

**STATUTORY CONSTRUCTION AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Derek E. Brown**

Senate Sponsor: Stephen H. Urquhart

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**LONG TITLE**

**General Description:**

This bill amends provisions of Titles 17 through 35A of the Utah Code by correcting terms to comply with rules of statutory construction applicable to the Utah Code.

**Highlighted Provisions:**

This bill:

- ▶ amends provisions of Titles 17 through 35A of the Utah Code by correcting terms to comply with rules of statutory construction applicable to the Utah Code; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides an effective date.

**Utah Code Sections Affected:**

AMENDS:

**17-3-1**, as last amended by Laws of Utah 2004, Chapter 371

**17-3-8**, Utah Code Annotated 1953

**17-8-7**, as last amended by Laws of Utah 1993, Chapter 227

**17-11-2**, as last amended by Laws of Utah 1993, Chapter 227

**17-15-16**, as last amended by Laws of Utah 1993, Chapter 227

**17-16-4**, Utah Code Annotated 1953



28           **17-16-9**, as last amended by Laws of Utah 1993, Chapters 33 and 227  
29           **17-16-16**, as last amended by Laws of Utah 1971, Chapter 25  
30           **17-16a-3**, as enacted by Laws of Utah 1983, Chapter 46  
31           **17-16a-6**, as last amended by Laws of Utah 1993, Chapter 227  
32           **17-18-1.9**, as enacted by Laws of Utah 1993, Chapter 38  
33           **17-19-7**, Utah Code Annotated 1953  
34           **17-19-14**, Utah Code Annotated 1953  
35           **17-22-6**, Utah Code Annotated 1953  
36           **17-22-21**, Utah Code Annotated 1953  
37           **17-22-22**, Utah Code Annotated 1953  
38           **17-22-23**, Utah Code Annotated 1953  
39           **17-22-27**, as last amended by Laws of Utah 2004, Chapter 301  
40           **17-23-16**, as last amended by Laws of Utah 2001, Chapter 241  
41           **17-27a-513**, as renumbered and amended by Laws of Utah 2005, Chapter 254  
42           **17-27a-518**, as renumbered and amended by Laws of Utah 2005, Chapter 254  
43           **17-28-11**, as last amended by Laws of Utah 1993, Chapter 227  
44           **17-30-8**, as enacted by Statewide Initiative A, Nov. 8, 1960  
45           **17-30-22**, as enacted by Statewide Initiative A, Nov. 8, 1960  
46           **17-31-3**, as last amended by Laws of Utah 1996, Chapter 79  
47           **17-33-10**, as last amended by Laws of Utah 2003, Chapter 65  
48           **17-33-15**, as last amended by Laws of Utah 1993, Chapter 227  
49           **17-34-5**, as last amended by Laws of Utah 2000, Chapter 199  
50           **17-35b-303**, as last amended by Laws of Utah 2007, Chapter 329  
51           **17-35b-304**, as enacted by Laws of Utah 1998, Chapter 369  
52           **17-36-10**, as last amended by Laws of Utah 1999, Chapter 300  
53           **17-36-17**, as last amended by Laws of Utah 1999, Chapter 300  
54           **17-37-4**, as last amended by Laws of Utah 2002, Chapter 95  
55           **17-38-4**, as last amended by Laws of Utah 1983, Chapter 291  
56           **17-41-301**, as last amended by Laws of Utah 2006, Chapter 194  
57           **17-41-401**, as last amended by Laws of Utah 1997, Chapter 383  
58           **17-52-401**, as last amended by Laws of Utah 2003, Chapter 131

59           **17-53-209**, as renumbered and amended by Laws of Utah 2000, Chapter 133  
60           **17-53-311**, as last amended by Laws of Utah 2008, Chapters 360 and 382  
61           **17B-1-304**, as last amended by Laws of Utah 2009, Chapter 388  
62           **17B-1-506**, as last amended by Laws of Utah 2008, Chapter 3  
63           **17B-1-510**, as renumbered and amended by Laws of Utah 2007, Chapter 329  
64           **17B-1-512**, as last amended by Laws of Utah 2009, Chapters 350 and 388  
65           **17B-1-607**, as renumbered and amended by Laws of Utah 2007, Chapter 329  
66           **17B-2a-807**, as last amended by Laws of Utah 2010, Chapter 281  
67           **17B-2a-818.5**, as last amended by Laws of Utah 2010, Chapter 229  
68           **18-1-1**, as last amended by Laws of Utah 1971, Chapter 29  
69           **19-1-206**, as last amended by Laws of Utah 2010, Chapters 218 and 229  
70           **19-2-109.1**, as last amended by Laws of Utah 2009, Chapters 183 and 377  
71           **19-2-113**, as last amended by Laws of Utah 2010, Chapter 324  
72           **19-2-115**, as last amended by Laws of Utah 2008, Chapter 382  
73           **19-3-302**, as last amended by Laws of Utah 2001, Chapter 107  
74           **19-3-308**, as last amended by Laws of Utah 2009, Chapter 183  
75           **19-4-112**, as last amended by Laws of Utah 1998, Chapter 126  
76           **19-5-102**, as last amended by Laws of Utah 2001, Chapter 274  
77           **19-5-115**, as last amended by Laws of Utah 2010, Chapter 324  
78           **19-5-116**, as renumbered and amended by Laws of Utah 1991, Chapter 112  
79           **19-5-121**, as last amended by Laws of Utah 2009, Chapter 183  
80           **19-6-108**, as last amended by Laws of Utah 2007, Chapter 72  
81           **19-6-116**, as renumbered and amended by Laws of Utah 1991, Chapter 112  
82           **19-6-202**, as renumbered and amended by Laws of Utah 1991, Chapter 112  
83           **19-6-203**, as renumbered and amended by Laws of Utah 1991, Chapter 112  
84           **19-6-205**, as last amended by Laws of Utah 1993, Chapter 227  
85           **19-6-413**, as last amended by Laws of Utah 1992, Chapter 214  
86           **19-6-714**, as enacted by Laws of Utah 1993, Chapter 283  
87           **19-6-814**, as renumbered and amended by Laws of Utah 2000, Chapter 51  
88           **19-9-105**, as last amended by Laws of Utah 2008, Chapter 382  
89           **19-9-109**, as renumbered and amended by Laws of Utah 2003, Chapter 184

- 90           **19-10-104**, as enacted by Laws of Utah 2003, Chapter 44
- 91           **20A-1-401**, as last amended by Laws of Utah 2008, Chapter 225
- 92           **20A-1-508**, as last amended by Laws of Utah 2010, Chapter 197
- 93           **20A-1-509.1**, as last amended by Laws of Utah 2010, Chapter 197
- 94           **20A-1-703**, as last amended by Laws of Utah 2010, Chapter 324
- 95           **20A-2-102.5**, as last amended by Laws of Utah 2008, Chapter 225
- 96           **20A-2-105**, as last amended by Laws of Utah 2008, Chapter 276
- 97           **20A-2-306**, as last amended by Laws of Utah 2007, Chapter 75
- 98           **20A-4-201**, as last amended by Laws of Utah 2006, Chapter 326
- 99           **20A-5-403**, as last amended by Laws of Utah 2009, Chapter 45
- 100          **20A-6-302**, as last amended by Laws of Utah 2006, Chapter 326
- 101          **20A-7-202**, as last amended by Laws of Utah 2008, Chapter 237
- 102          **20A-7-204.1**, as last amended by Laws of Utah 2010, Chapter 90
- 103          **20A-7-702 (Superseded 01/01/12)**, as last amended by Laws of Utah 2008, Chapters 3,
- 104          82, and 225
- 105          **20A-7-702 (Effective 01/01/12)**, as last amended by Laws of Utah 2008, Chapters 3,
- 106          82, 225, and 248
- 107          **20A-7-706**, as last amended by Laws of Utah 2008, Chapter 225
- 108          **20A-9-403**, as last amended by Laws of Utah 2008, Chapter 225
- 109          **20A-11-401**, as last amended by Laws of Utah 2009, Chapter 361
- 110          **20A-11-1603**, as enacted by Laws of Utah 2010, Chapter 12
- 111          **20A-14-103**, as last amended by Laws of Utah 2008, Chapter 8
- 112          **20A-14-201**, as last amended by Laws of Utah 2007, Chapter 215
- 113          **20A-14-202**, as last amended by Laws of Utah 2008, Chapter 8
- 114          **22-1-11**, Utah Code Annotated 1953
- 115          **22-3-104**, as enacted by Laws of Utah 2004, Chapter 285
- 116          **22-3-202**, as enacted by Laws of Utah 2004, Chapter 285
- 117          **22-3-302**, as enacted by Laws of Utah 2004, Chapter 285
- 118          **22-3-303**, as enacted by Laws of Utah 2004, Chapter 285
- 119          **22-3-403**, as enacted by Laws of Utah 2004, Chapter 285
- 120          **22-3-405**, as enacted by Laws of Utah 2004, Chapter 285

