without a permanent foundation when connected to the required utilities, and includes  
1060 the plumbing, heating, air-conditioning, and electrical systems.

1061 (29) "Manufacturer" means a person engaged in the business of constructing,  
1062 manufacturing, assembling, producing, or importing new or unused vehicles, vessels, or  
1063 outboard motors for the purpose of sale or trade.

1064 (30) "Mobile home" means a transportable factory built housing unit built prior to June  
1065 15, 1976, in accordance with a state mobile home code which existed prior to the Federal

1066 Manufactured Housing and Safety Standards Act (HUD Code).

1067 (31) "Motorboat" has the same meaning as provided in Section 73-18-2.

1068 (32) "Motorcycle" means a motor vehicle having a saddle for the use of the rider and  
1069 designed to travel on not more than three wheels in contact with the ground.

1070 (33) (a) "Motor vehicle" means a self-propelled vehicle intended primarily for use and  
1071 operation on the highways.

1072 (b) "Motor vehicle" does not include an off-highway vehicle.

1073 (34) (a) "Nonresident" means a person who is not a resident of this state as defined by  
1074 Section 41-1a-202, and who does not engage in intrastate business within this state and does  
1075 not operate in that business any motor vehicle, trailer, or semitrailer within this state.

1076 (b) A person who engages in intrastate business within this state and operates in that  
1077 business any motor vehicle, trailer, or semitrailer in this state or who, even though engaging in  
1078 interstate commerce, maintains any vehicle in this state as the home station of that vehicle is  
1079 considered a resident of this state, insofar as that vehicle is concerned in administering this  
1080 chapter.

1081 (35) "Odometer" means a device for measuring and recording the actual distance a  
1082 vehicle travels while in operation, but does not include any auxiliary odometer designed to be  
1083 periodically reset.

1084 (36) "Off-highway implement of husbandry" has the same meaning as provided in  
1085 Section 41-22-2.

1086 (37) "Off-highway vehicle" has the same meaning as provided in Section 41-22-2.

1087 (38) "Operate" means to drive or be in actual physical control of a vehicle or to  
1088 navigate a vessel.

1089 (39) "Outboard motor" means a detachable self-contained propulsion unit, excluding  
1090 fuel supply, used to propel a vessel.

1091 (40) (a) "Owner" means a person, other than a lienholder, holding title to a vehicle,  
1092 vessel, or outboard motor whether or not the vehicle, vessel, or outboard motor is subject to a  
1093 security interest.

1094           (b) If a vehicle is the subject of an agreement for the conditional sale or installment  
1095 sale or mortgage of the vehicle with the right of purchase upon performance of the conditions  
1096 stated in the agreement and with an immediate right of possession vested in the conditional  
1097 vendee or mortgagor, or if the vehicle is the subject of a security agreement, then the  
1098 conditional vendee, mortgagor, or debtor is considered the owner for the purposes of this  
1099 chapter.

1100           (c) If a vehicle is the subject of an agreement to lease, the lessor is considered the  
1101 owner until the lessee exercises his option to purchase the vehicle.

1102           (41) "Personalized license plate" means a license plate that has displayed on it a  
1103 combination of letters, numbers, or both as requested by the owner of the vehicle and assigned  
1104 to the vehicle by the division.

1105           (42) (a) "Pickup truck" means a two-axle motor vehicle with motive power  
1106 manufactured, remanufactured, or materially altered to provide an open cargo area.

1107           (b) "Pickup truck" includes motor vehicles with the open cargo area covered with a  
1108 camper, camper shell, tarp, removable top, or similar structure.

1109           (43) "Pneumatic tire" means every tire in which compressed air is designed to support  
1110 the load.

1111           (44) "Preceding year" means a period of 12 consecutive months fixed by the division  
1112 that is within 16 months immediately preceding the commencement of the registration or  
1113 license year in which proportional registration is sought. The division in fixing the period shall  
1114 conform it to the terms, conditions, and requirements of any applicable agreement or  
1115 arrangement for the proportional registration of vehicles.

1116           (45) "Public garage" means every building or other place where vehicles or vessels are  
1117 kept and stored and where a charge is made for the storage and keeping of vehicles and vessels.

1118           (46) "Reconstructed vehicle" means every vehicle of a type required to be registered in  
1119 this state that is materially altered from its original construction by the removal, addition, or  
1120 substitution of essential parts, new or used.

1121           (47) "Recreational vehicle" has the same meaning as provided in Section 13-14-102.



1122           (48) "Registration" means a document issued by a jurisdiction that allows operation of  
1123 a vehicle or vessel on the highways or waters of this state for the time period for which the  
1124 registration is valid and that is evidence of compliance with the registration requirements of the  
1125 jurisdiction.

1126           (49) (a) "Registration year" means a 12 consecutive month period commencing with  
1127 the completion of all applicable registration criteria.

1128           (b) For administration of a multistate agreement for proportional registration the  
1129 division may prescribe a different 12-month period.

1130           (50) "Repair or replacement" means the restoration of vehicles, vessels, or outboard  
1131 motors to a sound working condition by substituting any inoperative part of the vehicle, vessel,  
1132 or outboard motor, or by correcting the inoperative part.

1133           (51) "Replica vehicle" means:

1134           (a) a street rod that meets the requirements under Subsection 41-21-1(1)(a)(i)(B); or

1135           (b) a custom vehicle that meets the requirements under Subsection  
1136 41-6a-1507(1)(a)(i)(B).

1137           (52) "Road tractor" means every motor vehicle designed and used for drawing other  
1138 vehicles and constructed so it does not carry any load either independently or any part of the  
1139 weight of a vehicle or load that is drawn.

1140           (53) "Sailboat" has the same meaning as provided in Section 73-18-2.

1141           (54) "Security interest" means an interest that is reserved or created by a security  
1142 agreement to secure the payment or performance of an obligation and that is valid against third  
1143 parties.

1144           (55) "Semitrailer" means every vehicle without motive power designed for carrying  
1145 persons or property and for being drawn by a motor vehicle and constructed so that some part  
1146 of its weight and its load rests or is carried by another vehicle.

1147           (56) "Special group license plate" means a type of license plate designed for a  
1148 particular group of people or a license plate authorized and issued by the division in accordance  
1149 with Section 41-1a-418.

1150 (57) (a) "Special interest vehicle" means a vehicle used for general transportation  
1151 purposes and that is:

1152 (i) 20 years or older from the current year; or

1153 (ii) a make or model of motor vehicle recognized by the division director as having  
1154 unique interest or historic value.

1155 (b) In making his determination under Subsection (57)(a), the division director shall  
1156 give special consideration to:

1157 (i) a make of motor vehicle that is no longer manufactured;

1158 (ii) a make or model of motor vehicle produced in limited or token quantities;

1159 (iii) a make or model of motor vehicle produced as an experimental vehicle or one  
1160 designed exclusively for educational purposes or museum display; or

1161 (iv) a motor vehicle of any age or make that has not been substantially altered or  
1162 modified from original specifications of the manufacturer and because of its significance is  
1163 being collected, preserved, restored, maintained, or operated by a collector or hobbyist as a  
1164 leisure pursuit.

1165 (58) (a) "Special mobile equipment" means every vehicle:

1166 (i) not designed or used primarily for the transportation of persons or property;

1167 (ii) not designed to operate in traffic; and

1168 (iii) only incidentally operated or moved over the highways.

1169 (b) "Special mobile equipment" includes:

1170 (i) farm tractors;

1171 (ii) off-road motorized construction or maintenance equipment including backhoes,  
1172 bulldozers, compactors, graders, loaders, road rollers, tractors, and trenchers; and

1173 (iii) ditch-digging apparatus.

1174 (c) "Special mobile equipment" does not include a commercial vehicle as defined  
1175 under Section 72-9-102.

1176 (59) "Specially constructed vehicle" means every vehicle of a type required to be  
1177 registered in this state, not originally constructed under a distinctive name, make, model, or

1178 type by a generally recognized manufacturer of vehicles, and not materially altered from its  
1179 original construction.

1180 (60) "Title" means the right to or ownership of a vehicle, vessel, or outboard motor.

1181 (61) (a) "Total fleet miles" means the total number of miles operated in all jurisdictions  
1182 during the preceding year by power units.

1183 (b) If fleets are composed entirely of trailers or semitrailers, "total fleet miles" means  
1184 the number of miles that those vehicles were towed on the highways of all jurisdictions during  
1185 the preceding year.

1186 (62) "Trailer" means a vehicle without motive power designed for carrying persons or  
1187 property and for being drawn by a motor vehicle and constructed so that no part of its weight  
1188 rests upon the towing vehicle.

1189 (63) "Transferee" means a person to whom the ownership of property is conveyed by  
1190 sale, gift, or any other means except by the creation of a security interest.

1191 (64) "Transferor" means a person who transfers his ownership in property by sale, gift,  
1192 or any other means except by creation of a security interest.

1193 (65) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle  
1194 without motive power, designed as a temporary dwelling for travel, recreational, or vacation  
1195 use that does not require a special highway movement permit when drawn by a self-propelled  
1196 motor vehicle.

1197 (66) "Truck tractor" means a motor vehicle designed and used primarily for drawing  
1198 other vehicles and not constructed to carry a load other than a part of the weight of the vehicle  
1199 and load that is drawn.

1200 (67) "Vehicle" includes a motor vehicle, trailer, semitrailer, off-highway vehicle,  
1201 manufactured home, and mobile home.

1202 (68) "Vessel" has the same meaning as provided in Section 73-18-2.

1203 (69) "Vintage vehicle" has the same meaning as provided in Section 41-21-1.

1204 (70) "Waters of this state" has the same meaning as provided in Section 73-18-2.

1205 (71) "Weighmaster" means a person, association of persons, or corporation permitted

1206 to weigh vehicles under this chapter.

1207 Section 18. Section **48-1-3** is amended to read:

1208 **48-1-3. "Partnership" defined.**

1209 (1) (a) Except as provided in Subsection (2), a "partnership" is an association of two or  
1210 more persons to carry on as coowners a business for profit.

1211 (b) "Partnership," when used in a statute of the state, includes a limited liability  
1212 partnership registered under Section 48-1-42, unless the context requires otherwise.

1213 (2) An association formed under any other statute of this state, or any statute adopted  
1214 by authority other than the authority of this state, is not a partnership under this chapter, unless  
1215 such association would have been a partnership in this state prior to the adoption of this  
1216 chapter.

1217 (3) This chapter shall apply to limited partnerships except in so far as the statutes  
1218 relating to such partnerships are inconsistent herewith.

1219 Section 19. Section **48-2a-1105** is amended to read:

1220 **48-2a-1105. Rules for cases not provided for in this chapter.**

1221 In any case not provided for in this chapter, the provisions of Title 48, Chapter 1, Part 1,  
1222 [~~Uniform Partnership Act~~] General Partnership, govern.

1223 Section 20. Section **53-2-105** is amended to read:

1224 **53-2-105. Hazardous materials emergency -- Recovery of expenses.**

1225 (1) (a) The director may recover from those persons whose negligent actions caused the  
1226 hazardous materials emergency, expenses incurred by state agencies directly associated with a  
1227 response to a hazardous materials emergency taken under authority of this part, Title 63K,  
1228 Chapter 3, Emergency Management Act, or Title 63K, Chapter [2] 4, Disaster Response and  
1229 Recovery Act.

1230 (b) The payment of expenses under this Subsection (1) does not constitute an  
1231 admission of liability or negligence in any legal action for damages.

1232 (c) The director may obtain assistance from the attorney general or a county attorney of  
1233 the affected jurisdiction to assist the director in recovering expenses and legal fees.

1234 (d) Any recovered costs shall be deposited in the General Fund as dedicated credits to  
1235 be used by the division to reimburse state and local government agencies for the costs they  
1236 have incurred.

1237 (2) (a) If the cost directly associated with emergency response exceeds all available  
1238 funds of the division within a given fiscal year, the division, with approval from the governor,  
1239 may incur a deficit in its line item budget.

1240 (b) The Legislature shall provide a supplemental appropriation in the following year to  
1241 cover the deficit.

1242 (c) The division shall deposit all costs associated with any emergency response that are  
1243 collected in subsequent fiscal years into the General Fund.

1244 (3) Any political subdivision may enact local ordinances pursuant to existing statutory  
1245 or constitutional authority to provide for the recovery of expenses incurred by the political  
1246 subdivision.

1247 Section 21. Section **53-2-106** is amended to read:

1248 **53-2-106. Expenditures authorized by "state of emergency" declaration.**

1249 (1) (a) The director may use funds authorized under Title 63K, Chapter [2] 4, Disaster  
1250 Response and Recovery Act, to provide:

1251 (i) transportation to and from the disaster scene;

1252 (ii) accommodations at the disaster scene for prolonged incidents; and

1253 (iii) emergency purchase of response equipment and supplies in direct support of a  
1254 disaster.

1255 (b) The commissioner may authorize the use of funds accrued under Title 63K, Chapter  
1256 2, Energy Emergency Powers of the Governor Act, only if the governor declares a state of  
1257 emergency as provided in Title 63K, Chapter [2] 4, Disaster Response and Recovery Act.

1258 (2) These funds may not be allocated to a political subdivision unless the political  
1259 subdivision has demonstrated that it is beyond its capability to respond to the disaster and that  
1260 no other resources are available in sufficient amount to meet the disaster.

1261 Section 22. Section **53-7-103** is amended to read:

1262           **53-7-103. State Fire Marshal Division -- Creation -- State fire marshal --**  
1263 **Appointment, qualifications, duties, and compensation.**

1264           (1) There is created within the department the State Fire Marshal Division.

1265           (2) (a) The director of the division is the state fire marshal, who shall be appointed by  
1266 the commissioner upon the recommendation of the Utah Fire Prevention Board created in  
1267 Section 53-7-203 and with the approval of the governor.

1268           (b) The state fire marshal is the executive and administrative head of the division, and  
1269 shall be qualified by experience and education to:

1270           (i) enforce the state fire code;

1271           (ii) enforce rules made under this chapter; and

1272           (iii) perform the duties prescribed by the commissioner.

1273           (3) The state fire marshal acts under the supervision and control of the commissioner  
1274 and may be removed from the position at the will of the commissioner.

1275           (4) The state fire marshal shall:

1276           (a) enforce the state fire code and rules made under this chapter in accordance with  
1277 Section 53-7-104;

1278           (b) complete the duties assigned by the commissioner;

1279           (c) examine plans and specifications for school buildings, as required by Section  
1280 53A-20-104;

1281           (d) approve criteria established by the state superintendent for building inspectors;

1282           (e) promote and support injury prevention public education programs; and

1283           (f) perform all other duties provided in this chapter.

1284           (5) The state fire marshal shall receive compensation as provided by Title 67, Chapter  
1285 19, Utah State Personnel Management Act.

1286           Section 23. Section **53A-11-102.6** is amended to read:

1287           **53A-11-102.6. Private school and home school students' participation in**  
1288 **extracurricular activities in a public school.**

1289           (1) As used in this section:

1290 (a) "Academic eligibility requirements" means the academic eligibility requirements  
1291 that a home school student is required to meet to participate in an extracurricular activity in a  
1292 public school.

1293 (b) "Principal" means the principal of the school in which a home school student  
1294 participates or intends to participate in an extracurricular activity.

1295 (2) (a) A minor who is enrolled in a private school or a home school shall be eligible to  
1296 participate in an extracurricular activity at a public school as provided in this section.

1297 (b) A private school student may only participate in an extracurricular activity at a  
1298 public school that is not offered by the student's private school.

1299 (c) Except as provided in Subsection (2)(d), a private school student or a home school  
1300 student may only participate in an extracurricular activity at:

1301 (i) the school within whose attendance boundaries the student's custodial parent or  
1302 legal guardian resides; or

1303 (ii) the school from which the student withdrew for the purpose of attending a private  
1304 or home school.

1305 (d) A school other than a school described in Subsection (2)(c)(i) or (ii) may allow a  
1306 private school student or a home school student to participate in an extracurricular activity  
1307 other than:

1308 (i) an interscholastic competition of athletic teams sponsored and supported by a public  
1309 school; or

1310 (ii) an interscholastic contest or competition for music, drama, or forensic groups or  
1311 teams sponsored and supported by a public school.

1312 (3) (a) Except as provided in Subsections (4) through (13), a private school or home  
1313 school student shall be eligible to participate in an extracurricular activity at a public school  
1314 consistent with eligibility standards:

1315 (i) applied to a fully enrolled public school student;

1316 (ii) of the public school where the private school or home school student participates in  
1317 an extracurricular activity; and

1318 (iii) for the extracurricular activity in which the private school or home school student  
1319 participates.

1320 (b) A school district or public school may not impose additional requirements on a  
1321 private school or home school student to participate in an extracurricular activity that are not  
1322 imposed on a fully enrolled public school student.

1323 (c) (i) A private school or home school student who participates in an extracurricular  
1324 activity at a public school shall pay the same fees as required of a fully enrolled public school  
1325 student to participate in an extracurricular activity.

1326 (ii) If a local school board or charter school governing board imposes a mandatory  
1327 student activity fee for a student enrolled in a public school, the fee may be imposed on a  
1328 private school or home school student who participates in an extracurricular activity at the  
1329 public school if the same benefits of paying the mandatory student activity fee that are  
1330 available to a fully enrolled public school student are available to a private school or home  
1331 school student who participates in an extracurricular activity at the public school.

1332 (4) Eligibility requirements based on school attendance are not applicable to a home  
1333 school student.

1334 (5) A home school student meets academic eligibility requirements to participate in an  
1335 extracurricular activity if:

1336 (a) the student is mastering the material in each course or subject being taught; and

1337 (b) the student is maintaining satisfactory progress towards achievement or promotion.

1338 (6) (a) To establish a home school student's academic eligibility, a parent, teacher, or  
1339 organization providing instruction to the student shall submit an affidavit to the principal  
1340 indicating the student meets academic eligibility requirements.

1341 (b) Upon submission of an affidavit pursuant to Subsection (6)(a), a home school  
1342 student shall:

1343 (i) be considered to meet academic eligibility requirements; and

1344 (ii) retain academic eligibility for all extracurricular activities during the activity season  
1345 for which the affidavit is submitted, until:



1346 (A) a panel established under Subsection (10) determines the home school student does  
1347 not meet academic eligibility requirements; or

1348 (B) the person who submitted the affidavit under Subsection (6)(a) provides written  
1349 notice to the school principal that the student no longer meets academic eligibility  
1350 requirements.

1351 (7) (a) A home school student who loses academic eligibility pursuant to Subsection  
1352 (6)(b)(ii)(B) may not participate in an extracurricular activity until the person who submitted  
1353 the affidavit under Subsection (6)(a) provides written notice to the school principal that the  
1354 home school student has reestablished academic eligibility.

1355 (b) If a home school student reestablishes academic eligibility pursuant to Subsection  
1356 (7)(a), the home school student may participate in extracurricular activities for the remainder of  
1357 the activity season for which an affidavit was submitted under Subsection (6)(a).

1358 (8) A person who has probable cause to believe a home school student does not meet  
1359 academic eligibility requirements may submit an affidavit to the principal:

1360 (a) asserting the home school student does not meet academic eligibility requirements;  
1361 and

1362 (b) providing information indicating that the home school student does not meet the  
1363 academic eligibility requirements.

1364 (9) A principal shall review the affidavit submitted under Subsection (8), and if the  
1365 principal determines it contains information which constitutes probable cause to believe a  
1366 home school student may not meet academic eligibility requirements, the principal shall  
1367 request a panel established pursuant to Subsection (10) to verify the student's compliance with  
1368 academic eligibility requirements.

1369 (10) (a) A school district superintendent shall:

1370 (i) appoint a panel of three individuals to verify a home school student's compliance  
1371 with academic eligibility requirements when requested by a principal pursuant to Subsection  
1372 (9); and

1373 (ii) select the panel members from nominees submitted by national, state, or regional

1374 organizations whose members are home school students and parents.

1375 (b) Of the members appointed to a panel under Subsection (10)(a):

1376 (i) one member shall have experience teaching in a public school as a licensed teacher  
1377 and in home schooling high school-age students;

1378 (ii) one member shall have experience teaching in a higher education institution and in  
1379 home schooling; and

1380 (iii) one member shall have experience in home schooling high school-age students.

1381 (11) A panel appointed under Subsection (10):

1382 (a) shall review the affidavit submitted under Subsection (8);

1383 (b) may confer with the person who submitted the affidavit under Subsection (8);

1384 (c) shall request the home school student to submit test scores or a portfolio of work  
1385 documenting the student's academic achievement to the panel;

1386 (d) shall review the test scores or portfolio of work; and

1387 (e) shall determine whether the home school student meets academic eligibility  
1388 requirements.

1389 (12) A home school student who meets academic eligibility requirements pursuant to  
1390 Subsection (11), retains academic eligibility for all extracurricular activities during the activity  
1391 season for which an affidavit is submitted pursuant to Subsection (6).

1392 (13) (a) A panel's determination that a home school student does not comply with  
1393 academic eligibility requirements is effective for an activity season and all extracurricular  
1394 activities that have academic eligibility requirements.

1395 (b) A home school student who is not in compliance with academic eligibility  
1396 requirements as determined by a panel appointed under Subsection (11) may seek to establish  
1397 academic eligibility under this section for the next activity season.

1398 (14) (a) A public school student who has been declared to be academically ineligible to  
1399 participate in an extracurricular activity and who subsequently enrolls in a home school shall  
1400 lose eligibility for participation in the extracurricular activity until the student:

1401 (i) demonstrates academic eligibility by providing test results or a portfolio of the

1402 student's work to the school principal, provided that a student may not reestablish academic  
1403 eligibility under this Subsection (14)(a) during the same activity season in which the student  
1404 was declared to be academically ineligible;

1405 (ii) returns to public school and reestablishes academic eligibility; or

1406 (iii) enrolls in a private school and establishes academic eligibility.

1407 (b) A public school student who has been declared to be behaviorally ineligible to  
1408 participate in an extracurricular activity and who subsequently enrolls in a home school shall  
1409 lose eligibility for participation in the extracurricular activity until the student meets eligibility  
1410 standards as provided in Subsection (3).

1411 (15) When selection to participate in an extracurricular activity at a public school is  
1412 made on a competitive basis, a private school student and a home school student shall be  
1413 eligible to try out for and participate in the activity as provided in this section.

1414 (16) (a) If a student exits a public school to enroll in a private or home school  
1415 mid-semester or during an activity season, and the student desires to participate in an  
1416 extracurricular activity at the public school, the public school shall issue an interim academic  
1417 assessment based on the student's work in each class.

1418 (b) A student's academic eligibility to participate in an extracurricular activity under  
1419 the circumstances described in Subsection (16)(a) shall be based on the student meeting public  
1420 school academic eligibility standards at the time of exiting public school.

1421 (c) A student may appeal an academic eligibility determination made under Subsection  
1422 (16)(b) in accordance with procedures for appealing a public school student's academic  
1423 eligibility.

1424 Section 24. Section **53A-17a-156** is amended to read:

1425 **53A-17a-156. Teacher Salary Supplement Program.**

1426 (1) As used in this section:

1427 (a) "Eligible teacher" means a teacher who:

1428 (i) has an assignment to teach:

1429 (A) a secondary school level mathematics course;

- 1430 (B) integrated science in grade 7 or 8;
- 1431 (C) chemistry; or
- 1432 (D) physics;
- 1433 (ii) holds the appropriate endorsement for the assigned course;
- 1434 (iii) has qualifying educational background; and
- 1435 (iv) (A) is a new employee; or
- 1436 (B) received a satisfactory rating or above on the teacher's most recent evaluation.
- 1437 (b) "Qualifying educational background" means:
- 1438 (i) for a teacher who is assigned a secondary school level mathematics course, a
- 1439 bachelor's degree major, master's degree, or doctoral degree in mathematics; and
- 1440 (ii) for a teacher who is assigned a grade 7 or 8 integrated science course, chemistry
- 1441 course, or physics course, a bachelor's degree major, master's degree, or doctoral degree in:
- 1442 [~~(F)~~] (A) integrated science;
- 1443 [~~(H)~~] (B) chemistry;
- 1444 [~~(H)~~] (C) physics;
- 1445 [~~(V)~~] (D) physical science; or
- 1446 [~~(V)~~] (E) general science.
- 1447 (2) (a) Subject to future budget constraints, the Legislature shall annually appropriate
- 1448 money to the Teacher Salary Supplement Restricted Account established in Section
- 1449 53A-17a-157 to fund the Teacher Salary Supplement Program.
- 1450 (b) Money appropriated for the Teacher Salary Supplement Program shall include
- 1451 money for the following employer-paid benefits:
- 1452 (i) retirement;
- 1453 (ii) workers' compensation;
- 1454 (iii) Social Security; and
- 1455 (iv) Medicare.
- 1456 (3) (a) Beginning in fiscal year 2008-09, the annual salary supplement is \$4,100 for an
- 1457 eligible teacher who:

1458 (i) is assigned full-time to teach one or more courses listed in Subsections (1)(a)(i)(A)  
1459 through (D); and

1460 (ii) meets the requirements of Subsections (1)(a)(ii) and (iii) for each course  
1461 assignment.

1462 (b) An eligible teacher who has a part-time assignment to teach one or more courses  
1463 listed in Subsections (1)(a)(i)(A) through (D) shall receive a partial salary supplement based on  
1464 the number of hours worked in a course assignment that meets the requirements of Subsections  
1465 (1)(a)(ii) and (iii).

1466 (4) The Department of Human Resource Management shall:

1467 (a) create an on-line application system for a teacher to apply to receive a salary  
1468 supplement through the Teacher Salary Supplement Program;

1469 (b) determine if a teacher:

1470 (i) is an eligible teacher; and

1471 (ii) has a course assignment as listed in Subsections (1)(a)(i)(A) through (D);

1472 (c) verify, as needed, the determinations made under Subsection (4)(b) with school  
1473 district and school administrators; and

1474 (d) certify a list of eligible teachers and the amount of their salary supplement, sorted  
1475 by school district and charter school, to the Division of Finance.

1476 (5) (a) An eligible teacher shall apply with the Department of Human Resource  
1477 Management prior to the conclusion of a school year to receive the salary supplement  
1478 authorized in this section.

1479 (b) An eligible teacher may apply with the Department of Human Resource  
1480 Management, after verification that the requirements under this section have been satisfied, to  
1481 receive a salary supplement after the completion of:

1482 (i) the school year as an annual award; or

1483 (ii) a semester or trimester as a partial award based on the portion of the school year  
1484 that has been completed.

1485 (6) (a) The Division of Finance shall distribute money from the Teacher Salary

1486 Supplement Restricted Account to school districts and charter schools for the Teacher Salary  
1487 Supplement Program in accordance with the provisions of this section.

1488 (b) The Department of Human Resource Management shall include the employer-paid  
1489 benefits described under Subsection (2)(b) in the amount of each salary supplement certified to  
1490 the Division of Finance.

1491 (c) The employer-paid benefits described under Subsection (2)(b) are an addition to the  
1492 salary supplement limits described under Subsection (3).

1493 (7) (a) Money received from the Teacher Salary Supplement Restricted Account shall  
1494 be used by a school district or charter school to provide a salary supplement equal to the  
1495 amount specified for each eligible teacher.

1496 (b) The salary supplement is part of the teacher's base pay, subject to the teacher's  
1497 qualification as an eligible teacher every year, semester, or trimester.

1498 (8) The State Board of Education shall cooperate with the Department of Human  
1499 Resource Management as it administers the Teacher Salary Supplement Program by:

1500 (a) providing or verifying teacher data, as requested; and

1501 (b) making information technology resources available.

1502 (9) Notwithstanding the provisions of this section, if the appropriation for the program  
1503 is insufficient to cover the costs associated with salary supplements, the Department of Human  
1504 Resource Management may limit or reduce the salary supplements.