- 121            **22-3-406**, as enacted by Laws of Utah 2004, Chapter 285
- 122            **22-3-411**, as enacted by Laws of Utah 2004, Chapter 285
- 123            **22-3-414**, as enacted by Laws of Utah 2004, Chapter 285
- 124            **22-3-505**, as last amended by Laws of Utah 2009, Chapter 96
- 125            **22-3-506**, as enacted by Laws of Utah 2004, Chapter 285
- 126            **22-3-601**, as enacted by Laws of Utah 2004, Chapter 285
- 127            **23-13-2**, as last amended by Laws of Utah 2010, Chapter 256
- 128            **23-13-17**, as last amended by Laws of Utah 2005, Chapter 2
- 129            **23-14-2**, as last amended by Laws of Utah 2010, Chapter 286
- 130            **23-15-2**, as enacted by Laws of Utah 1971, Chapter 46
- 131            **23-15-9**, as last amended by Laws of Utah 2008, Chapter 69
- 132            **23-16-3**, as last amended by Laws of Utah 2003, Chapter 228
- 133            **23-16-4**, as last amended by Laws of Utah 2009, Chapter 183
- 134            **23-17-4**, as enacted by Laws of Utah 1971, Chapter 46
- 135            **23-17-6**, as last amended by Laws of Utah 1998, Chapter 242
- 136            **23-17-8**, as enacted by Laws of Utah 1971, Chapter 46
- 137            **23-18-5**, as last amended by Laws of Utah 1980, Chapter 28
- 138            **23-19-9**, as last amended by Laws of Utah 2008, Chapter 382
- 139            **23-19-14**, as last amended by Laws of Utah 2003, Chapter 171
- 140            **23-19-17.5**, as last amended by Laws of Utah 2007, Chapter 187
- 141            **23-19-38.2**, as last amended by Laws of Utah 2008, Chapter 382
- 142            **23-20-1**, as last amended by Laws of Utah 2002, Chapter 185
- 143            **23-20-9**, as last amended by Laws of Utah 2007, Chapter 136
- 144            **23-20-14**, as last amended by Laws of Utah 2000, Chapter 6
- 145            **23-20-20**, as last amended by Laws of Utah 2006, Chapter 325
- 146            **23-20-28**, as last amended by Laws of Utah 1995, Chapter 211
- 147            **23-20-29**, as enacted by Laws of Utah 1986, Chapter 67
- 148            **23-20-30**, as last amended by Laws of Utah 1995, Chapter 211
- 149            **23-20-31**, as last amended by Laws of Utah 2009, Chapter 256
- 150            **23-21-2**, as last amended by Laws of Utah 1993, Chapter 227
- 151            **23-22-1**, as last amended by Laws of Utah 1998, Chapter 140

152           **23-22-3**, as last amended by Laws of Utah 1992, Chapter 260  
153           **23-23-11**, as last amended by Laws of Utah 1997, Chapter 258  
154           **23-24-1**, as last amended by Laws of Utah 2010, Chapter 289  
155           **24-1-8**, as last amended by Laws of Utah 2007, Chapter 180  
156           **25-5-2**, as last amended by Laws of Utah 1995, Chapter 20  
157           **25-6-9**, as last amended by Laws of Utah 2000, Chapter 252  
158           **26-1-5**, as last amended by Laws of Utah 2008, Chapter 382  
159           **26-1-7.5**, as last amended by Laws of Utah 2010, Chapter 286  
160           **26-1-11**, as enacted by Laws of Utah 1981, Chapter 126  
161           **26-1-25**, as enacted by Laws of Utah 1981, Chapter 126  
162           **26-1-32**, as enacted by Laws of Utah 1981, Chapter 126  
163           **26-3-8**, as enacted by Laws of Utah 1981, Chapter 126  
164           **26-4-2**, as last amended by Laws of Utah 2009, Chapter 223  
165           **26-4-9**, as last amended by Laws of Utah 1999, Chapter 289  
166           **26-4-12**, as last amended by Laws of Utah 2000, Chapter 86  
167           **26-4-20**, as last amended by Laws of Utah 1993, Chapter 38  
168           **26-6-3**, as last amended by Laws of Utah 2008, Chapter 130  
169           **26-6-18**, as enacted by Laws of Utah 1981, Chapter 126  
170           **26-6-20**, as last amended by Laws of Utah 2000, Chapter 86  
171           **26-6b-3**, as last amended by Laws of Utah 2008, Chapter 115  
172           **26-6b-3.1**, as enacted by Laws of Utah 2006, Chapter 185  
173           **26-7-1**, as enacted by Laws of Utah 1981, Chapter 126  
174           **26-8a-103**, as last amended by Laws of Utah 2010, Chapter 286  
175           **26-8a-203**, as last amended by Laws of Utah 2000, Chapter 305  
176           **26-8a-207**, as last amended by Laws of Utah 2010, Chapter 161  
177           **26-8a-253**, as last amended by Laws of Utah 2006, Chapter 310  
178           **26-8a-405.2**, as last amended by Laws of Utah 2010, Chapter 187  
179           **26-8a-405.3**, as last amended by Laws of Utah 2010, Chapter 187  
180           **26-8a-405.5**, as enacted by Laws of Utah 2010, Chapter 187  
181           **26-8a-406**, as last amended by Laws of Utah 2009, Chapter 388  
182           **26-8a-408**, as enacted by Laws of Utah 1999, Chapter 141

183           **26-8a-410**, as enacted by Laws of Utah 1999, Chapter 141  
184           **26-8a-413**, as last amended by Laws of Utah 2003, Chapter 213  
185           **26-10b-102**, as renumbered and amended by Laws of Utah 2010, Chapter 340  
186           **26-15-8**, as last amended by Laws of Utah 2006, Chapter 91  
187           **26-18-3**, as last amended by Laws of Utah 2010, Chapters 149, 323, 340, and 391  
188           **26-18-4**, as last amended by Laws of Utah 2008, Chapter 62  
189           **26-18-5**, as last amended by Laws of Utah 1988, Chapter 21  
190           **26-18-10**, as last amended by Laws of Utah 2008, Chapter 62  
191           **26-18-11**, as enacted by Laws of Utah 1988, Chapter 12  
192           **26-18-501**, as enacted by Laws of Utah 2004, Chapter 215  
193           **26-18-502**, as enacted by Laws of Utah 2004, Chapter 215  
194           **26-18-503**, as last amended by Laws of Utah 2008, Chapter 347  
195           **26-18-505**, as enacted by Laws of Utah 2008, Chapter 219  
196           **26-19-7**, as last amended by Laws of Utah 2005, Chapter 103  
197           **26-19-8**, as last amended by Laws of Utah 2007, Chapter 64  
198           **26-20-3**, as last amended by Laws of Utah 1986, Chapter 46  
199           **26-20-6**, as last amended by Laws of Utah 1986, Chapter 46  
200           **26-20-8**, as enacted by Laws of Utah 1981, Chapter 126  
201           **26-20-9.5**, as last amended by Laws of Utah 2007, Chapter 48  
202           **26-20-12**, as repealed and reenacted by Laws of Utah 2007, Chapter 48  
203           **26-20-14**, as enacted by Laws of Utah 2007, Chapter 48  
204           **26-21-9**, as last amended by Laws of Utah 2000, Chapter 86  
205           **26-21-9.5**, as last amended by Laws of Utah 2009, Chapter 267  
206           **26-23-7**, as enacted by Laws of Utah 1981, Chapter 126  
207           **26-23-10**, as enacted by Laws of Utah 1981, Chapter 126  
208           **26-23b-104**, as enacted by Laws of Utah 2002, Chapter 155  
209           **26-25-5**, as last amended by Laws of Utah 1991, Chapter 241  
210           **26-28-105**, as enacted by Laws of Utah 2007, Chapter 60  
211           **26-28-106**, as enacted by Laws of Utah 2007, Chapter 60  
212           **26-28-107**, as enacted by Laws of Utah 2007, Chapter 60  
213           **26-28-111**, as enacted by Laws of Utah 2007, Chapter 60