1505 Section 25. Section **54-3-29** is amended to read:

1506 **54-3-29. Removal, relocation, or alteration of utility facility in public highway**  
1507 **construction or reconstruction -- Notice -- Cooperation.**

1508 (1) As used in this section:

1509 (a) "Design-build" means a design-build transportation project for which a design-build  
1510 transportation project contract is issued, within the meaning of Section 63G-6-502.

1511 (b) "Municipality" is as defined in Section [~~10-1-4~~] 10-1-104.

1512 (c) "Political subdivision" means a:

1513 (i) county; or

- 1514 (ii) municipality.
- 1515 (d) "Public agency" means an entity of state government or a political subdivision.
- 1516 (e) "Public highway" means a highway, street, road, or alley constructed for public use  
1517 in the state.
- 1518 (f) "Utility company" means a privately, cooperatively, or publicly owned utility,  
1519 including a utility owned by a political subdivision, that provides service using a utility facility.
- 1520 (g) "Utility facility" means:
- 1521 (i) a telecommunications, gas, electricity, cable television, water, sewer, or data  
1522 facility;
- 1523 (ii) a video transmission line;
- 1524 (iii) a drainage and irrigation system; or
- 1525 (iv) a facility similar to those listed in Subsections (1)(g)(i) through (iii) located in, on,  
1526 along, across, over, through, or under any public highway.
- 1527 (2) If a public agency engages in or proposes to engage in a construction or  
1528 reconstruction project on a public highway that may require the removal, relocation, or  
1529 alteration of a utility facility, the public agency shall:
- 1530 (a) contact an association, established under Title 54, Chapter 8a, Damage to  
1531 Underground Utility Facilities, to identify each utility company that may have a utility facility  
1532 in the area of the construction or reconstruction project;
- 1533 (b) identify a utility company that has an above-ground utility facility in the area of the  
1534 proposed construction or reconstruction project; and
- 1535 (c) electronically notify each utility company identified in accordance with Subsections  
1536 (2)(a) and (b).
- 1537 (3) The notice required by Subsection (2)(c) shall:
- 1538 (a) be made as early as practicable and at least 30 days:
- 1539 (i) before the preliminary design or project development meeting;
- 1540 (ii) before issuance of a request for proposal for a design-build project; or
- 1541 (iii) after a change in scope of a design-build project;

1542 (b) include:  
1543 (i) information concerning the proposed project design;  
1544 (ii) the proposed date of a required removal, relocation, or alteration of a utility facility;  
1545 (iii) the federal identifying project number, if applicable; and  
1546 (c) advise the utility company if the proposed project may qualify for aid for the utility  
1547 company's expense in removing, relocating, or altering a utility facility.

1548 (4) A public agency shall permit a utility company notified under Subsection (2) to  
1549 participate in the preliminary design or project development meeting, or similar meeting at  
1550 which the project design is addressed.

1551 (5) (a) A public agency shall, not less than 30 days after providing notice under  
1552 Subsection (2) to each utility company, provide the utility company an opportunity to meet  
1553 with the public agency to allow the utility company to:

1554 (i) review project plans;  
1555 (ii) understand the objectives and funding sources for the proposed project;  
1556 (iii) provide and discuss recommendations to the public agency that may reasonably  
1557 eliminate or minimize utility removal, relocation, or alteration costs, limit the disruption of  
1558 utility company services, or eliminate or reduce the need for present or future utility facility  
1559 removal, relocation, or alteration; and

1560 (iv) provide reasonable schedules to enable coordination of the construction project  
1561 and removal, relocation, or alteration of a utility facility.

1562 (b) If a public agency provides a utility company with reasonable opportunities to meet  
1563 in accordance with Subsection (5)(a), the utility company's failure to meet does not affect the  
1564 public agency's ability to proceed with the project.

1565 (6) While recognizing the essential goals and objectives of the public highway agency  
1566 in proceeding with and completing a project, the parties shall use their best efforts to find ways  
1567 to:

1568 (a) eliminate the cost to the utility of relocation of the utility facilities; or  
1569 (b) if elimination of the costs is not feasible, minimize the relocation costs to the extent



1570 reasonably possible.

1571 (7) A utility company notified under Subsection (2) shall coordinate with the public  
1572 agency concerning the utility facility removal, relocation, or alteration, including the  
1573 scheduling of the utility facility removal, relocation, or alteration.

1574 (8) A public agency and a utility company may address the removal, relocation, or  
1575 alteration of a utility facility in relation to a construction or reconstruction project on a public  
1576 highway in a franchise agreement in lieu of this section, if the public agency is otherwise  
1577 permitted to enter into the franchise agreement.

1578 (9) This chapter does not affect a public agency's authority over a public right-of-way,  
1579 including any rule, ordinance, order to relocate a utility as provided in Section 72-6-116, or  
1580 other valid provision governing the use of the public right-of-way.

1581 Section 26. Section **54-8a-11** is amended to read:

1582 **54-8a-11. Applicability of federal law.**

1583 The following persons or entities are subject to the provisions of Title 49, Code of  
1584 Federal Regulations, Part 198, Regulations for Grants to Aid State Pipeline Safety Programs,  
1585 including those provisions relating to damage to underground facilities:

1586 (1) an operator, to the extent subject to the [~~Natural Gas Pipeline Safety Act of 1968,~~  
1587 ~~49 U.S. Code 1671 et seq. or the Hazardous Liquid Pipeline Safety Act of 1979, 49 App.~~  
1588 ~~U.S.C. 2001~~] Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60101 et seq.;

1589 (2) an excavator; and

1590 (3) a person who operates an association.

1591 Section 27. Section **54-13-7** is amended to read:

1592 **54-13-7. Minimum distances for placement of structures and facilities near main**  
1593 **and transmission lines.**

1594 (1) As used in this section:

1595 (a) "Main" has the meaning set forth in 49 C.F.R. Section 192.3[?];

1596 (b) "Minimum distance" means:

1597 (i) the width of a recorded easement when the width is described;

1598 (ii) 15 feet when the width of a recorded easement is undefined; or  
1599 (iii) for any underground facility, it means an area measured one foot vertically and  
1600 three feet horizontally from the outer surface of a main or transmission line.

1601 (c) "Transmission line" has the meaning set forth in 49 C.F.R. Section 192.3~~[-and]~~.

1602 (d) "Underground facility" has the meaning set forth in Section 54-8a-2.

1603 (2) (a) After April 30, 1995, a building or structure requiring slab support or footings,  
1604 or an underground facility may not be placed within the minimum distance of a main or  
1605 transmission line.

1606 (b) Subsection (2)(a) does not apply if:

1607 (i) the building or structure is used for public or railroad transportation, natural gas  
1608 pipeline purposes, or by a public utility subject to the jurisdiction or regulation of the Public  
1609 Service Commission;

1610 (ii) in order to receive natural gas service, the building or structure must be located  
1611 within the minimum distance of the pipeline;

1612 (iii) the owner or operator of the main or transmission line has been notified prior to  
1613 construction or placement pursuant to Section 54-8a-4 and has given written permission; or

1614 (iv) the commission by rule exempts such action from the provisions of Subsection  
1615 (2)(a).

1616 (3) An owner or operator of a main or transmission line may obtain a mandatory  
1617 injunction from the district court of the judicial district in which the main or transmission line  
1618 is located against any person who violates Subsection (2).

1619 (4) The penalties specified in Title 54, Chapter 7, Hearings, Practice, and Procedure,  
1620 ~~[and in Section 54-13-6]~~ do not apply to a violation of this section.

1621 Section 28. Section **54-14-303** is amended to read:

1622 **54-14-303. Actions or disputes for which board review may be sought.**

1623 (1) A local government or public utility may seek review by the board, if:

1624 (a) a local government has imposed requirements on the construction of a facility that  
1625 result in estimated excess costs without entering into an agreement with the public utility to pay

1626 for the actual excess cost, except any actual excess costs specified in Subsection  
1627 54-14-201(2)(a) or (2)(b), at least 30 days before the date construction of the facility should  
1628 commence in order to avoid significant risk of impairment of safe, reliable, efficient, and  
1629 adequate service to customers of the public utility;

1630 (b) there is a dispute regarding:

1631 (i) the estimated excess cost or standard cost of a facility;

1632 (ii) when construction of a facility should commence in order to avoid significant risk  
1633 of impairment of safe, reliable, and adequate service to customers of the public utility;

1634 (iii) whether the public utility has sought a permit, authorization, approval, exception,  
1635 or waiver with respect to a facility sufficiently in advance of the date construction should  
1636 commence, based upon reasonably foreseeable conditions, to allow the local government  
1637 reasonable time to pay for any estimated excess cost;

1638 (iv) the geographic boundaries of a proposed corridor as set forth in a notice submitted  
1639 by a public utility to a local government pursuant to the provisions of Subsection  
1640 54-18-301[(+)](2)(a), provided the action is filed by the local government before the public  
1641 utility files an application for a land use permit as set forth in Subsection 54-18-304(1)(a); or

1642 (v) a modification proposed by a local government to a utility's proposed corridor that  
1643 is identified in the public utility's notice of intent required pursuant to Subsection  
1644 54-18-301(3);

1645 (c) a local government has required construction of a facility in a manner that will not  
1646 permit the utility to provide service to its customers in a safe, reliable, adequate, or efficient  
1647 manner;

1648 (d) a local government has prohibited construction of a facility which is needed to  
1649 provide safe, reliable, adequate, and efficient service to the customers of the public utility;

1650 (e) a local government has not made a final decision on the public utility's application  
1651 for a permit, authorization, approval, exception, or waiver with respect to a facility within 60  
1652 days of the date the public utility applied to the local government for the permit, authorization,  
1653 approval, exception, or waiver;

1654 (f) a facility is located or proposed to be located in more than one local government  
1655 jurisdiction and the decisions of the local governments regarding the facility are inconsistent;  
1656 or

1657 (g) a facility is proposed to be located within a local government jurisdiction to serve  
1658 customers exclusively outside the jurisdiction of the local government and there is a dispute  
1659 regarding the apportionment of the actual excess cost of the facility between the local  
1660 government and the public utility.

1661 (2) (a) If an action is filed by a local government pursuant to Subsection (1)(b)(iv) or  
1662 (v) seeking a modification to a target study area or a proposed corridor, the local government  
1663 shall provide written notice of the action to any potentially affected landowner, as defined in  
1664 Section 54-18-102, or affected entity, as defined in Section 54-18-102.

1665 (b) A potentially affected landowner, as defined in Section 54-18-102, or affected  
1666 entity, as defined in Section 54-18-102, shall have a right to intervene as a party in the  
1667 proceeding.

1668 Section 29. Section **54-14-305** is amended to read:

1669 **54-14-305. Written decisions of board.**

1670 (1) The board shall issue a written decision on the review expeditiously and, in any  
1671 event, not later than 45 days following the initial hearing.

1672 (2) The written decision shall:

1673 (a) specify whether the facility should be constructed and, if so, whether any  
1674 requirements or conditions imposed by the local government may not be imposed because they  
1675 impair the ability of the public utility to provide safe, reliable, and adequate service to its  
1676 customers; and

1677 (b) resolve any dispute regarding:

1678 (i) the standard cost or estimated excess cost of the facility;

1679 (ii) the date on which construction of the facility should commence in order to avoid a  
1680 significant risk of impairment of safe, reliable, and adequate service to customers of the public  
1681 utility;

1682 (iii) whether the public utility has sought a permit, authorization, approval, exception,  
1683 or waiver with respect to a facility sufficiently in advance of the date construction should  
1684 commence, based upon reasonably foreseeable conditions, to allow the local government  
1685 reasonable time to pay for any estimated excess cost;

1686 (iv) apportionment of the actual excess cost of the facility between the local  
1687 government and the public utility pursuant to Subsection 54-14-303[~~(7)~~](1)(g); or

1688 (v) the proposed location and siting of a facility subject to Title 54, Chapter 18, Siting  
1689 of High Voltage Power Line Act, and in accordance with Section 54-14-102.

1690 (3) (a) Notwithstanding Subsection (6), the written decision of the board may designate  
1691 the facility route for a high voltage transmission line pursuant to a dispute described under  
1692 Section 54-14-304.

1693 (b) The public utility shall be entitled to recover from its ratepayers any actual excess  
1694 costs apportioned to it under Subsection (2)(b)(iv).

1695 (4) If the board determines that a facility that a local government has prohibited should  
1696 be constructed, the written decision shall specify any general location parameters required to  
1697 provide safe, reliable, adequate, and efficient service to the customers of the public utility.

1698 (5) The written decision shall leave to the local government any issue that does not  
1699 affect the provision of safe, reliable, adequate, and efficient service to customers of the public  
1700 utility or that does not involve an estimated excess cost.

1701 (6) With respect to local government requirements or conditions that impose an  
1702 estimated excess cost but do not impair the provision of safe, reliable, and adequate service to  
1703 the customers of the public utility, the written decision shall leave each siting issue to the local  
1704 government except determination of the estimated excess cost and determination of when the  
1705 construction of the facility should commence.

1706 (7) In determining when the construction of the facility should commence, the board  
1707 shall consider whether the public utility sought a permit, authorization, approval, exception, or  
1708 waiver from the local government in a timely manner based upon reasonably foreseeable  
1709 conditions, and, if the board determines that the public utility did not do so, it shall allow

1710 sufficient time for the local government to pay any actual excess cost that may be imposed as a  
1711 result of requirements or conditions the local government has imposed that do not impair the  
1712 provision of safe, reliable, and adequate service to customers of the public utility.

1713 Section 30. Section **57-11-11** is amended to read:

1714 **57-11-11. Rules of division -- Filing advertising material -- Injunctions --**  
1715 **Intervention by division in suits -- General powers of division.**

1716 (1) (a) The division shall prescribe reasonable rules which shall be adopted, amended,  
1717 or repealed only after a public hearing.

1718 (b) The division shall:

1719 (i) publish notice of the public hearing described in Subsection (1)(a):

1720 (A) once in a newspaper or newspapers with statewide circulation and at least 20 days  
1721 before the hearing; and

1722 (B) on the Utah Public Notice Website created in Section 63F-1-701, for at least 20  
1723 days before the hearing; and

1724 (ii) send a notice to a nonprofit organization which files a written request for notice  
1725 with the division at least 20 days prior to the hearing.