- 214 **26-28-114**, as enacted by Laws of Utah 2007, Chapter 60  
215 **26-28-120**, as enacted by Laws of Utah 2007, Chapter 60  
216 **26-28-121**, as last amended by Laws of Utah 2008, Chapter 32  
217 **26-28-124**, as enacted by Laws of Utah 2007, Chapter 60  
218 **26-31-1**, as enacted by Laws of Utah 1981, Chapter 126  
219 **26-33a-104**, as last amended by Laws of Utah 2008, Chapter 382  
220 **26-33a-106.5**, as last amended by Laws of Utah 2005, Chapter 266  
221 **26-33a-111**, as enacted by Laws of Utah 1990, Chapter 305  
222 **26-34-2**, as last amended by Laws of Utah 2007, Chapter 306  
223 **26-35a-107**, as enacted by Laws of Utah 2004, Chapter 284  
224 **26-36a-102**, as enacted by Laws of Utah 2010, Chapter 179  
225 **26-36a-203**, as enacted by Laws of Utah 2010, Chapter 179  
226 **26-40-110**, as last amended by Laws of Utah 2010, Chapter 351  
227 **26-41-104**, as last amended by Laws of Utah 2008, Chapters 64 and 382  
228 **26-47-103**, as last amended by Laws of Utah 2010, Chapter 323  
229 **26-49-202**, as enacted by Laws of Utah 2008, Chapter 242  
230 **26-49-701**, as enacted by Laws of Utah 2008, Chapter 242  
231 **26A-1-112**, as last amended by Laws of Utah 2002, Chapter 249  
232 **26A-1-126**, as enacted by Laws of Utah 2005, Chapter 153  
233 **29-1-2**, as enacted by Laws of Utah 1953, Chapter 47  
234 **29-1-3**, as enacted by Laws of Utah 1953, Chapter 47  
235 **30-1-4.5**, as last amended by Laws of Utah 2004, Chapter 261  
236 **30-1-5**, as last amended by Laws of Utah 2001, Chapter 129  
237 **30-1-10**, Utah Code Annotated 1953  
238 **30-1-32**, as last amended by Laws of Utah 1993, Chapter 227  
239 **30-1-33**, as enacted by Laws of Utah 1971, Chapter 64  
240 **30-1-35**, as enacted by Laws of Utah 1971, Chapter 64  
241 **30-1-37**, as enacted by Laws of Utah 1971, Chapter 64  
242 **30-2-7**, Utah Code Annotated 1953  
243 **30-3-16.7**, as enacted by Laws of Utah 1969, Chapter 72  
244 **30-3-17**, as last amended by Laws of Utah 1969, Chapter 72

245           **30-3-17.1**, as last amended by Laws of Utah 2008, Chapter 3  
246           **30-3-18**, as last amended by Laws of Utah 1997, Chapter 215  
247           **30-3-33**, as last amended by Laws of Utah 2008, Chapter 146  
248           **30-8-3**, as enacted by Laws of Utah 1994, Chapter 105  
249           **31A-2-301**, as last amended by Laws of Utah 1987, Chapters 91 and 161  
250           **31A-2-302**, as last amended by Laws of Utah 2008, Chapter 382  
251           **31A-5-208**, as last amended by Laws of Utah 1991, Chapter 5  
252           **31A-5-305**, as last amended by Laws of Utah 2007, Chapter 309  
253           **31A-6a-104**, as last amended by Laws of Utah 2008, Chapter 345  
254           **31A-8a-201**, as enacted by Laws of Utah 2005, Chapter 58  
255           **31A-8a-203**, as last amended by Laws of Utah 2008, Chapter 382  
256           **31A-8a-204**, as enacted by Laws of Utah 2005, Chapter 58  
257           **31A-8a-205**, as enacted by Laws of Utah 2005, Chapter 58  
258           **31A-8a-206**, as enacted by Laws of Utah 2005, Chapter 58  
259           **31A-8a-207**, as enacted by Laws of Utah 2005, Chapter 58  
260           **31A-9-503**, as enacted by Laws of Utah 1985, Chapter 242  
261           **31A-11-107**, as last amended by Laws of Utah 2003, Chapter 298  
262           **31A-15-203**, as enacted by Laws of Utah 1992, Chapter 258  
263           **31A-15-207**, as last amended by Laws of Utah 2003, Chapter 298  
264           **31A-15-210**, as last amended by Laws of Utah 2003, Chapter 298  
265           **31A-17-503**, as last amended by Laws of Utah 2008, Chapter 382  
266           **31A-17-506**, as last amended by Laws of Utah 2010, Chapter 324  
267           **31A-17-507**, as last amended by Laws of Utah 2001, Chapter 116  
268           **31A-17-510**, as enacted by Laws of Utah 1993, Chapter 305  
269           **31A-17-512**, as enacted by Laws of Utah 1993, Chapter 305  
270           **31A-18-106**, as last amended by Laws of Utah 2008, Chapter 257  
271           **31A-19a-206**, as renumbered and amended by Laws of Utah 1999, Chapter 130  
272           **31A-19a-208**, as renumbered and amended by Laws of Utah 1999, Chapter 130  
273           **31A-19a-309**, as renumbered and amended by Laws of Utah 1999, Chapter 130  
274           **31A-21-101**, as last amended by Laws of Utah 2006, Chapter 197  
275           **31A-21-312**, as last amended by Laws of Utah 1986, Chapter 204

276           **31A-21-313**, as last amended by Laws of Utah 2008, Chapter 3  
277           **31A-21-403**, as last amended by Laws of Utah 2001, Chapter 116  
278           **31A-22-305**, as last amended by Laws of Utah 2010, Chapter 354  
279           **31A-22-408**, as last amended by Laws of Utah 1987, Chapter 91  
280           **31A-22-610.5**, as last amended by Laws of Utah 2010, Chapter 10  
281           **31A-22-611**, as last amended by Laws of Utah 2006, Chapter 188  
282           **31A-22-613.5**, as last amended by Laws of Utah 2010, Chapters 68, 149 and last  
283 amended by Coordination Clause, Laws of Utah 2010, Chapter 149  
284           **31A-22-618.5**, as last amended by Laws of Utah 2010, Chapter 68  
285           **31A-22-625**, as last amended by Laws of Utah 2010, Chapters 10 and 68  
286           **31A-22-634**, as enacted by Laws of Utah 2003, Chapter 188  
287           **31A-22-636**, as enacted by Laws of Utah 2009, Chapter 11  
288           **31A-22-637**, as enacted by Laws of Utah 2009, Chapter 11  
289           **31A-22-716**, as last amended by Laws of Utah 2005, Chapter 71  
290           **31A-22-722.5**, as last amended by Laws of Utah 2010, Chapters 10, 149 and last  
291 amended by Coordination Clause, Laws of Utah 2010, Chapter 149  
292           **31A-22-723**, as last amended by Laws of Utah 2010, Chapter 68  
293           **31A-22-806**, as last amended by Laws of Utah 2001, Chapter 116  
294           **31A-22-1406**, as enacted by Laws of Utah 1991, Chapter 243  
295           **31A-22-1409**, as last amended by Laws of Utah 2001, Chapter 116  
296           **31A-23a-501**, as last amended by Laws of Utah 2010, Chapter 10  
297           **31A-23a-602**, as renumbered and amended by Laws of Utah 2003, Chapter 298  
298           **31A-23a-702**, as renumbered and amended by Laws of Utah 2003, Chapter 298  
299           **31A-23a-806**, as renumbered and amended by Laws of Utah 2003, Chapter 298  
300           **31A-27a-202**, as enacted by Laws of Utah 2007, Chapter 309  
301           **31A-27a-205**, as enacted by Laws of Utah 2007, Chapter 309  
302           **31A-27a-502**, as enacted by Laws of Utah 2007, Chapter 309  
303           **31A-27a-701**, as enacted by Laws of Utah 2007, Chapter 309  
304           **31A-30-107.3**, as last amended by Laws of Utah 2007, Chapter 307  
305           **31A-30-107.5**, as last amended by Laws of Utah 2007, Chapter 307  
306           **31A-30-110**, as last amended by Laws of Utah 2002, Chapter 308