1726 (2) The rules shall include but need not be limited to:

1727 (a) provisions for advertising standards to assure full and fair disclosure; and

1728 (b) provisions for escrow or trust agreements, performance bonds, or other means  
1729 reasonably necessary to assure that all improvements referred to in the application for  
1730 registration and advertising will be completed and that purchasers will receive the interest in  
1731 land contracted for.

1732 (3) These provisions, however, shall not be required if the city or county in which the  
1733 subdivision is located requires similar means of assurance of a nature and in an amount no less  
1734 adequate than is required under said rules:

1735 (a) provisions for operating procedures;

1736 (b) provisions for a shortened form of registration in cases where the division  
1737 determines that the purposes of this act do not require a subdivision to be registered pursuant to

1738 an application containing all the information required by Section 57-11-6 or do not require that  
1739 the public offering statement contain all the information required by Section 57-11-7; and

1740 (c) other rules necessary and proper to accomplish the purpose of this chapter.

1741 (4) The division by rule or order, after reasonable notice, may require the filing of  
1742 advertising material relating to subdivided lands prior to its distribution, provided that the  
1743 division must approve or reject any advertising material within 15 days from the receipt thereof  
1744 or the material shall be considered approved.

1745 (5) If it appears that a person has engaged or is about to engage in an act or practice  
1746 constituting a violation of a provision of this [act] chapter or a rule or order hereunder, the  
1747 agency, with or without prior administrative proceedings, may bring an action in the district  
1748 court of the district where said person maintains his residence or a place of business or where  
1749 said act or practice has occurred or is about to occur, to enjoin the acts or practices and to  
1750 enforce compliance with this chapter or any rule or order hereunder. Upon proper showing,  
1751 injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator  
1752 may be appointed. The division shall not be required to post a bond in any court proceedings.

1753 (6) The division shall be allowed to intervene in a suit involving subdivided lands,  
1754 either as a party or as an amicus curiae, where it appears that the interpretation or  
1755 constitutionality of any provision of law will be called into question. In any suit by or against a  
1756 subdivider involving subdivided lands, the subdivider promptly shall furnish the agency notice  
1757 of the suit and copies of all pleadings. Failure to do so may, in the discretion of the division,  
1758 constitute grounds for the division withholding any approval required by this chapter.

1759 (7) The division may:

1760 (a) accept registrations filed in other states or with the federal government;

1761 (b) contract with public agencies or qualified private persons in this state or other  
1762 jurisdictions to perform investigative functions; and

1763 (c) accept grants-in-aid from any source.

1764 (8) The division shall cooperate with similar agencies in other jurisdictions to establish  
1765 uniform filing procedures and forms, uniform public offering statements, advertising standards,

1766 rules, and common administrative practices.

1767 Section 31. Section **57-16-15**, which is renumbered from Section 57-16-15.1 is  
1768 renumbered and amended to read:

1769 ~~[57-16-15.1]~~. **57-16-15. Eviction proceeding.**

1770 (1) Eviction proceedings commenced under this chapter and based on causes of action  
1771 set forth in Subsections 57-16-5(1)(a), (b), and (e), and eviction proceedings commenced under  
1772 this chapter based on causes of action set forth in Subsections 57-16-5(1)(c) and (d), in which a  
1773 landlord elects to bring an action under this chapter and not under the unlawful detainer  
1774 provisions of Title 78B, Chapter 6, Part 8, Forcible Entry and Detainer, shall comply with the  
1775 following:

1776 (a) A judgment may be entered upon the merits or upon default. A judgment entered in  
1777 favor of the plaintiff may:

1778 (i) include an order of restitution of the premises; and

1779 (ii) declare the forfeiture of the lease or agreement.

1780 (b) The jury, or the court if the proceedings are tried without a jury or upon the  
1781 defendant's default, shall assess the damages resulting to the plaintiff from any of the  
1782 following:

1783 (i) waste of the premises during the resident's tenancy, if waste is alleged in the  
1784 complaint and proved; and

1785 (ii) the amount of rent due.

1786 (c) If the lease or agreement provides for reasonable attorney fees, the court shall order  
1787 reasonable attorney fees to the prevailing party.

1788 (d) Whether or not the lease or agreement provides for court costs and attorney fees, if  
1789 the proceeding is contested, the court shall order court costs and attorney fees to the prevailing  
1790 party.

1791 (e) Except as provided in Subsection (1)(f), after judgment has been entered under this  
1792 section, judgment and restitution may be enforced no sooner than 15 days from the date the  
1793 judgment is entered. The person who commences the action shall mail through registered or



1794 certified mail a copy of the judgment to the resident or the resident's agent or attorney as  
1795 required by the Utah Rules of Civil Procedure.

1796 (f) If a resident tenders to the mobile home park postjudgment rent, in the form of cash,  
1797 cashier's check, or certified funds, then restitution may be delayed for the period of time  
1798 covered by the postjudgment rent, which time period shall not exceed 15 days from the date of  
1799 the judgment unless a longer period is agreed to in writing by the mobile home park.

1800 (2) Eviction proceedings commenced under this chapter and based on causes of action  
1801 set forth in Subsections 57-16-5(1)(c) and (d), in which the mobile home park has elected to  
1802 treat as actions also brought under the unlawful detainer provisions of Title 78B, Chapter 6,  
1803 Part 8, Forcible Entry and Detainer, shall be governed by Sections 78B-6-811 and 78B-6-812  
1804 with respect to judgment for restitution, damages, rent, enforcement of the judgment and  
1805 restitution.

1806 (3) The provisions in Section 78B-6-812 shall apply to this section except the  
1807 enforcement time limits in Subsections (1)(e) and (f) shall govern.

1808 Section 32. Section **58-31b-503** is amended to read:

1809 **58-31b-503. Penalties and administrative actions for unlawful conduct and**  
1810 **unprofessional conduct.**

1811 (1) Any person who violates the unlawful conduct provision specifically defined in  
1812 Subsection 58-1-501(1)(a) is guilty of a third degree felony.

1813 (2) Any person who violates any of the unlawful conduct provisions specifically  
1814 defined in Subsections 58-1-501(1)(b) through (f) and 58-31b-501(1)(d) is guilty of a class A  
1815 misdemeanor.

1816 (3) Any person who violates any of the unlawful conduct provisions specifically  
1817 defined in this chapter and not set forth in Subsection (1) or (2) is guilty of a class B  
1818 misdemeanor.

1819 (4) (a) Subject to Subsection (6) and in accordance with Section 58-31b-401, for acts  
1820 of unprofessional or unlawful conduct, the division may:

1821 (i) assess administrative penalties; and

1822 (ii) take any other appropriate administrative action.

1823 (b) An administrative penalty imposed pursuant to this section shall be deposited in the  
1824 "Nurse Education and Enforcement Account" as provided in Section 58-31b-103.

1825 (5) If a licensee has been convicted of violating Section 58-31b-501 prior to an  
1826 administrative finding of a violation of the same section, the licensee may not be assessed an  
1827 administrative fine under this chapter for the same offense for which the conviction was  
1828 obtained.

1829 (6) (a) If upon inspection or investigation, the division concludes that a person has  
1830 violated the provisions of [~~Sections~~] Section 58-31b-401, 58-31b-501, or 58-31b-502, Chapter  
1831 1, Division of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled  
1832 Substances Act, or any rule or order issued with respect to these provisions, and that  
1833 disciplinary action is appropriate, the director or the director's designee from within the  
1834 division shall:

1835 (i) promptly issue a citation to the person according to this chapter and any pertinent  
1836 administrative rules;

1837 (ii) attempt to negotiate a stipulated settlement; or

1838 (iii) notify the person to appear before an adjudicative proceeding conducted under  
1839 Title 63G, Chapter 4, Administrative Procedures Act.

1840 (b) Any person who is in violation of a provision described in Subsection (6)(a), as  
1841 evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an  
1842 adjudicative proceeding may be assessed a fine:

1843 (i) pursuant to this Subsection (6) of up to \$10,000 per single violation or up to \$2,000  
1844 per day of ongoing violation, whichever is greater, in accordance with a fine schedule  
1845 established by rule; and

1846 (ii) in addition to or in lieu of the fine imposed under Subsection (6)(b)(i), be ordered  
1847 to cease and desist from violating a provision of Sections 58-31b-501 and 58-31b-502, Chapter  
1848 1, Division of Occupational and Professional Licensing Act, Chapter 37, Utah Controlled  
1849 Substances Act, or any rule or order issued with respect to those provisions.

1850 (c) Except for an administrative fine and a cease and desist order, the licensure  
1851 sanctions cited in Section 58-31b-401 may not be assessed through a citation.

1852 (d) Each citation issued under this section shall:

1853 (i) be in writing; and

1854 (ii) clearly describe or explain:

1855 (A) the nature of the violation, including a reference to the provision of the chapter,  
1856 rule, or order alleged to have been violated;

1857 (B) that the recipient must notify the division in writing within 20 calendar days of  
1858 service of the citation in order to contest the citation at a hearing conducted under Title 63G,  
1859 Chapter 4, Administrative Procedures Act; and

1860 (C) the consequences of failure to timely contest the citation or to make payment of  
1861 any fines assessed by the citation within the time specified in the citation; and

1862 (iii) be served upon any person upon whom a summons may be served:

1863 (A) in accordance with the Utah Rules of Civil Procedure;

1864 (B) personally or upon the person's agent by a division investigator or by any person  
1865 specially designated by the director; or

1866 (C) by mail.

1867 (e) If within 20 calendar days from the service of a citation, the person to whom the  
1868 citation was issued fails to request a hearing to contest the citation, the citation becomes the  
1869 final order of the division and is not subject to further agency review. The period to contest the  
1870 citation may be extended by the division for cause.

1871 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation  
1872 the license of a licensee who fails to comply with the citation after it becomes final.

1873 (g) The failure of an applicant for licensure to comply with a citation after it becomes  
1874 final is a ground for denial of license.

1875 (h) No citation may be issued under this section after the expiration of six months  
1876 following the occurrence of any violation.

1877 Section 33. Section **58-37f-102** is amended to read:

1878 **58-37f-102. Definitions.**

1879 (1) The definitions in Section 58-37-2 apply to this chapter.

1880 (2) As used in this chapter:

1881 (a) "Board" means the Utah State Board of Pharmacy created in Section 58-17b-201.

1882 (b) "Database" means the controlled substance database created in [~~this section~~]

1883 Section 58-37f-201.

1884 (c) "Health care facility" is as defined in Section 26-21-2.

1885 (d) "Mental health therapist" is as defined in Section 58-60-102.

1886 (e) "Pharmacy" or "pharmaceutical facility" is as defined in Section 58-17b-102.

1887 (f) "Prospective patient" means an individual who:

1888 (i) is seeking medical advice, medical treatment, or medical services from a

1889 practitioner; and

1890 (ii) the practitioner described in Subsection (2)(f)(i) is considering accepting as a

1891 patient.

1892 (g) "Substance abuse treatment program" is as defined in Section 62A-2-101.

1893 Section 34. Section **58-38a-203** is amended to read:

1894 **58-38a-203. Duties of the committee.**

1895 (1) The committee serves as a consultative and advisory body to the Legislature

1896 regarding:

1897 (a) the movement of a controlled substance from one schedule to another;

1898 (b) the removal of a controlled substance from any schedule; and

1899 (c) the designation of a substance as a controlled substance and the placement of the

1900 substance in a designated schedule.

1901 (2) On or before September 30 of each year, the committee shall submit to the Health

1902 and Human Services Interim Committee a written report:

1903 (a) listing any substances recommended by the committee for scheduling, rescheduling,

1904 or deletion from the schedules by the Legislature; and

1905 (b) stating the reasons for the recommendation.

1906 (3) In advising the Legislature regarding the need to add, delete, or reschedule a  
1907 substance, the committee shall consider:

1908 (a) the actual or probable abuse of the substance, including:

1909 (i) the history and current pattern of abuse both in Utah and in other states;

1910 (ii) the scope, duration, and significance of abuse;

1911 (iii) the degree of actual or probable detriment to public health which may result from  
1912 abuse of the substance; and

1913 (iv) the probable physical and social impact of widespread abuse of the substance;

1914 (b) the biomedical hazard of the substance, including:

1915 (i) its pharmacology, including the effects and modifiers of the effects of the substance;

1916 (ii) its toxicology, acute and chronic toxicity, interaction with other substances,  
1917 whether controlled or not, and the degree to which it may cause psychological or physiological  
1918 dependence; and

1919 (iii) the risk to public health and the particular susceptibility of segments of the  
1920 population;

1921 (c) whether the substance is an immediate precursor, as defined in Section 58-37-2, of  
1922 a substance that is currently a controlled substance;

1923 (d) the current state of scientific knowledge regarding the substance, including whether  
1924 there is any acceptable means to safely use the substance under medical supervision;

1925 (e) the relationship between the use of the substance and criminal activity, including  
1926 whether:

1927 (i) persons engaged in illicit trafficking of the substance are also engaged in other  
1928 criminal activity;

1929 (ii) the nature and relative profitability of manufacturing or delivering the substance  
1930 encourages illicit trafficking in the substance;

1931 (iii) the commission of other crimes is one of the recognized effects of abuse of the  
1932 substance; and

1933 (iv) addiction to the substance relates to the commission of crimes to facilitate the

1934 continued use of the substance;

1935 (f) whether the substance has been scheduled by other states; and

1936 (g) whether the substance has any accepted medical use in treatment in the United  
1937 States.

1938 (4) The committee's duties under this chapter do not include tobacco products as  
1939 defined in Section 59-14-102 or alcoholic beverages as defined in Section [~~32A-1-105~~]  
1940 32B-1-102.

1941 Section 35. Section **58-55-503** is amended to read:

1942 **58-55-503. Penalty for unlawful conduct -- Citations.**

1943 (1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1),  
1944 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), or (23), or Subsection 58-55-504(2), or  
1945 who fails to comply with a citation issued under this section after it is final, is guilty of a class  
1946 A misdemeanor.