307           **31A-30-206**, as enacted by Laws of Utah 2009, Chapter 12  
308           **31A-34-104**, as last amended by Laws of Utah 2009, Chapter 183  
309           **31A-34-107**, as enacted by Laws of Utah 1996, Chapter 143  
310           **31A-36-107**, as last amended by Laws of Utah 2009, Chapter 355  
311           **31A-36-109**, as last amended by Laws of Utah 2009, Chapter 355  
312           **31A-36-110**, as last amended by Laws of Utah 2009, Chapter 355  
313           **31A-36-112**, as last amended by Laws of Utah 2009, Chapter 355  
314           **31A-36-114**, as last amended by Laws of Utah 2009, Chapter 355  
315           **31A-37-105**, as enacted by Laws of Utah 2003, Chapter 251  
316           **31A-37-106**, as last amended by Laws of Utah 2008, Chapters 302 and 382  
317           **31A-37-202**, as last amended by Laws of Utah 2009, Chapter 183  
318           **31A-37-301**, as last amended by Laws of Utah 2004, Chapter 312  
319           **31A-37-302**, as enacted by Laws of Utah 2003, Chapter 251  
320           **31A-37-306**, as last amended by Laws of Utah 2004, Chapter 312  
321           **31A-37-402**, as last amended by Laws of Utah 2008, Chapter 302  
322           **31A-37-601**, as enacted by Laws of Utah 2004, Chapter 312  
323           **31A-37a-205**, as enacted by Laws of Utah 2008, Chapter 302  
324           **32B-1-407 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276  
325           **32B-1-505 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276  
326           **32B-6-407 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276  
327           **32B-8-304 (Effective 07/01/11)**, as enacted by Laws of Utah 2010, Chapter 276  
328           **34-19-1**, as enacted by Laws of Utah 1969, Chapter 85  
329           **34-19-9**, as enacted by Laws of Utah 1969, Chapter 85  
330           **34-19-10**, as enacted by Laws of Utah 1969, Chapter 85  
331           **34-19-13**, as enacted by Laws of Utah 1969, Chapter 85  
332           **34-20-3**, as last amended by Laws of Utah 2010, Chapter 286  
333           **34-20-5**, as enacted by Laws of Utah 1969, Chapter 85  
334           **34-20-8**, as enacted by Laws of Utah 1969, Chapter 85  
335           **34-23-208**, as renumbered and amended by Laws of Utah 1990, Chapter 8  
336           **34-25-2**, as enacted by Laws of Utah 1969, Chapter 85  
337           **34-28-5**, as last amended by Laws of Utah 1995, Chapter 17

338           **34-28-6**, as enacted by Laws of Utah 1969, Chapter 85  
339           **34-28-14**, as last amended by Laws of Utah 1996, Chapter 240  
340           **34-29-1**, as enacted by Laws of Utah 1969, Chapter 85  
341           **34-32-4**, as last amended by Laws of Utah 2004, Chapter 220  
342           **34-34-2**, as enacted by Laws of Utah 1969, Chapter 85  
343           **34-34-15**, as enacted by Laws of Utah 1969, Chapter 85  
344           **34-36-3**, as enacted by Laws of Utah 1969, Chapter 85  
345           **34-41-106**, as last amended by Laws of Utah 1997, Chapter 375  
346           **34A-1-408**, as renumbered and amended by Laws of Utah 1997, Chapter 375  
347           **34A-1-409**, as renumbered and amended by Laws of Utah 1997, Chapter 375  
348           **34A-2-413**, as last amended by Laws of Utah 2010, Chapter 59  
349           **34A-2-802**, as renumbered and amended by Laws of Utah 1997, Chapter 375  
350           **34A-3-104**, as renumbered and amended by Laws of Utah 1997, Chapter 375  
351           **34A-6-108**, as renumbered and amended by Laws of Utah 1997, Chapter 375  
352           **34A-6-202**, as last amended by Laws of Utah 2008, Chapter 382  
353           **34A-6-301**, as last amended by Laws of Utah 2008, Chapters 3 and 382  
354           **34A-7-102**, as last amended by Laws of Utah 2006, Chapter 155  
355           **35A-3-106**, as renumbered and amended by Laws of Utah 1997, Chapter 174  
356           **35A-3-108**, as last amended by Laws of Utah 1998, Chapter 188  
357           **35A-3-304**, as last amended by Laws of Utah 2007, Chapter 81  
358           **35A-3-310.5**, as enacted by Laws of Utah 2008, Chapter 59  
359           **35A-3-503**, as renumbered and amended by Laws of Utah 1997, Chapter 174  
360           **35A-4-303**, as last amended by Laws of Utah 2008, Chapter 110  
361           **35A-4-304**, as last amended by Laws of Utah 2008, Chapter 382  
362           **35A-4-305**, as last amended by Laws of Utah 2010, Chapter 278  
363           **35A-4-309**, as last amended by Laws of Utah 2006, Chapter 22  
364           **35A-4-311**, as last amended by Laws of Utah 2001, Chapter 265  
365           **35A-4-404**, as renumbered and amended by Laws of Utah 1996, Chapter 240  
366           **35A-4-501**, as last amended by Laws of Utah 2010, Chapters 277 and 278  
367           **35A-4-506**, as last amended by Laws of Utah 2010, Chapters 277 and 278  
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369 *Be it enacted by the Legislature of the state of Utah:*

370 Section 1. Section **17-3-1** is amended to read:

371 **17-3-1. By petition -- Election -- Ballots.**

372 Whenever any number of the qualified electors of any portion of any county desire to  
373 have the territory within which they reside created into a new county they may [~~petition~~  
374 ~~therefor~~] file a petition for the creation of a new county with the county legislative body of the  
375 county in which they reside. [~~Such~~] The petition [~~must~~] shall be signed by at least [~~1/4~~]  
376 one-fourth of the qualified electors as shown by the registration list of the last preceding  
377 general election, residing in that portion of the county to be created into a new county, and by  
378 not less than [~~1/4~~] one-fourth of the qualified electors residing in the remaining portion of  
379 [~~said~~] the county. [~~Such~~] The petition [~~must~~] shall be presented on or before the first Monday  
380 in May of any year, and shall propose the name and define the boundaries of [~~such~~] the new  
381 county. The county legislative body [~~must~~] shall cause the proposition to be submitted to the  
382 legal voters residing in the county at a special election to be held according to the dates  
383 established in Section 20A-1-204, first causing 30 days' notice of [~~such~~] the election to be  
384 given in the manner provided by law for giving notice of general elections. [~~Such~~] The  
385 election shall be held, the result [~~thereof~~] canvassed, and returns made under the provisions of  
386 the general election laws. The form of ballot to be used at such election shall be:

387 For the creation of (supplying the name proposed) county.

388 Against the creation of (supplying the name proposed) county.

389 Section 2. Section **17-3-8** is amended to read:

390 **17-3-8. Prior offenses.**

391 [~~All offenses theretofore committed in such new county in which prosecution shall not~~  
392 ~~have been commenced~~] An offense, for which prosecution has not commenced, that was  
393 committed within the boundaries of a new county before the new county was created, may be  
394 prosecuted to judgment and execution in [~~such~~] the new county.