1947 (ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an  
1948 individual and does not include a sole proprietorship, joint venture, corporation, limited  
1949 liability company, association, or organization of any type.

1950 (b) A person who violates the provisions of Subsection 58-55-501(8) may not be  
1951 awarded and may not accept a contract for the performance of the work.

1952 (2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an  
1953 infraction unless the violator did so with the intent to deprive the person to whom money is to  
1954 be paid of the money received, in which case the violator is guilty of theft, as classified in  
1955 Section 76-6-412.

1956 (3) Grounds for immediate suspension of the licensee's license by the division and the  
1957 commission include the issuance of a citation for violation of Subsection 58-55-308(2), Section  
1958 58-55-501, or Subsection 58-55-504(2), or the failure by a licensee to make application to,  
1959 report to, or notify the division with respect to any matter for which application, notification, or  
1960 reporting is required under this chapter or rules adopted under this chapter, including applying  
1961 to the division for a new license to engage in a new specialty classification or to do business

1962 under a new form of organization or business structure, filing with the division current  
1963 financial statements, notifying the division concerning loss of insurance coverage, or change in  
1964 qualifier.

1965 (4) (a) If upon inspection or investigation, the division concludes that a person has  
1966 violated the provisions of Subsection 58-55-308(2) or Subsections 58-55-501(1), (2), (3), (9),  
1967 (10), (12), (14), (19), (21), (22), or (23), or Subsection 58-55-504(2), or any rule or order issued  
1968 with respect to these subsections, and that disciplinary action is appropriate, the director or the  
1969 director's designee from within the division shall promptly issue a citation to the person  
1970 according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or  
1971 notify the person to appear before an adjudicative proceeding conducted under Title 63G,  
1972 Chapter 4, Administrative Procedures Act.

1973 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),  
1974 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), or (23), or Subsection  
1975 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or by a finding  
1976 of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection  
1977 (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating  
1978 Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), or (21),  
1979 or Subsection 58-55-504(2).

1980 (ii) Except for a cease and desist order, the licensure sanctions cited in Section  
1981 58-55-401 may not be assessed through a citation.

1982 ~~[(iii) (A) A person who receives a citation or is fined for violating Subsection~~  
1983 ~~58-55-501(21) may also be issued a cease and desist order from engaging in work to be~~  
1984 ~~performed by a contractor licensed under this chapter unless the person meets the continuing~~  
1985 ~~education requirement within 30 days after receipt of the citation or fine.]~~

1986 ~~[(B) The order, if issued, shall be removed upon the person's completion of the~~  
1987 ~~continuing education requirement.]~~

1988 ~~[(C) This Subsection (4)(a)(iii) is repealed effective July 1, 2010.]~~

1989 (b) (i) Each citation shall be in writing and describe with particularity the nature of the

1990 violation, including a reference to the provision of the chapter, rule, or order alleged to have  
1991 been violated.

1992 (ii) The citation shall clearly state that the recipient must notify the division in writing  
1993 within 20 calendar days of service of the citation if the recipient wishes to contest the citation  
1994 at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

1995 (iii) The citation shall clearly explain the consequences of failure to timely contest the  
1996 citation or to make payment of any fines assessed by the citation within the time specified in  
1997 the citation.

1998 (c) Each citation issued under this section, or a copy of each citation, may be served  
1999 upon a person upon whom a summons may be served:

2000 (i) in accordance with the Utah Rules of Civil Procedure;

2001 (ii) personally or upon the person's agent by a division investigator or by a person  
2002 specially designated by the director; or

2003 (iii) by mail.

2004 (d) (i) If within 20 calendar days from the service of a citation, the person to whom the  
2005 citation was issued fails to request a hearing to contest the citation, the citation becomes the  
2006 final order of the division and is not subject to further agency review.

2007 (ii) The period to contest a citation may be extended by the division for cause.

2008 (e) The division may refuse to issue or renew, suspend, revoke, or place on probation  
2009 the license of a licensee who fails to comply with a citation after it becomes final.

2010 (f) The failure of an applicant for licensure to comply with a citation after it becomes  
2011 final is a ground for denial of license.

2012 (g) No citation may be issued under this section after the expiration of six months  
2013 following the occurrence of any violation.

2014 (h) Fines shall be assessed by the director or the director's designee according to the  
2015 following:

2016 (i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;

2017 (ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;



2018 and

2019 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to  
2020 \$2,000 for each day of continued offense.

2021 (i) (i) For purposes of issuing a final order under this section and assessing a fine under  
2022 Subsection (4)(h), an offense constitutes a second or subsequent offense if:

2023 (A) the division previously issued a final order determining that a person committed a  
2024 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),  
2025 (3), (9), (10), (12), (14), or (19), or Subsection 58-55-504(2); or

2026 (B) (I) the division initiated an action for a first or second offense;

2027 (II) no final order has been issued by the division in the action initiated under  
2028 Subsection (4)(i)(i)(B)(I);

2029 (III) the division determines during an investigation that occurred after the initiation of  
2030 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent  
2031 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),  
2032 (10), (12), (14), or (19), or Subsection 58-55-504(2); and

2033 (IV) after determining that the person committed a second or subsequent offense under  
2034 Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under  
2035 Subsection (4)(i)(i)(B)(I).

2036 (ii) In issuing a final order for a second or subsequent offense under Subsection  
2037 (4)(i)(i), the division shall comply with the requirements of this section.

2038 (5) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited  
2039 into the Commerce Service Account created by Section 13-1-2.

2040 (b) A penalty which is not paid may be collected by the director by either referring the  
2041 matter to a collection agency or bringing an action in the district court of the county in which  
2042 the person against whom the penalty is imposed resides or in the county where the office of the  
2043 director is located.

2044 (c) A county attorney or the attorney general of the state is to provide legal assistance  
2045 and advice to the director in any action to collect the penalty.

2046 (d) In an action brought to enforce the provisions of this section, reasonable attorney's  
2047 fees and costs shall be awarded.

2048 Section 36. Section **58-57-7** is amended to read:

2049 **58-57-7. Exemptions from licensure.**

2050 (1) (a) For purposes of Subsection (2)(b), "qualified" means an individual who is a  
2051 registered polysomnographic technologist or a Diplomate certified by the American Board of  
2052 Sleep Medicine.

2053 (b) For purposes of Subsections (2)(f) and (g), "supervision" means one of the  
2054 following will be immediately available for consultation in person or by phone:

2055 (i) a practitioner;

2056 (ii) a respiratory therapist;

2057 (iii) a Diplomate of the American Board of Sleep Medicine; or

2058 (iv) a registered polysomnographic technologist.

2059 (2) In addition to the exemptions from licensure in Section 58-1-307, the following  
2060 persons may engage in the practice of respiratory therapy subject to the stated circumstances  
2061 and limitations without being licensed under this chapter:

2062 (a) any person who provides gratuitous care for a member of his immediate family  
2063 without representing himself as a licensed respiratory care practitioner;

2064 (b) any person who is a licensed or qualified member of another health care profession,  
2065 if this practice is consistent with the accepted standards of the profession and if the person does  
2066 not represent himself as a respiratory care practitioner;

2067 (c) any person who serves in the Armed Forces of the United States or any other  
2068 agency of the federal government and is engaged in the performance of his official duties;

2069 (d) any person who acts under a certification issued pursuant to Title 26, Chapter 8a,  
2070 Utah Emergency Medical Services System Act, while providing emergency medical services;

2071 (e) any person who delivers, installs, or maintains respiratory related durable medical  
2072 equipment and who gives instructions regarding the use of that equipment in accordance with  
2073 Subsections 58-57-2(3) and (6), except that this exemption does not include any clinical

2074 evaluation or treatment of the patient;  
2075 (f) any person who is working in a practitioner's office, acting under supervision; and  
2076 (g) a polysomnographic technician or trainee, acting under supervision, as long as [~~they~~  
2077 ~~only administer~~] the technician or trainee administers the following only in a sleep lab, sleep  
2078 center, or sleep facility:

- 2079 (i) oxygen titration; and
- 2080 (ii) positive airway pressure that does not include mechanical ventilation.
- 2081 (3) Nothing in this chapter permits a respiratory care practitioner to engage in the  
2082 unauthorized practice of other health disciplines.

2083 Section 37. Section **61-1-10** is amended to read:

2084 **61-1-10. Registration by qualification.**

- 2085 (1) Application may be made to register any security by qualification.
- 2086 (2) A registration statement under this section shall contain the following information  
2087 and be accompanied by the following documents in addition to the information specified in  
2088 Subsection 61-1-11(3) and the consent to service of process required by Section 61-1-26:

- 2089 (a) with respect to the issuer and any significant subsidiary:
  - 2090 (i) its name, address, and form of organization;
  - 2091 (ii) the state or foreign jurisdiction and date of its organization;
  - 2092 (iii) the general character and location of its business;
  - 2093 (iv) a description of its physical properties and equipment; and
  - 2094 (v) a statement of the general competitive conditions in the industry or business in  
2095 which it is or will be engaged;
- 2096 (b) with respect to every director and officer of the issuer or person occupying a similar  
2097 status or performing similar functions:
  - 2098 (i) his name, address, and principal occupation for the past five years;
  - 2099 (ii) the amount of securities of the issuer held by him as of a specified date within 30  
2100 days of the filing of the registration statement;
  - 2101 (iii) the amount of the securities covered by the registration statement to which he has

2102 indicated his intention to subscribe; and

2103 (iv) a description of any material interest in any material transaction with the issuer or  
2104 any significant subsidiary affected within the past three years or proposed to be affected;

2105 (c) with respect to persons covered by Subsection (2)(b), the remuneration paid during  
2106 the past 12 months and estimated to be paid during the next 12 months, directly or indirectly,  
2107 by the issuer, together with all predecessors, parents, subsidiaries, and affiliates, to all those  
2108 persons in the aggregate;

2109 (d) with respect to any person owning of record, or beneficially if known, 10% or more  
2110 of the outstanding shares of any class of equity security of the issuer, the information specified  
2111 in Subsection (2)(b) other than the person's occupation;

2112 (e) with respect to every promoter if the issuer was organized within the past three  
2113 years, the information specified in Subsection (2)(b), any amount paid to the promoter within  
2114 that period or intended to be paid to the promoter, and the consideration for any such payment;

2115 (f) with respect to any person on whose behalf any part of the offering is to be made in  
2116 a nonissuer distribution:

2117 (i) the person's name and address;

2118 (ii) the amount of securities of the issuer held by the person as of the date of filing of  
2119 the registration statement;

2120 (iii) a description of any material interest in any material transaction with the issuer or  
2121 any significant subsidiary effected within the past three years or proposed to be effected; and

2122 (iv) a statement of the person's reasons for making the offering;

2123 (g) the capitalization and long-term debt, on both a current and pro forma basis, of the  
2124 issuer and any significant subsidiary, including a description of each security outstanding or  
2125 being registered or otherwise offered, and a statement of the amount and kind of consideration,  
2126 whether in the form of cash, physical assets, services, patents, goodwill, or anything else, for  
2127 which the issuer or any subsidiary has issued any of its securities within the past two years or is  
2128 obligated to issue any of its securities;

2129 (h) (i) the kind and amount of securities to be offered;

- 2130 (ii) the proposed offering price or the method by which it is to be computed;
- 2131 (iii) any variation therefrom at which any proportion of the offering is to be made to
- 2132 any person or class of persons other than the underwriters, with a specification of any such
- 2133 person or class;
- 2134 (iv) the basis upon which the offering is to be made if otherwise than for cash;
- 2135 (v) the estimated aggregate underwriting and selling discounts or commissions and
- 2136 finders' fees, including separately cash, securities, contracts, or anything else of value to accrue
- 2137 to the underwriters or finders in connection with the offering, or, if the selling discounts or
- 2138 commissions are variable, the basis of determining them and their maximum and minimum
- 2139 amounts;
- 2140 (vi) the estimated amounts of other selling expenses, including legal, engineering, and
- 2141 accounting charges;
- 2142 (vii) the name and address of every underwriter and every recipient of a finder's fee;
- 2143 (viii) a copy of any underwriting or selling-group agreement under which the
- 2144 distribution is to be made, or the proposed form of any such agreement whose terms have not
- 2145 yet been determined; and
- 2146 (ix) a description of the plan of distribution of any securities which are to be offered
- 2147 otherwise than through an underwriter;
- 2148 (i) (i) the estimated cash proceeds to be received by the issuer from the offering;
- 2149 (ii) the purposes for which the proceeds are to be used by the issuer;
- 2150 (iii) the amount to be used for each purpose;
- 2151 (iv) the order or priority in which the proceeds will be used for the purposes stated;
- 2152 (v) the amounts of any funds to be raised from other sources to achieve the purposes
- 2153 stated[;] and the sources of any such funds; and
- 2154 (vi) if any part of the proceeds is to be used to acquire any property, including
- 2155 goodwill, otherwise than in the ordinary course of business, the names and addresses of the
- 2156 vendors, the purchase price, the names of any persons who have received commissions in
- 2157 connection with the acquisition, and the amounts of any such commissions and any other

2158 expense in connection with the acquisition, including the cost of borrowing money to finance  
2159 the acquisition;

2160 (j) a description of any stock options or other security options outstanding, or to be  
2161 created in connection with the offering, together with the amount of any such option held or to  
2162 be held by every person required to be named in Subsection (2)(b), (d), (e), (f), or (h) and by  
2163 any person who holds or will hold 10% or more in the aggregate of any such options;

2164 (k) (i) the dates of, parties to, and general effect concisely stated of, every management  
2165 or other material contract made or to be made otherwise than in the ordinary course of business  
2166 if it is to be performed in whole or in part at or after the filing of the registration statement or  
2167 was made within the past two years, together with a copy of every such contract; and

2168 (ii) a description of any pending litigation or proceeding to which the issuer is a party  
2169 and which materially affects its business or assets, including any such litigation or proceeding  
2170 known to be contemplated by governmental authorities;

2171 (l) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other  
2172 sales literature intended as of the effective date to be used in connection with the offering;

2173 (m) (i) a specimen copy of the security being registered;

2174 (ii) a copy of the issuer's articles of incorporation, and bylaws, if any, or their  
2175 substantial equivalents, as currently in effect; and

2176 (iii) a copy of any indenture or other instrument covering the security to be registered;

2177 (n) a signed or conformed copy of an opinion of counsel as to the legality of the  
2178 security being registered, with an English translation if it is in a foreign language, which shall  
2179 state whether the security when sold will be legally issued, fully paid, and nonassessable, and if  
2180 a debt security, a binding obligation of the issuer;

2181 (o) the written consent of any accountant, engineer, appraiser, or other person whose  
2182 profession gives authority to a statement made by him, if that person is named as having  
2183 prepared or certified a report or valuation, other than a public and official document or  
2184 statement, which is used in connection with the registration statement;

2185 (p) (i) a balance sheet of the issuer as of a date within four months prior to the filing of

2186 the registration statement;

2187 (ii) a profit and loss statement and analysis of retained earnings for each of the three  
2188 fiscal years preceding the date of the balance sheet and for any period between the close of the  
2189 last fiscal year and the date of the balance sheet, or for the period of the issuer's and any  
2190 predecessors' existence if less than three years; and

2191 (iii) if any part of the proceeds of the offering is to be applied to the purchase of any  
2192 business, the same financial statements which would be required if that business were the  
2193 registrant; and

2194 (q) such additional information or verification of any statement as the division requires  
2195 by rule or order.

2196 (3) A registration statement under this section becomes effective when the division so  
2197 orders.

2198 (4) As a condition of registration under this section, a prospectus containing the  
2199 information, but not containing copies of contracts or agreements specified in Subsections  
2200 (2)(a) through (k) and (p) shall be sent or given to each person to whom an offer is made before  
2201 or concurrently with:

2202 (a) the first written offer made to the person, otherwise than by means of a public  
2203 advertisement, by or for the account of the issuer or any other person on whose behalf the  
2204 offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold  
2205 allotment or subscription taken by the person as a participant in the distribution;

2206 (b) the confirmation of any sale made by or for the account of any such person;

2207 (c) payment pursuant to any such sale; or

2208 (d) delivery of the security pursuant to any such sale, whichever occurs first.

2209 Section 38. Section **63G-2-204** is amended to read:

2210 **63G-2-204. Requests -- Time limit for response and extraordinary circumstances.**

2211 (1) A person making a request for a record shall furnish the governmental entity with a  
2212 written request containing:

2213 (a) the person's name, mailing address, and daytime telephone number, if available;

2214 and

2215 (b) a description of the record requested that identifies the record with reasonable  
2216 specificity.

2217 (2) (a) Subject to Subsection (2)(b), a person making a request for a record shall submit  
2218 the request to the governmental entity that prepares, owns, or retains the record.

2219 (b) In response to a request for a record, a governmental entity may not provide a  
2220 record that it has received under Section 63G-2-206 as a shared record if the record was shared  
2221 for the purpose of auditing, if the governmental entity is authorized by state statute to conduct  
2222 an audit.

2223 (c) If a governmental entity is prohibited from providing a record under Subsection  
2224 (2)(b), it shall:

2225 (i) deny the records request; and

2226 (ii) inform the person making the request that records requests must be submitted to the  
2227 governmental entity that prepares, owns, or retains the record.

2228 (d) A governmental entity may make rules in accordance with Title 63G, Chapter 3,  
2229 Utah Administrative Rulemaking Act, specifying where and to whom requests for access shall  
2230 be directed.

2231 (3) After receiving a request for a record, a governmental entity shall:

2232 (a) review each request that seeks an expedited response and notify, within five  
2233 business days after receiving the request, each requester that has not demonstrated that their  
2234 record request benefits the public rather than the person that their response will not be  
2235 expedited; and

2236 (b) as soon as reasonably possible, but no later than 10 business days after receiving a  
2237 written request, or five business days after receiving a written request if the requester  
2238 demonstrates that expedited response to the record request benefits the public rather than the  
2239 person:

2240 (i) approve the request and provide a copy of the record;

2241 (ii) deny the request in accordance with the procedures and requirements of Section



2242 63G-2-205;

2243 (iii) notify the requester that it does not maintain the record requested and provide, if  
2244 known, the name and address of the governmental entity that does maintain the record; or

2245 (iv) notify the requester that because of one of the extraordinary circumstances listed in  
2246 Subsection (5), it cannot immediately approve or deny the request, and include with the notice:

2247 (A) a description of the circumstances that constitute the extraordinary circumstances;

2248 and

2249 (B) the date when the records will be available, consistent with the requirements of  
2250 Subsection (6).

2251 (4) Any person who requests a record to obtain information for a story or report for  
2252 publication or broadcast to the general public is presumed to be acting to benefit the public  
2253 rather than a person.

2254 (5) The following circumstances constitute "extraordinary circumstances" that allow a  
2255 governmental entity to delay approval or denial by an additional period of time as specified in  
2256 Subsection (6) if the governmental entity determines that due to the extraordinary  
2257 circumstances it cannot respond within the time limits provided in Subsection (3):

2258 (a) another governmental entity is using the record, in which case the originating  
2259 governmental entity shall promptly request that the governmental entity currently in possession  
2260 return the record;

2261 (b) another governmental entity is using the record as part of an audit, and returning the  
2262 record before the completion of the audit would impair the conduct of the audit;

2263 (c) (i) the request is for a voluminous quantity of records or a record series containing a  
2264 substantial number of records; or

2265 (ii) the requester seeks a substantial number of records or records series in requests  
2266 filed within five working days of each other;

2267 (d) the governmental entity is currently processing a large number of records requests;

2268 (e) the request requires the governmental entity to review a large number of records to  
2269 locate the records requested;

2270 (f) the decision to release a record involves legal issues that require the governmental  
2271 entity to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case  
2272 law;

2273 (g) segregating information that the requester is entitled to inspect from information  
2274 that the requester is not entitled to inspect requires extensive editing; or

2275 (h) segregating information that the requester is entitled to inspect from information  
2276 that the requester is not entitled to inspect requires computer programming.

2277 (6) If one of the extraordinary circumstances listed in Subsection (5) precludes  
2278 approval or denial within the time specified in Subsection (3), the following time limits apply  
2279 to the extraordinary circumstances:

2280 (a) for claims under Subsection (5)(a), the governmental entity currently in possession  
2281 of the record shall return the record to the originating entity within five business days of the  
2282 request for the return unless returning the record would impair the holder's work;

2283 (b) for claims under Subsection (5)(b), the originating governmental entity shall notify  
2284 the requester when the record is available for inspection and copying;

2285 (c) for claims under Subsections (5)(c), (d), and (e), the governmental entity shall:

2286 (i) disclose the records that it has located which the requester is entitled to inspect;

2287 (ii) provide the requester with an estimate of the amount of time it will take to finish  
2288 the work required to respond to the request;

2289 (iii) complete the work and disclose those records that the requester is entitled to  
2290 inspect as soon as reasonably possible; and

2291 (iv) for any person that does not establish a right to an expedited response as  
2292 authorized by Subsection (3)~~(a)~~, a governmental entity may choose to:

2293 (A) require the person to provide for copying of the records as provided in Subsection  
2294 63G-2-201(9); or

2295 (B) treat a request for multiple records as separate record requests, and respond  
2296 sequentially to each request;

2297 (d) for claims under Subsection (5)(f), the governmental entity shall either approve or

2298 deny the request within five business days after the response time specified for the original  
2299 request has expired;

2300 (e) for claims under Subsection (5)(g), the governmental entity shall fulfill the request  
2301 within 15 business days from the date of the original request; or

2302 (f) for claims under Subsection (5)(h), the governmental entity shall complete its  
2303 programming and disclose the requested records as soon as reasonably possible.

2304 (7) (a) If a request for access is submitted to an office of a governmental entity other  
2305 than that specified by rule in accordance with Subsection (2), the office shall promptly forward  
2306 the request to the appropriate office.

2307 (b) If the request is forwarded promptly, the time limit for response begins when the  
2308 record is received by the office specified by rule.

2309 (8) If the governmental entity fails to provide the requested records or issue a denial  
2310 within the specified time period, that failure is considered the equivalent of a determination  
2311 denying access to the record.

2312 Section 39. Section **63G-2-502** is amended to read:

2313 **63G-2-502. State Records Committee -- Duties.**

2314 (1) The records committee shall:

2315 (a) meet at least once every three months;

2316 (b) review and approve schedules for the retention and disposal of records;

2317 (c) hear appeals from determinations of access as provided by Section 63G-2-403; and

2318 (d) appoint a chairman from among its members.

2319 (2) The records committee may:

2320 (a) make rules to govern its own proceedings as provided by Title 63G, Chapter 3,  
2321 Utah Administrative Rulemaking Act; and

2322 (b) by order, after notice and hearing, reassign classification and designation for any  
2323 record series by a governmental entity if the governmental entity's classification or designation  
2324 is inconsistent with this chapter.

2325 (3) The records committee shall annually appoint an executive secretary to the records

2326 committee. The executive secretary may not serve as a voting member of the committee.

2327 (4) Five members of the records committee are a quorum for the transaction of  
2328 business.

2329 (5) The state archives shall provide staff and support services for the records  
2330 committee.

2331 [~~(6) A member may not receive compensation or benefits for the member's service, but  
2332 may receive per diem and travel expenses in accordance with:]~~

2333 [~~(a) Section 63A-3-106;~~]

2334 [~~(b) Section 63A-3-107; and]~~

2335 [~~(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
2336 63A-3-107.]~~

2337 [~~(7)~~] (6) If the records committee reassigns the classification or designation of a record  
2338 or record series under Subsection (2)(b), any affected governmental entity or any other  
2339 interested person may appeal the reclassification or redesignation to the district court. The  
2340 district court shall hear the matter de novo.

2341 [~~(8)~~] (7) The Office of the Attorney General shall provide counsel to the records  
2342 committee and shall review proposed retention schedules.

2343 Section 40. Section **67-5a-8** is amended to read:

2344 **67-5a-8. Administration.**

2345 (1) (a) The administration costs of this chapter, including council staff compensation,  
2346 shall be funded from appropriations made by the Legislature to the Office of the Attorney  
2347 General for the support of the council from the Public Safety Support Account established in  
2348 Section 51-9-404.

2349 (b) Funds available from other sources may also be appropriated by the Legislature to  
2350 the Office of the Attorney General for the administration of this chapter.

2351 (2) In exercising its duties, the council shall minimize costs of administration and  
2352 utilize existing training facilities and resources where possible so the greatest portion of the  
2353 funds available are expended for training prosecuting attorneys.

2354 (3) [~~Common~~] Council staff may receive per diem and travel expenses in accordance  
2355 with:

2356 (a) Section 63A-3-106;

2357 (b) Section 63A-3-107; and

2358 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
2359 63A-3-107.

2360 Section 41. Section **67-19-6.7** is amended to read:

2361 **67-19-6.7. Overtime policies for state employees.**

2362 (1) As used in this section:

2363 (a) "Accrued overtime hours" means:

2364 (i) for nonexempt employees, overtime hours earned during a fiscal year that, at the end  
2365 of the fiscal year, have not been paid and have not been taken as time off by the nonexempt  
2366 state employee who accrued them; and

2367 (ii) for exempt employees, overtime hours earned during an overtime year.

2368 (b) "Appointed official" means:

2369 (i) each department executive director and deputy director, each division director, and  
2370 each member of a board or commission; and

2371 (ii) any other person employed by a department who is appointed by, or whose  
2372 appointment is required by law to be approved by, the governor and who:

2373 (A) is paid a salary by the state; and

2374 (B) who exercises managerial, policy-making, or advisory responsibility.

2375 (c) "Department" means the Department of Administrative Services, the Department of  
2376 Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage  
2377 Control, the Insurance Department, the Public Service Commission, the Labor Commission,  
2378 the Department of Agriculture and Food, the Department of Human Services, the State Board  
2379 of Education, the Department of Natural Resources, the Department of Technology Services,  
2380 the Department of Transportation, the Department of Commerce, the Department of Workforce  
2381 Services, the State Tax Commission, the Department of Community and Culture, the

2382 Department of Health, the National Guard, the Department of Environmental Quality, the  
2383 Department of Public Safety, the Department of Human Resource Management, the  
2384 Commission on Criminal and Juvenile Justice, all merit employees except attorneys in the  
2385 Office of the Attorney General, merit employees in the Office of the State Treasurer, merit  
2386 employees in the Office of the State Auditor, Department of Veterans' Affairs, and the Board of  
2387 Pardons and Parole.

2388 (d) "Elected official" means any person who is an employee of the state because the  
2389 person was elected by the registered voters of Utah to a position in state government.

2390 (e) "Exempt employee" means a state employee who is exempt as defined by the Fair  
2391 Labor Standards Act of 1978, 29 U.S.C. Section 201 et seq.

2392 (f) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. Section 201 et seq.

2393 (g) "FLSA agreement" means the agreement authorized by the Fair Labor Standards  
2394 Act of 1978, 29 U.S.C. Section 201 et seq., by which a nonexempt employee elects the form of  
2395 compensation the nonexempt employee will receive for overtime.

2396 (h) "Nonexempt employee" means a state employee who is nonexempt as defined by  
2397 the Department of Human Resource Management applying FLSA requirements.

2398 (i) "Overtime" means actual time worked in excess of the employee's defined work  
2399 period.

2400 (j) "Overtime year" means the year determined by a department under Subsection  
2401 (4)(b) at the end of which an exempt employee's accrued overtime lapses.

2402 (k) "State employee" means every person employed by a department who is not:

2403 (i) an appointed official;

2404 (ii) an elected official;

2405 (iii) a member of a board or commission who is paid only ~~on a~~ for per diem or travel  
2406 expenses ~~[basis]~~; or

2407 (iv) employed on a contractual basis at the State Office of Education.