395 Section 3. Section **17-8-7** is amended to read:

396 **17-8-7. Declaration of drought emergency -- Appropriation -- Tax levy.**

397 The county legislative body of each county may at any regular meeting or at a special  
398 meeting called for such purpose, declare that an emergency drought exists in said county; and  
399 thereupon may appropriate from the money not otherwise appropriated in the county general

400 fund such funds as shall be necessary for the gathering of information upon, and aiding in any  
401 program for increased precipitation within said county or in conjunction with any other county  
402 or counties, or that if there are not sufficient funds available in the county general fund for such  
403 purpose, the county legislative body may, during any such emergency so declared by them,  
404 assess, levy, and direct the county to collect annually to aid in any program of increased  
405 precipitation. The provisions of Sections 17-19-1 to 17-19-28 relating to budgeting [~~shall~~] do  
406 not apply to appropriations necessitated by such an emergency.

407 Section 4. Section **17-11-2** is amended to read:

408 **17-11-2. Initiating petitions -- Limitation.**

409 Whenever there [~~shall be~~] is presented to the county legislative body of any county a  
410 petition signed by qualified electors of [~~such~~] the county, in number equal to a majority of the  
411 votes cast at the preceding general election, praying for the submission of the question of the  
412 removal of the county seat, it shall be the duty of the county legislative body to submit the  
413 question of [~~such~~] the removal at the next general election to the qualified electors of [~~such~~] the  
414 county; and [~~such~~] the election shall be conducted and the returns canvassed in all respects as  
415 provided by law for the conducting of general elections and canvassing the returns [~~thereof~~]. A  
416 proposition of removal of the county seat [~~shall not~~] may not be submitted in the same county  
417 more than once in four years, or within four years [~~from the time that any such proposition has~~  
418 ~~been theretofore~~] after the day on which a proposition of removal of the county seat is  
419 submitted.

420 Section 5. Section **17-15-16** is amended to read:

421 **17-15-16. Warrants -- Payment -- Registration -- Duty of auditor.**

422 Warrants drawn by order of the county executive on the county treasurer for current  
423 expenses during each year [~~must~~] shall specify the liability for which they are drawn, when  
424 they accrued, and the funds from which they are to be paid, and [~~must~~] shall be paid in the  
425 order of presentation to the treasurer. If the fund is insufficient to pay any warrant, it [~~must~~]  
426 shall be registered and [~~thereafter~~] then paid in the order of registration. Accounts for county  
427 charges of every description [~~must~~] shall be presented to the auditor and county executive to be  
428 audited as prescribed in this title.

429 Section 6. Section **17-16-4** is amended to read:

430 **17-16-4. Election of officer to consolidated office.**

431 When offices are united and consolidated [~~but~~]:

432 (1) only one person shall be elected to fill the united and consolidated offices [~~so~~

433 ~~united and consolidated, and he must~~]; and

434 (2) the person elected shall:

435 (a) take the oath and give the bond required for [~~and~~] each of the offices; and

436 (b) discharge all the duties pertaining to[;] each of the offices.

437 Section 7. Section **17-16-9** is amended to read:

438 **17-16-9. Officers at county seats -- Office hours.**

439 (1) The elected county officers of all counties, except those in counties having a  
440 population of less than 8,000, shall have their offices at the county seats.

441 (2) (a) In all counties the clerk, sheriff, recorder, auditor, treasurer, assessor, and  
442 attorney shall keep their offices open for the transaction of business as authorized by  
443 resolution of the county legislative body.

444 (b) If the county legislative body does not authorize hours of operation for Saturdays,  
445 then the hours served by the employees of the county [~~shall not~~] may not be less than under  
446 their present schedule.

447 (c) (i) Any act authorized, required, or permitted to be performed at or by, or with  
448 respect to, any county office on a Saturday when the county office is closed, may be performed  
449 on the next business day.

450 (ii) No liability or loss of rights of any kind may result from [~~that delay~~] the delay  
451 described in Subsection (2)(c)(i).

452 Section 8. Section **17-16-16** is amended to read:

453 **17-16-16. Commissioners' traveling expenses.**

454 (1) The members of the board of county commissioners [~~shall not~~] may not receive any  
455 compensation in addition to that provided in Section 17-16-14 for any special or committee  
456 work, but, subject to Subsection (2), each member shall be paid the amount of [~~his~~] the  
457 member's actual and reasonable traveling expenses in attending the regular and special sessions  
458 of the board and in the discharge of necessary duties[; ~~provided, that~~].

459 (2) Before receiving payment for the actual and reasonable traveling expenses  
460 described in Subsection (1), the member shall:

461 (a) submit an itemized statement [~~shall be made~~] showing in detail the expenses

462 incurred~~], and shall be subscribed and sworn to by the member claiming such expenses.]; and~~  
463 (b) subscribe and swear to the statement described in Subsection (2)(a).

464 Section 9. Section **17-16a-3** is amended to read:

465 **17-16a-3. Definitions.**

466 As used in this part:

467 (1) "Appointed officer" means any person appointed to any statutory office or position  
468 or any other person appointed to any position of employment with a county, except special  
469 employees. Appointed officers include, but are not limited to persons serving on special,  
470 regular or full-time committees, agencies, or boards whether or not such persons are  
471 compensated for their services. The use of the word "officer" in this part is not intended to  
472 make appointed persons or employees "officers" of the county.

473 (2) "Assist" means to act, or offer or agree to act, in such a way as to help, represent,  
474 aid, advise, furnish information to, or otherwise provide assistance to a person or business  
475 entity, believing that such action is of help, aid, advice, or assistance to such person or business  
476 entity and with the intent to so assist such person or business entity.

477 (3) "Business entity" means a sole proprietorship, partnership, association, joint  
478 venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on  
479 a business.

480 (4) "Compensation" means anything of economic value, however designated, which is  
481 paid, loaned, granted, given, donated or transferred to any person or business entity for or in  
482 consideration of personal services, materials, property, or any other thing whatsoever.

483 (5) "Elected officer" means any person elected or appointed to any office in the county.

484 (6) "Governmental action" means any action on the part of a county including~~], but not~~  
485 ~~limited to]:~~

486 (a) any decision, determination, finding, ruling, or order; and

487 (b) any grant, payment, award, license, contract, subcontract, transaction, decision,  
488 sanction, or approval, or the denial thereof, or the failure to act in respect to.

489 (7) "Special employee" means any person hired on the basis of a contract to perform a  
490 special service for the county pursuant to an award of a contract following a public bid.

491 (8) "Substantial interest" means the ownership, either legally or equitably, by an  
492 individual, ~~[his]~~ the individual's spouse, and ~~[his]~~ the individual's minor children, of at least

493 10% of the outstanding shares of a corporation or 10% interest in any other business entity.

494 Section 10. Section **17-16a-6** is amended to read:

495 **17-16a-6. Interest in business entity regulated by county -- Disclosure.**

496 Every appointed or elected officer who is an officer, director, agent, or employee or the  
497 owner of a substantial interest in any business entity which is subject to the regulation of the  
498 county in which ~~he~~ the officer is an elected or appointed officer shall disclose the position  
499 held and the precise nature and value of ~~his~~ the officer's interest upon first becoming  
500 appointed or elected, and again during January of each year thereafter during which ~~he~~ the  
501 officer continues to be an appointed or elected officer. The disclosure shall be made in a sworn  
502 statement filed with the county legislative body. The commission shall report the substance of  
503 all such disclosure statements to the members of the governing body or may provide to the  
504 members of the governing body, copies of the disclosure statement within 30 days after the  
505 statement is received. This section does not apply to instances where the value of the interest  
506 does not exceed \$2,000, and life insurance policies and annuities ~~shall not~~ may not be  
507 considered in determining the value of ~~any such~~ the interest.

508 Section 11. Section **17-18-1.9** is amended to read:

509 **17-18-1.9. Creation of prosecution district by ordinance or interlocal agreement.**

510 (1) The county governing body may create a countywide state prosecution district by  
511 ordinance.

512 (2) (a) Two or more counties, whether or not contiguous, may unite to create and  
513 maintain a state prosecution district by interlocal agreement pursuant to Title 11, Chapter 13.

514 (b) At the time of the creation of the prosecution district, the participating counties  
515 shall be located within the same judicial district.

516 (3) The county governing body or bodies ~~shall not~~ may not dissolve a prosecution  
517 district during the term of office of an elected or appointed district attorney.

518 Section 12. Section **17-19-7** is amended to read:

519 **17-19-7. Current accounts with treasurer.**

520 The auditor ~~must~~ shall keep accounts current with the treasurer.

521 Section 13. Section **17-19-14** is amended to read:

522 **17-19-14. Duties -- Omnibus provision.**

523 The auditor ~~must~~ shall perform such other duties as may be required by law.

524 Section 14. Section 17-22-6 is amended to read:

525 **17-22-6. Service of process on prisoners -- Penalty.**

526 (1) A sheriff or jailer upon whom a paper in a judicial proceeding directed to a prisoner  
527 in ~~[his]~~ the sheriff's or jailer's custody is served ~~[must]~~ shall forthwith deliver ~~[it]~~ the paper to  
528 the prisoner, with a note thereon of the time of its service. ~~[For neglect to do so he]~~

529 (2) A sheriff or jailer who neglects to comply with Subsection (1) is liable to the  
530 prisoner for all damages occasioned ~~[thereby]~~ by that neglect.

531 Section 15. Section 17-22-21 is amended to read:

532 **17-22-21. Process justifies sheriff's action.**

533 A sheriff is justified in the execution of, and ~~[must]~~ shall execute, all process, writs and  
534 orders regular on their face and issued by competent authority.

535 Section 16. Section 17-22-22 is amended to read:

536 **17-22-22. Process to be exhibited.**

537 The officer executing process ~~[must]~~ shall then, and at all times subsequent as long as  
538 ~~[he]~~ the officer retains it, upon request show the same, with all papers attached, to any  
539 interested person ~~[interested therein]~~.

540 Section 17. Section 17-22-23 is amended to read:

541 **17-22-23. Crier of court.**

542 The sheriff in attendance upon court ~~[must]~~ shall, if required by the court, act as crier  
543 ~~[thereof]~~ for the court, call the parties and witnesses and other persons bound to appear at the  
544 court, and make proclamation of the opening and adjournment of court and of any other matter  
545 under its direction.

546 Section 18. Section 17-22-27 is amended to read:

547 **17-22-27. Sheriff -- Assignment of court bailiffs -- Contract and costs.**

548 (1) The sheriff shall assign law enforcement officers or special function officers, as  
549 defined under Sections 53-13-103 and 53-13-105, to serve as court bailiffs and security officers  
550 in the courts of record and county justice courts as required by the rules of the Judicial  
551 Council.

552 (2) (a) The state court administrator shall enter into a contract with the county sheriff  
553 for bailiffs and building security officers for the district and juvenile courts within the county.  
554 The contract ~~[shall not]~~ may not exceed amounts appropriated by the Legislature for that

555 purpose. The county shall assume costs related to security administration, supervision, travel,  
556 equipment, and training of bailiffs.

557 (b) The contract shall specify the agreed services, costs of services, and terms of  
558 payment.

559 (c) If the court is located in the same facility as a state or local law enforcement agency  
560 and the county sheriff's office is not in close proximity to the court, the State Court  
561 Administrator in consultation with the sheriff may enter into a contract with the state or local  
562 law enforcement agency for bailiff and security services subject to meeting all other  
563 requirements of this section. If the services are provided by another agency, the county sheriff  
564 shall have no responsibility for the services under this section.

565 (3) (a) At the request of the court, the sheriff may appoint as a law clerk bailiff  
566 graduates of a law school accredited by the American Bar Association to provide security and  
567 legal research assistance. Any law clerk who is also a bailiff shall meet the requirements of  
568 Subsection (1) of this section.

569 (b) The sheriff may appoint a law clerk bailiff by contract for a period not to exceed  
570 two years, who shall be exempt from the deputy sheriff merit service commission.

571 Section 19. Section **17-23-16** is amended to read:

572 **17-23-16. Resurveys.**

573 In the resurvey of lands surveyed under the authority of the United States, the county  
574 surveyor or [~~his~~] the county surveyor's designee shall observe the following rules:

575 (1) Section and quarter-section corners, and all other corners established by the  
576 government survey, shall stand as the true corner.

577 (2) Missing corners shall be reestablished at the point where existing evidence would  
578 indicate the original corner was located by the government survey.

579 (3) In all cases, missing corners [~~must~~] shall be reestablished with reference to the  
580 United States Manual of Surveying Instructions.

581 Section 20. Section **17-27a-513** is amended to read:

582 **17-27a-513. Manufactured homes.**

583 (1) For purposes of this section, a manufactured home is the same as defined in Section  
584 58-56-3, except that the manufactured home [~~must~~] shall be attached to a permanent  
585 foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and

586 frost protection in compliance with the applicable building code. All appendages, including  
587 carports, garages, storage buildings, additions, or alterations [~~must~~] shall be built in compliance  
588 with the applicable building code.

589 (2) A manufactured home may not be excluded from any land use zone or area in  
590 which a single-family residence would be permitted, provided the manufactured home  
591 complies with all local land use ordinances, building codes, and any restrictive covenants,  
592 applicable to a single-family residence within that zone or area.

593 (3) A county may not:

594 (a) adopt or enforce an ordinance or regulation that treats a proposed development that  
595 includes manufactured homes differently than one that does not include manufactured homes;  
596 or

597 (b) reject a development plan based on the fact that the development is expected to  
598 contain manufactured homes.

599 Section 21. Section **17-27a-518** is amended to read:

600 **17-27a-518. Elderly residential facilities in areas zoned exclusively for**  
601 **single-family dwellings.**

602 (1) For purposes of this section:

603 (a) no person who is being treated for alcoholism or drug abuse may be placed in a  
604 residential facility for elderly persons; and

605 (b) placement in a residential facility for elderly persons shall be on a strictly voluntary  
606 basis and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a  
607 correctional institution.

608 (2) Subject to the granting of a conditional use permit, a residential facility for elderly  
609 persons shall be allowed in any zone that is regulated to permit exclusively single-family  
610 dwelling use, if that facility:

611 (a) conforms to all applicable health, safety, land use, and building codes;

612 (b) is capable of use as a residential facility for elderly persons without structural or  
613 landscaping alterations that would change the structure's residential character; and

614 (c) conforms to the county's criteria, adopted by ordinance, governing the location of  
615 residential facilities for elderly persons in areas zoned to permit exclusively single-family  
616 dwellings.

617 (3) A county may, by ordinance, provide that no residential facility for elderly persons  
 618 be established within three-quarters mile of another existing residential facility for elderly  
 619 persons or residential facility for persons with a disability.

620 (4) The use granted and permitted by this section is nontransferable and terminates if  
 621 the structure is devoted to a use other than as a residential facility for elderly persons or if the  
 622 structure fails to comply with applicable health, safety, and building codes.

623 (5) (a) County ordinances shall prohibit discrimination against elderly persons and  
 624 against residential facilities for elderly persons.

625 (b) The decision of a county regarding the application for a permit by a residential  
 626 facility for elderly persons ~~[must]~~ shall be based on legitimate land use criteria and may not be  
 627 based on the age of the facility's residents.

628 (6) The requirements of this section that a residential facility for elderly persons obtain  
 629 a conditional use permit or other permit do not apply if the facility meets the requirements of  
 630 existing land use ordinances that allow a specified number of unrelated persons to live  
 631 together.

632 Section 22. Section **17-28-11** is amended to read:

633 **17-28-11. Temporary work -- Term or period.**

634 ~~[The]~~ (1) Subject to Subsection (2), the head of any county fire department coming  
 635 within the provisions of this act may with the advice and consent of the county legislative  
 636 body, appoint to any position or place of employment in ~~[his]~~ the fire department, any person  
 637 for temporary work without making ~~[such]~~ the appointment from the certified civil service list~~;~~  
 638 ~~provided, however, such~~.