2408 (l) "Uniform annual date" means the date when an exempt employee's accrued  
2409 overtime lapses.

- 2410 (m) "Work period" means:
- 2411 (i) for all nonexempt employees, except law enforcement and hospital employees, a
- 2412 consecutive seven day 24 hour work period of 40 hours;
- 2413 (ii) for all exempt employees, a 14 day, 80 hour payroll cycle; and
- 2414 (iii) for nonexempt law enforcement and hospital employees, the period established by
- 2415 each department by rule for those employees according to the requirements of the Fair Labor
- 2416 Standards Act of 1978, 29 U.S.C. Section 201 et seq.
- 2417 (2) Each department shall compensate each state employee who works overtime by
- 2418 complying with the requirements of this section.
- 2419 (3) (a) Each department shall negotiate and obtain a signed FLSA agreement from each
- 2420 nonexempt employee.
- 2421 (b) In the FLSA agreement, the nonexempt employee shall elect either to be
- 2422 compensated for overtime by:
- 2423 (i) taking time off work at the rate of one and one-half hour off for each overtime hour
- 2424 worked; or
- 2425 (ii) being paid for the overtime worked at the rate of one and one-half times the rate per
- 2426 hour that the state employee receives for nonovertime work.
- 2427 (c) Any nonexempt employee who elects to take time off under this Subsection (3)
- 2428 shall be paid for any overtime worked in excess of the cap established by the Department of
- 2429 Human Resource Management.
- 2430 (d) Before working any overtime, each nonexempt employee shall obtain authorization
- 2431 to work overtime from the employee's immediate supervisor.
- 2432 (e) Each department shall:
- 2433 (i) for employees who elect to be compensated with time off for overtime, allow
- 2434 overtime earned during a fiscal year to be accumulated; and
- 2435 (ii) for employees who elect to be paid for overtime worked, pay them for overtime
- 2436 worked in the paycheck for the pay period in which the employee worked the overtime.
- 2437 (f) If the department pays a nonexempt employee for overtime, the department shall

2438 charge that payment to the department's budget.

2439 (g) At the end of each fiscal year, the Division of Finance shall total all the accrued  
2440 overtime hours for nonexempt employees and charge that total against the appropriate fund or  
2441 subfund.

2442 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), each department shall  
2443 compensate exempt employees who work overtime by granting them time off at the rate of one  
2444 hour off for each hour of overtime worked.

2445 (ii) The executive director of the Department of Human Resource Management may  
2446 grant limited exceptions to this requirement, where work circumstances dictate, by authorizing  
2447 a department to pay employees for overtime worked at the rate per hour that the employee  
2448 receives for nonovertime work, if the department has funds available.

2449 (b) (i) Each department shall:

2450 (A) establish in its written human resource policies a uniform annual date for each  
2451 division that is at the end of any pay period; and

2452 (B) communicate the uniform annual date to its employees.

2453 (ii) If any department fails to establish a uniform annual date as required by this  
2454 Subsection (4), the executive director of the Department of Human Resource Management, in  
2455 conjunction with the director of the Division of Finance, shall establish the date for that  
2456 department.

2457 (c) (i) Any overtime earned under this Subsection (4) is not an entitlement, is not a  
2458 benefit, and is not a vested right.

2459 (ii) A court may not construe the overtime for exempt employees authorized by this  
2460 Subsection (4) as an entitlement, a benefit, or as a vested right.

2461 (d) At the end of the overtime year, upon transfer to another department at any time,  
2462 and upon termination, retirement, or other situations where the employee will not return to  
2463 work before the end of the overtime year:

2464 (i) any of an exempt employee's overtime that is more than the maximum established  
2465 by the Department of Human Resource Management rule lapses; and



2466 (ii) unless authorized by the executive director of the Department of Human Resource  
2467 Management under Subsection (4)(a)(ii), a department may not compensate the exempt  
2468 employee for that lapsed overtime by paying the employee for the overtime or by granting the  
2469 employee time off for the lapsed overtime.

2470 (e) Before working any overtime, each exempt employee shall obtain authorization to  
2471 work overtime from the exempt employee's immediate supervisor.

2472 (f) If the department pays an exempt employee for overtime under authorization from  
2473 the executive director of the Department of Human Resource Management, the department  
2474 shall charge that payment to the department's budget in the pay period earned.

2475 (5) The Department of Human Resource Management shall:

2476 (a) ensure that the provisions of the FLSA and this section are implemented throughout  
2477 state government;

2478 (b) determine, for each state employee, whether that employee is exempt, nonexempt,  
2479 law enforcement, or has some other status under the FLSA;

2480 (c) in coordination with modifications to the systems operated by the Division of  
2481 Finance, make rules:

2482 (i) establishing procedures for recording overtime worked that comply with FLSA  
2483 requirements;

2484 (ii) establishing requirements governing overtime worked while traveling and  
2485 procedures for recording that overtime that comply with FLSA requirements;

2486 (iii) establishing requirements governing overtime worked if the employee is "on call"  
2487 and procedures for recording that overtime that comply with FLSA requirements;

2488 (iv) establishing requirements governing overtime worked while an employee is being  
2489 trained and procedures for recording that overtime that comply with FLSA requirements;

2490 (v) subject to the FLSA, establishing the maximum number of hours that a nonexempt  
2491 employee may accrue before a department is required to pay the employee for the overtime  
2492 worked;

2493 (vi) subject to the FLSA, establishing the maximum number of overtime hours for an

2494 exempt employee that do not lapse; and

2495 (vii) establishing procedures for adjudicating appeals of any FLSA determinations  
2496 made by the Department of Human Resource Management as required by this section;

2497 (d) monitor departments for compliance with the FLSA; and

2498 (e) recommend to the Legislature and the governor any statutory changes necessary  
2499 because of federal government action.

2500 (6) In coordination with the procedures for recording overtime worked established in  
2501 rule by the Department of Human Resource Management, the Division of Finance shall modify  
2502 its payroll and human resource systems to accommodate those procedures.

2503 (a) Notwithstanding the procedures and requirements of Title 63G, Chapter 4,  
2504 Administrative Procedures Act, Section 67-19-31, and Section 67-19a-301, any employee who  
2505 is aggrieved by the FLSA designation made by the Department of Human Resource  
2506 Management as required by this section may appeal that determination to the executive director  
2507 of the Department of Human Resource Management by following the procedures and  
2508 requirements established in Department of Human Resource Management rule.

2509 (b) Upon receipt of an appeal under this section, the executive director shall notify the  
2510 executive director of the employee's department that the appeal has been filed.

2511 (c) If the employee is aggrieved by the decision of the executive director of the  
2512 Department of Human Resource Management, the employee shall appeal that determination to  
2513 the Department of Labor, Wage and Hour Division, according to the procedures and  
2514 requirements of federal law.

2515 Section 42. Section **67-19-15** is amended to read:

2516 **67-19-15. Career service -- Exempt positions -- Schedules for civil service**  
2517 **positions -- Coverage of career service provisions.**

2518 (1) Except as otherwise provided by law or by rules and regulations established for  
2519 federally aided programs, the following positions are exempt from the career service provisions  
2520 of this chapter and are designated under the following schedules:

2521 (a) schedule AA includes the governor, members of the Legislature, and all other

2522 elected state officers;

2523       (b) schedule AB includes appointed executives and board or commission executives

2524 enumerated in Section 67-22-2;

2525       (c) schedule AC includes all employees and officers in:

2526       (i) the office and at the residence of the governor;

2527       (ii) the Utah Science Technology and Research Initiative (USTAR);

2528       (iii) the Public Lands Policy Coordinating Council;

2529       (iv) the Office of the State Auditor; and

2530       (v) the Office of the State Treasurer;

2531       (d) schedule AD includes employees who:

2532       (i) are in a confidential relationship to an agency head or commissioner; and

2533       (ii) report directly to, and are supervised by, a department head, commissioner, or

2534 deputy director of an agency or its equivalent;

2535       (e) schedule AG includes employees in the Office of the Attorney General who are

2536 under their own career service pay plan under Sections 67-5-7 through 67-5-13;

2537       (f) schedule AH includes:

2538       (i) teaching staff of all state institutions; and

2539       (ii) employees of the Utah Schools for the Deaf and the Blind who are:

2540       (A) educational interpreters as classified by the department; or

2541       (B) educators as defined by Section 53A-25b-102;

2542       (g) schedule AN includes employees of the Legislature;

2543       (h) schedule AO includes employees of the judiciary;

2544       (i) schedule AP includes all judges in the judiciary;

2545       (j) schedule AQ includes:

2546       (i) members of state and local boards and councils appointed by the governor and

2547 governing bodies of agencies;

2548       (ii) other local officials serving in an ex officio capacity; and

2549       (iii) officers, faculty, and other employees of state universities and other state

2550 institutions of higher education;

2551 (k) schedule AR includes employees in positions [~~which~~] that involve responsibility:

2552 (i) for determining policy;

2553 (ii) for determining the way in which a policy is carried out; or

2554 (iii) of a type not appropriate for career service, as determined by the agency head with

2555 the concurrence of the executive director;

2556 (l) schedule AS includes any other employee:

2557 (i) whose appointment is required by statute to be career service exempt;

2558 (ii) whose agency is not subject to this chapter; or

2559 (iii) whose agency has authority to make rules regarding the performance,

2560 compensation, and bonuses for its employees;

2561 (m) schedule AT includes employees of the Department of Technology Services,

2562 designated as executive/professional positions by the executive director of the Department of

2563 Technology Services with the concurrence of the executive director;

2564 (n) schedule AU includes patients and inmates employed in state institutions;

2565 (o) schedule IN includes employees who are:

2566 (i) hired to work part time on an indefinite basis; and

2567 (ii) considered to be temporary noncareer employees; and

2568 (p) schedule TL includes employees who are:

2569 (i) hired to work on a time-limited basis; and

2570 (ii) considered to be temporary noncareer employees.

2571 (2) The civil service shall consist of two schedules as follows:

2572 (a) (i) Schedule A is the schedule consisting of positions under Subsection (1).

2573 (ii) Removal from any appointive position under schedule A, unless otherwise

2574 regulated by statute, is at the pleasure of the appointing officers without regard to tenure.

2575 (b) Schedule B is the competitive career service schedule, consisting of:

2576 (i) all positions filled through competitive selection procedures as defined by the

2577 executive director; or

2578 (ii) positions filled through a department approved on the job examination intended to  
2579 appoint a qualified person with a disability.

2580 (3) (a) The executive director, after consultation with the heads of concerned executive  
2581 branch departments and agencies and with the approval of the governor, shall allocate positions  
2582 to the appropriate schedules under this section.

2583 (b) Agency heads shall make requests and obtain approval from the executive director  
2584 before changing the schedule assignment and tenure rights of any position.

2585 (c) Unless the executive director's decision is reversed by the governor, when the  
2586 executive director denies an agency's request, the executive director's decision is final.

2587 (4) (a) Compensation for employees of the Legislature shall be established by the  
2588 directors of the legislative offices in accordance with Section 36-12-7.

2589 (b) Compensation for employees of the judiciary shall be established by the state court  
2590 administrator in accordance with Section 78A-2-107.

2591 (c) Compensation for officers, faculty, and other employees of state universities and  
2592 institutions of higher education shall be established as provided in Title 53B, Chapters 1,  
2593 Governance, Powers, Rights, and Responsibilities, and 2, Institutions of Higher Education.

2594 (d) Unless otherwise provided by law, compensation for all other schedule A  
2595 employees shall be established by their appointing authorities, within ranges approved by, and  
2596 after consultation with the executive director of the Department of Human Resource  
2597 Management.

2598 (5) An employee who is in a position designated schedule AC and who holds career  
2599 service status on June 30, 2010, shall retain the career service status if the employee:

2600 (a) remains in the position that the employee is in on June 30, 2010; and

2601 (b) does not elect to convert to career service exempt status in accordance with a rule  
2602 made by the department.

2603 Section 43. Section **73-29-202** is amended to read:

2604 **73-29-202. Public right to float on public waters.**

2605 (1) There is a public right to float on public water that has sufficient width, depth, and

2606 flow to allow free passage of the chosen vessel at the time of floating.

2607 (2) Subsection (1) includes the right to:

2608 (a) incidentally touch private property as required for safe passage and continued  
2609 movement;

2610 (b) portage around a dangerous obstruction in the water, if portage is made in a manner  
2611 that is:

2612 (i) most direct;

2613 (ii) least invasive; and

2614 (iii) closest to the water; and

2615 (c) fish while floating.

2616 (3) A person exercising the right that this section recognizes:

2617 (a) shall enter and exit the water at a point on public property or private property with  
2618 permission of the owner; and

2619 (b) may not stop on private property.

2620 (4) (a) The right this section recognizes does not prevent the establishment of broader  
2621 public recreational access in accordance with this chapter.

2622 (b) Notwithstanding Subsection (4)(a), the right this section recognizes does not  
2623 establish broader public recreational access.

2624 Section 44. Section **76-5-107.5** is amended to read:

2625 **76-5-107.5. Prohibition of "hazing" -- Definitions -- Penalties.**

2626 (1) A person is guilty of hazing if that person intentionally, knowingly, or recklessly  
2627 commits an act or causes another to commit an act that:

2628 (a) (i) endangers the mental or physical health or safety of another;

2629 (ii) involves any brutality of a physical nature such as whipping, beating, branding,  
2630 calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or  
2631 exposure to the elements;

2632 (iii) involves consumption of any food, alcoholic product, drug, or other substance or  
2633 any other physical activity that endangers the mental or physical health and safety of an

2634 individual; or

2635 (iv) involves any activity that would subject the individual to extreme mental stress,  
2636 such as sleep deprivation, extended isolation from social contact, or conduct that subjects  
2637 another to extreme embarrassment, shame, or humiliation; and

2638 (b) (i) is for the purpose of initiation, admission into, affiliation with, holding office in,  
2639 or as a condition for continued membership in any organization; or

2640 (ii) if the actor knew that the victim is a member of or candidate for membership with a  
2641 school team or school organization to which the actor belongs or did belong within the  
2642 preceding two years.