639 (2) An appointment ~~[shall not]~~ described in Subsection (1) may not be longer than one  
 640 month in the aggregate in the same calendar year.

641 Section 23. Section **17-30-8** is amended to read:

642 **17-30-8. Preservation and inspection of examination papers.**

643 All examination papers shall remain the property of the commission, and shall be  
 644 preserved until the expiration of the eligible register for the preparation of which an  
 645 examination is given. Examination papers ~~[shall not be]~~ are not open to public inspection  
 646 without court order, but an applicant may inspect ~~[his]~~ the applicant's own papers at any time  
 647 within 30 days after the mailing of notice of ~~[his]~~ the applicant's grade. The appointing

648 authority may inspect the papers of any eligible applicant certified for appointment.

649 Section 24. Section **17-30-22** is amended to read:

650 **17-30-22. Prohibitions against political activities -- Penalties.**

651 (1) Any employee of a governmental unit or member of a governing body, or  
652 appointing authority, or peace officer who shall appoint, promote, transfer, demote, suspend,  
653 discharge or change the amount of compensation of any merit system officer or seek, aid or  
654 abet the appointment, promotion, transfer, demotion, suspension, discharge or change in the  
655 amount of compensation of any merit system officer, or promise or threaten to do so, for  
656 giving, withholding, or neglecting to make any contributions or any service for any political  
657 purpose, or who solicits, directly or indirectly, any such contribution or service, from a merit  
658 system officer, shall be guilty of a misdemeanor. This section [~~shall not be deemed to~~] does not  
659 apply to political speeches or use of mass communications media for political purposes by  
660 persons not merit system officers even though merit system officers may be present or within  
661 the reach of such media unless the purpose and intent [~~thereof~~] is to violate this section with  
662 direct respect to [~~such~~] those officers.

663 (2) No merit system officer may engage in any political activity during the hours of  
664 employment, nor shall any person solicit political contributions from merit system officers  
665 during hours of employment for political purposes; but nothing in this section shall preclude  
666 voluntary contributions by a merit system officer to the party or candidate of the officer's  
667 choice.

668 Section 25. Section **17-31-3** is amended to read:

669 **17-31-3. Reserve fund authorized -- Use of collected funds.**

670 The county legislative body may create a reserve fund and any funds collected but not  
671 expended during any fiscal year [~~shall not~~] do not revert to the general fund of the governing  
672 bodies but shall be retained in a special fund to be used in accordance with Sections 17-31-2  
673 through 17-31-5.

674 Section 26. Section **17-33-10** is amended to read:

675 **17-33-10. Grievance and appeals procedure -- Employees' complaints of**  
676 **discriminatory employment practice.**

677 (1) Any county to which the provisions of this act apply shall establish in its personnel  
678 rules and regulations a grievance and appeals procedure. The procedure shall be used to

679 resolve disputes arising from grievances as defined in the rules and regulations, including [~~but~~  
680 ~~not limited to~~] acts of discrimination. The procedure may also be used by employees in the  
681 event of dismissal, demotion, suspension, or transfer.

682 (2) Any charge by a county career service employee of discriminatory or prohibited  
683 employment practice as prohibited by Section 34A-5-106, can be filed with the Division of  
684 Antidiscrimination and Labor within the Labor Commission. Complaints shall be filed within  
685 30 days of the issuance of a written decision of the county career service council.

686 Section 27. Section **17-33-15** is amended to read:

687 **17-33-15. Duty of county legislative body to provide rules or regulations --**  
688 **Conflicts with state or federal law.**

689 (1) It shall be the duty of the county legislative body to provide by rule or regulation  
690 for the operation and functioning of any activity within the purpose and spirit of the act which  
691 is necessary and expedient.

692 (2) If any provision of this act or the application thereof is found to be in conflict with  
693 any state or federal law, conflict with which would impair funding otherwise receivable from  
694 the state or federal government, the conflicting part is hereby declared to be inoperative solely  
695 to the extent of the conflict and with respect to the department, agency, or institution of the  
696 county directly affected, but such finding [~~shall not~~] does not affect the operation of the  
697 remainder of this act in any of its applications.

698 (3) Notwithstanding any provision to the contrary, no rule or regulation shall be  
699 adopted by the county legislative body which would deprive the county or any of its  
700 departments, agencies, or institutions of state or federal grants or other forms of financial  
701 assistance.

702 Section 28. Section **17-34-5** is amended to read:

703 **17-34-5. Budgeting, accounting for, and disbursing of funds -- Annual audit.**

704 (1) (a) With respect to the budgeting, accounting for, and disbursing of funds to furnish  
705 the municipal-type services and functions described in Section 17-34-1 to areas of the county  
706 outside the limits of incorporated towns and cities, including levying of taxes and imposition of  
707 fees and charges under Section 17-34-3, each county legislative body shall separately budget  
708 and strictly account for and apportion to the costs of providing municipal-type services and  
709 functions the following:

710 (i) the salaries of each county commissioner and the salaries and wages of all other  
711 elected and appointed county officials and employees;

712 (ii) the operation and maintenance costs of each municipal-type service or function  
713 provided, set forth separately as line items in the Municipal Services Fund budget;

714 (iii) the cost of renting or otherwise using capital facilities for the purposes of  
715 providing municipal-type services or functions; and

716 (iv) all other costs including~~[-but not limited to,]~~ administrative costs associated,  
717 directly or indirectly, with the costs of providing municipal-type services or functions.

718 (b) At all times these funds and any expenditures from these funds shall be separately  
719 accounted for and utilized only for the purposes of providing municipal-type services and  
720 functions to areas of the county outside the limits of incorporated towns or cities.

721 (2) To implement Subsection (1):

722 (a) a budget shall be adopted and administered in the same manner as the budget for  
723 general purposes of the county which furnishes the municipal-type services and functions is  
724 adopted and administered, either as a part of the general budget or separate from it;

725 (b) funds for the purposes of furnishing municipal-type services and functions under  
726 this chapter shall be collected, held, and administered in the same manner as other funds of the  
727 county are collected, held, and administered, but shall be segregated and separately maintained,  
728 except that where, in the judgment of the county legislative body, advantages inure to the fund  
729 from coinvestment of these funds and other funds also subject to control by the county  
730 legislative body, the county legislative body may direct this coinvestment, but in no event may  
731 the funds to furnish municipal-type services and functions or the income from their investment  
732 be used for purposes other than those described in Section 17-34-1;

733 (c) expenditures shall be made in the same manner as other expenditures of the county  
734 are made; and

735 (d) any taxes levied under this chapter shall be levied at the same time and in the same  
736 manner as other taxes of the county are levied.

737 (3) An annual audit of the budgeting, accounting for, and disbursing of funds used to  
738 furnish municipal-type services and functions, shall be conducted by an independent certified  
739 public accountant.

740 Section 29. Section **17-35b-303** is amended to read:

741 **17-35b-303. Community council form of county government.**

742 (1) The structural form of county government known as the "community council" form  
743 unites in a single consolidated city and county government the powers, duties, and functions  
744 which, immediately prior to its effective date, are vested in the county, the largest city in the  
745 county, such other cities and towns as elect to merge in it, and all special taxing districts, public  
746 authorities, service areas, and other local public entities functioning within the boundaries of  
747 the county, except school districts. The consolidated government shall have power to extend on  
748 a countywide basis any governmental service or function which is authorized by law or which  
749 the previous county, cities, and other local public agencies included therein were empowered to  
750 provide for their residents, but no such service shall be provided within an incorporated  
751 municipality which continues to provide that service for its own inhabitants, except upon a  
752 contract basis for the municipality, and no taxes, assessments, fees, or other charges shall be  
753 extended or collected within the municipality for the purpose of financing any service which is  
754 not provided by the consolidated government within the municipality. "Largest city," as used in  
755 this section, means a city or cities the population of which, as shown by the most recent  
756 decennial or special census, exceeds 35% of the total county population.