2643 (2) It is not a defense to prosecution of hazing that a person under 21, against whom  
2644 the hazing was directed, consented to or acquiesced in the hazing activity.

2645 (3) An actor who hazes another is guilty of a:

2646 (a) class B misdemeanor except as provided in Subsection (3)(b), (c), (d), or (e);

2647 (b) class A misdemeanor if the act involves:

2648 (i) the operation or other use of a motor vehicle;

2649 (ii) the consumption of an alcoholic product as defined in Section [~~32A-1-105~~]

2650 32B-1-102; or

2651 (iii) the consumption of a drug or a substance as defined in Section 76-5-113;

2652 (c) third degree felony if the act involves the use of a dangerous weapon as defined in  
2653 Section 76-1-601;

2654 (d) third degree felony if the hazing results in serious bodily injury to a person; or

2655 (e) second degree felony if hazing under Subsection (3)(d) involves the use of a  
2656 dangerous weapon as defined in Section 76-1-601.

2657 (4) A person who in good faith reports or participates in reporting of an alleged hazing  
2658 is not subject to any civil or criminal liability regarding the reporting.

2659 (5) (a) This section does not apply to military training or other official military  
2660 activities.

2661 (b) Military conduct is governed by Title 39, Chapter 6, Utah Code of Military Justice.

2662 (6) (a) A prosecution under this section does not bar a prosecution of the actor for:  
2663 (i) any other offense for which the actor may be liable as a party for conduct committed  
2664 by the person hazed; or  
2665 (ii) any offense, caused in the course of the hazing, that the actor commits against the  
2666 person who is hazed.

2667 (b) Under Subsection (6)(a)(i) a person may be separately punished, both for the hazing  
2668 offense and the conduct committed by the person hazed.

2669 (c) Under Subsection (6)(a)(ii) a person may not be punished both for hazing and for  
2670 the other offense, but shall be punished for the offense carrying the greater maximum penalty.

2671 Section 45. Section **76-6-101** is amended to read:

2672 **76-6-101. Definitions.**

2673 (1) For purposes of this chapter:

2674 ~~[(6)]~~ (a) "Fire" means a flame, heat source capable of combustion, or material capable  
2675 of combustion that is caused, set, or maintained by a person for any purpose.

2676 ~~[(2)]~~ (b) "Habitable structure" means any building, vehicle, trailer, railway car, aircraft,  
2677 or watercraft used for lodging or assembling persons or conducting business whether a person  
2678 is actually present or not.

2679 ~~[(+)]~~ (c) "Property" means:

2680 (i) any form of real property or tangible personal property which is capable of being  
2681 damaged or destroyed and includes a habitable structure~~[-]; and~~

2682 ~~[(3) "Property" is that]~~ (ii) the property of another, if anyone other than the actor has a  
2683 possessory or proprietary interest in any portion ~~[thereof]~~ of the property.

2684 ~~[(4)]~~ (d) "Value" means:

2685 ~~[(a)]~~ (i) the market value of the property, if totally destroyed, at the time and place of  
2686 the offense, or where cost of replacement exceeds the market value; or

2687 ~~[(b)]~~ (ii) where the market value cannot be ascertained, the cost of repairing or  
2688 replacing the property within a reasonable time following the offense.

2689 ~~[(5)]~~ (2) If the property damaged has a value that cannot be ascertained by the criteria



2690 set forth in [~~Subsections (4)(a) and (b)~~] Subsection (1)(d), the property shall be considered to  
2691 have a value less than \$500.

2692 Section 46. Section **77-23a-4** is amended to read:

2693 **77-23a-4. Offenses -- Criminal and civil -- Lawful interception.**

2694 (1) (a) Except as otherwise specifically provided in this chapter, any person who  
2695 violates Subsection (1)(b) is guilty of an offense and is subject to punishment under Subsection  
2696 (10), or when applicable, the person is subject to civil action under Subsection (11).

2697 (b) A person commits a violation of this subsection who:

2698 (i) intentionally or knowingly intercepts, endeavors to intercept, or procures any other  
2699 person to intercept or endeavor to intercept any wire, electronic, or oral communication;

2700 (ii) intentionally or knowingly uses, endeavors to use, or procures any other person to  
2701 use or endeavor to use any electronic, mechanical, or other device to intercept any oral  
2702 communication, when the device is affixed to, or otherwise transmits a signal through a wire,  
2703 cable, or other like connection used in wire communication or when the device transmits  
2704 communications by radio, or interferes with the transmission of the communication;

2705 (iii) intentionally or knowingly discloses or endeavors to disclose to any other person  
2706 the contents of any wire, electronic, or oral communication, knowing or having reason to know  
2707 that the information was obtained through the interception of a wire, electronic, or oral  
2708 communication in violation of this section; or

2709 (iv) intentionally or knowingly uses or endeavors to use the contents of any wire,  
2710 electronic, or oral communication, knowing or having reason to know that the information was  
2711 obtained through the interception of a wire, electronic, or oral communication in violation of  
2712 this section.

2713 (2) The operator of a switchboard, or an officer, employee, or agent of a provider of  
2714 wire or electronic communication service whose facilities are used in the transmission of a wire  
2715 communication may intercept, disclose, or use that communication in the normal course of his  
2716 employment while engaged in any activity which is a necessary incident to the rendition of his  
2717 service or to the protection of the rights or property of the provider of that service. However, a

2718 provider of wire communications service to the public may not utilize service observing or  
2719 random monitoring except for mechanical or service quality control checks.

2720 (3) (a) Providers of wire or electronic communications service, their officers,  
2721 employees, or agents, and any landlords, custodians, or other persons may provide information,  
2722 facilities, or technical assistance to persons authorized by law to intercept wire, oral, or  
2723 electronic communications or to conduct electronic surveillance if the provider and its officers,  
2724 employees, or agents, and any landlords, custodians, or other specified persons have been  
2725 provided with:

2726 (i) a court order directing the assistance signed by the authorizing judge; or  
2727 (ii) a certification in writing by a person specified in Subsection 77-23a-10(7), or by  
2728 the attorney general or an assistant attorney general, or by a county attorney or district attorney  
2729 or his deputy that no warrant or court order is required by law, that all statutory requirements  
2730 have been met, and that the specified assistance is required.

2731 (b) The order or certification under this subsection shall set the period of time during  
2732 which the provision of the information, facilities, or technical assistance is authorized and shall  
2733 specify the information, facilities, or technical assistance required.

2734 (4) (a) The providers of wire or electronic communications service, their officers,  
2735 employees, or agents, and any landlords, custodians, or other specified persons may not  
2736 disclose the existence of any interception or surveillance or the device used to accomplish the  
2737 interception or surveillance regarding which the person has been furnished an order or  
2738 certification under this section except as is otherwise required by legal process, and then only  
2739 after prior notification to the attorney general or to the county attorney or district attorney of the  
2740 county in which the interception was conducted, as is appropriate.

2741 (b) Any disclosure in violation of this subsection renders the person liable for civil  
2742 damages under Section 77-23a-11.

2743 (5) A cause of action does not lie in any court against any provider of wire or electronic  
2744 communications service, its officers, employees, or agents, or any landlords, custodians, or  
2745 other specified persons for providing information, facilities, or assistance in accordance with

2746 the terms of a court order or certification under this chapter.

2747 (6) Subsections (3), (4), and (5) supersede any law to the contrary.

2748 (7) (a) A person acting under color of law may intercept a wire, electronic, or oral  
2749 communication if that person is a party to the communication or one of the parties to the  
2750 communication has given prior consent to the interception.

2751 (b) A person not acting under color of law may intercept a wire, electronic, or oral  
2752 communication if that person is a party to the communication or one of the parties to the  
2753 communication has given prior consent to the interception, unless the communication is  
2754 intercepted for the purpose of committing any criminal or tortious act in violation of state or  
2755 federal laws.

2756 (c) An employee of a telephone company may intercept a wire communication for the  
2757 sole purpose of tracing the origin of the communication when the interception is requested by  
2758 the recipient of the communication and the recipient alleges that the communication is obscene,  
2759 harassing, or threatening in nature. The telephone company and its officers, employees, and  
2760 agents shall release the results of the interception, made under this subsection, upon request of  
2761 the local law enforcement authorities.

2762 (8) A person may:

2763 (a) intercept or access an electronic communication made through an electronic  
2764 communications system that is configured so that the electronic communication is readily  
2765 accessible to the general public;

2766 (b) intercept any radio communication transmitted by:

2767 (i) any station for the use of the general public, or that relates to ships, aircraft,  
2768 vehicles, or persons in distress;

2769 (ii) any government, law enforcement, civil defense, private land mobile, or public  
2770 safety communications system, including police and fire, readily accessible to the general  
2771 public;

2772 (iii) a station operating on an authorized frequency within the bands allocated to the  
2773 amateur, citizens' band, or general mobile radio services; or

2774 (iv) by a marine or aeronautics communications system;

2775 (c) intercept any wire or electronic communication, the transmission of which is  
2776 causing harmful interference to any lawfully operating station or consumer electronic  
2777 equipment, to the extent necessary to identify the source of the interference; or

2778 (d) as one of a group of users of the same frequency, intercept any radio  
2779 communication made through a system that utilizes frequencies monitored by individuals  
2780 engaged in the provision or the use of the system, if the communication is not scrambled or  
2781 encrypted.

2782 (9) (a) Except under Subsection (9)(b), a person or entity providing an electronic  
2783 communications service to the public may not intentionally divulge the contents of any  
2784 communication, while in transmission of that service, to any person or entity other than an  
2785 addressee or intended recipient of the communication or his agent.

2786 (b) A person or entity providing electronic communications service to the public may  
2787 divulge the contents of any communication:

2788 (i) as otherwise authorized under this section or Section 77-23a-9;

2789 (ii) with lawful consent of the originator or any addressee or intended recipient of the  
2790 communication;

2791 (iii) to a person employed or authorized or whose facilities are used to forward the  
2792 communication to its destination; or

2793 (iv) that is inadvertently obtained by the service provider and appears to pertain to the  
2794 commission of a crime, if the divulgence is made to a law enforcement agency.

2795 (10) (a) Except under Subsection (10)(b) or (11), a violation of Subsection (1) is a third  
2796 degree felony.

2797 (b) If the offense is a first offense under this section and is not for a tortious or illegal  
2798 purpose or for purposes of direct or indirect commercial advantage or private commercial gain,  
2799 and the wire or electronic communication regarding which the offense was committed is a  
2800 radio communication that is not scrambled or encrypted:

2801 (i) if the communication is not the radio portion of a cellular telephone communication,

2802 a public land mobile radio service communication, or paging service communication, and the  
2803 conduct is not under Subsection (11), the offense is a class A misdemeanor; and

2804 (ii) if the communication is the radio portion of a cellular telephone communication, a  
2805 public land mobile radio service communication, or a paging service communication, the  
2806 offense is a class B misdemeanor.

2807 (c) Conduct otherwise an offense under this section is not an offense if the conduct was  
2808 not done for the purpose of direct or indirect commercial advantage or private financial gain,  
2809 and consists of or relates to the interception of a satellite transmission that is not encrypted or  
2810 scrambled, and is either transmitted:

2811 (i) to a broadcasting station for purposes of retransmission to the general public; or

2812 (ii) as an audio subcarrier intended for redistribution to facilities open to the public, but  
2813 in any event not including data transmissions or telephone calls.

2814 (11) (a) A person is subject to civil suit initiated by the state in a court of competent  
2815 jurisdiction when his conduct is prohibited under Subsection (1) and the conduct involves a:

2816 (i) private satellite video communication that is not scrambled or encrypted, and the  
2817 conduct in violation of this chapter is the private viewing of that communication and is not for  
2818 a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or  
2819 private commercial gain; or

2820 (ii) radio communication that is transmitted on frequencies allocated under Subpart D,  
2821 Part 74, Rules of the Federal Communication Commission, that is not scrambled or encrypted  
2822 and the conduct in violation of this chapter is not for a tortious or illegal purpose or for  
2823 purposes of direct or indirect commercial advantage or private commercial gain.

2824 (b) In an action under Subsection (11)(a):

2825 (i) if the violation of this chapter is a first offense under this section and the person is  
2826 not found liable in a civil action under Section 77-23a-11, the state may seek appropriate  
2827 injunctive relief; or

2828 (ii) if the violation of this chapter is a second or subsequent offense under this section,  
2829 or the person has been found liable in any prior civil action under Section 77-23a-11, the

2830 person is subject to a mandatory \$500 civil penalty.

2831 (c) The court may use any means within its authority to enforce an injunction issued  
2832 under Subsection (11)(b)(i), and shall impose a civil fine of not less than \$500 for each  
2833 violation of the injunction.

2834 Section 47. Section **78B-4-515** is amended to read:

2835 **78B-4-515. Limitation on liability for greenhouse gases.**

2836 (1) "Greenhouse gas" means water vapor, carbon dioxide, methane, nitrous oxide,  
2837 ozone, and chlorofluorocarbons.

2838 (2) A person residing or doing business in this state may not be held liable for damage  
2839 or injury to another arising out of any actual or potential effect on climate caused by  
2840 contributions to emissions of greenhouse gases unless it can be proved by clear and convincing  
2841 evidence that the person has:

2842 (a) violated an enforceable statutory limitation or restriction against emissions of a  
2843 specific greenhouse gas originating within this state; or

2844 (b) violated the express terms of a valid, enforceable operating, air, or other permit  
2845 issued by a state or federal regulatory agency that has jurisdiction over the greenhouse gas  
2846 emissions of the person or business.

2847 (3) The person bringing the action shall:

2848 (a) specify each greenhouse gas emitted by the defendant which is asserted to give rise  
2849 to the cause of action; and

2850 (b) show by clear and convincing evidence that unavoidable[;] and identifiable damage  
2851 or injury has resulted or will result as a direct cause of the defendant's violation of statutory and  
2852 permitting limits.

2853 Section 48. **Repealer.**

2854 This bill repeals:

2855 Section **53A-20c-101, Title.**

2856 Section **73-2-22.1, Assistance of state engineer in management of flood waters.**