757 (2) The incorporated cities and towns, other than the largest city, in the county shall  
758 retain independent corporate existence and shall continue to provide local services to their  
759 inhabitants of the type and to the extent provided in the plan, but any such city or town, by  
760 majority vote of its qualified voters, cast either concurrently with the election at which the plan  
761 is approved or subsequently to it, as provided by the governing body of the city or town, may  
762 cause the city or town to be dissolved and its powers, duties, and functions vested in the  
763 countywide government.

764 (3) The county legislative body of the countywide government shall be a council  
765 composed of not less than five persons as specified in the plan, elected respectively from  
766 communities, which collectively include all of the territory within the county, having  
767 boundaries described in the plan embracing substantially equal populations. In addition to  
768 other powers vested in the countywide government by law or pursuant to this act, the county  
769 council shall have all of the legislative and policymaking powers which it is possible for the  
770 governing body of a county or a city to possess and which are not expressly denied by the  
771 constitution, by a general law applicable to all cities or all counties, or by a specific restriction

772 in the plan itself.

773           (4) The voters of each community shall elect a community council composed of the  
774 community's elected member of the county council, who shall be chairman of the community  
775 council, and not less than two nor more than four additional members elected either from  
776 districts of substantially equal population within the community, or at large therein, as may be  
777 provided in the plan. A community council shall have the power and duty, in conformity with  
778 guidelines prescribed by the county council, to adopt policies and formulate specific programs  
779 relating to and defining the kinds and levels of local governmental services necessary to satisfy  
780 the needs and desires of the citizens within the community, but a community council shall have  
781 no power to engage personnel or to acquire facilities, property, or equipment for the  
782 administration or performance of such services. Authorized programs for local governmental  
783 services which have been approved by a community council shall be submitted to the county  
784 council for implementation and shall be carried into effect by the county council and county  
785 executive unless, by a vote of not less than 3/4 of its entire membership, the county council  
786 determines that a particular program, in whole or in part, should be rejected as contrary to the  
787 general welfare of the county. A community council program for local governmental services  
788 within a community:

- 789           (a) shall include a method or methods for financing such services;
- 790           (b) may provide for supplying of such services by contract or by joint or cooperative  
791 action pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, in which case the  
792 community council shall be considered a "public agency" within the meaning of said act; and
- 793           (c) may provide for supplying of such services through the creation of service areas  
794 pursuant to Title 17B, Chapter 2a, Part 9, Service Area Act.

795           (5) Notwithstanding Subsection (4), in any community which includes, in whole or in  
796 part, the territory of a city or town, no community council program for local government  
797 services above the minimum level of area-wide services provided countywide may be  
798 submitted to the county council for implementation unless it first is submitted to the governing  
799 body of each such city or town for review. Within 30 days after such submission, the governing  
800 body of the city or town:

- 801           (a) may file with the community council a written statement of its comments,  
802 suggestions, and recommendations relating to the program, and the community council shall

803 give due consideration thereto; or

804 (b) may, by resolution or ordinance, provide that any designated part of the community  
805 council program relating to a service to be provided within the city or town shall be submitted  
806 to the voters thereof at a general or special election to be held therein within 60 days after the  
807 date of the resolution or ordinance. Any part of the program submitted to the voters of a city or  
808 town under this Subsection (5) [~~shall not~~] may not be included in the program as submitted to  
809 the county council unless it receives an approving vote at such election by majority of all votes  
810 cast on the question.

811 (6) Except as provided herein, the qualifications, mode of election, term of office,  
812 method of removal, procedure to fill vacancies, compensation, and other appropriate provisions  
813 relating to membership on the county council or community councils shall be provided in the  
814 plan.

815 (7) Upon the effective date of the plan and as provided in it, all properties and assets,  
816 whether tangible or intangible, and all obligations, debts, and liabilities, of those governmental  
817 entities which are merged into the new countywide government shall become vested and  
818 transferred by operation of law in and to the new countywide government. The properties,  
819 assets, obligations, debts, and liabilities of any city or town not merged into the new  
820 countywide government, so far as allocated, used, or incurred primarily to discharge a function  
821 which under the plan will no longer be a responsibility of the city or town, shall likewise be  
822 vested in and transferred to the new countywide government. All transfers under this  
823 Subsection (7) shall be subject to equitable adjustments, conditions, and limitations provided in  
824 the plan and determined by procedures specified in the plan, but the contractual rights of any  
825 bondholder or creditor [~~shall not~~] may not be impaired.

826 (8) Upon the effective date of the plan and as provided in it, nonelective officers and  
827 employees of governmental entities which are merged into the new countywide government  
828 and such officers and employees of nonmerged cities or towns whose qualifications and duties  
829 relate primarily to functions which under the plan will no longer be a responsibility of those  
830 cities or towns, shall be blanketed in and transferred to the new countywide government as  
831 officers and employees of it. Standards and procedures relating to such personnel transfers, and  
832 for resolving disputes or grievances relating thereto, shall be provided in the plan.

833 Section 30. Section **17-35b-304** is amended to read:

834 **17-35b-304. Consolidated city and county -- Structural form.**

835 (1) The structural form of county government known as the "consolidated city and  
836 county" form unites in a single consolidated city and county government the powers, duties,  
837 and functions which, immediately prior to its effective date, are vested in the county, the largest  
838 city in the county, such other cities and towns as elect to merge in it, and all special taxing  
839 districts, public authorities, county service areas, and other local public entities functioning  
840 within the boundaries of the county, except school districts. The consolidated government shall  
841 with the consent of the continuing municipalities have power to extend on a countywide basis  
842 any governmental service or function which is authorized by law or which the previous county,  
843 cities, and other local public agencies included in them were empowered to provide for their  
844 residents. No such service, however, shall be provided within an incorporated municipality  
845 which continues to provide that such service for its own inhabitants, except upon a contract  
846 basis for the municipality. No taxes, assessments, fees, or other charges shall be extended or  
847 collected by the consolidated government within any municipality for the purpose of financing  
848 any service which is not provided by the consolidated government within the municipality.

849 "Largest city," as used in this section, means a city or cities the population of which, as shown  
850 by the most recent decennial or special census, exceeds 35% of the total county population.

851 (2) The incorporated cities and towns, other than the largest city in the county, shall  
852 retain independent corporate existence and shall continue to provide local services to their  
853 inhabitants of the type and to the extent provided in the plan; but any such city or town by  
854 majority vote of its qualified voters cast either concurrently with the election at which the plan  
855 is approved or subsequently to it, as provided by the governing body of the city or town, may  
856 cause the city or town to be dissolved and its powers, duties, and functions vested in the  
857 consolidated government.

858 (3) The governing body of the consolidated government shall be a council composed of  
859 not less than five persons elected as specified in the plan. In addition to other powers vested in  
860 the consolidated government by law or pursuant to this act, the county council shall have all the  
861 legislative and policymaking powers which it is possible for the governing body of a county or  
862 a city to possess and which are not expressly denied by the constitution, by general law  
863 applicable to all cities or all counties, or by a specific restriction in the plan itself.

864 (4) Except as provided in this act, the qualifications, mode of election, term of office,

865 method of removal, procedure to fill vacancies, compensation, or other appropriate provisions  
866 relating to membership on the county council shall be provided in the plan.

867 (5) Upon the effective date of the plan, as provided in it, all properties and assets,  
868 whether tangible or intangible, and all obligations, debts, and liabilities of those governmental  
869 entities which are merged into the consolidated government shall become vested and  
870 transferred by operation of law in and to the consolidated government. The properties, assets,  
871 obligations, debts, and liabilities of any city or town not merged into the consolidated  
872 government, so far as allocated, used, or incurred primarily to discharge a function which under  
873 the plan will no longer be a responsibility of the city or town, shall likewise be vested in and  
874 transferred to the consolidated government. All transfers under this Subsection (5) shall be  
875 subject to equitable adjustments, conditions, and limitations provided in the plan and  
876 determined by procedures specified in the plan, but the contractual rights of any bondholder or  
877 creditor [~~shall not~~] may not be impaired.

878 (6) Upon the effective date of the plan, and as provided in it, nonelective officers and  
879 employees of the governmental entities which are merged into the consolidated government  
880 and such officers and employees of nonmerged cities or towns whose qualifications and duties  
881 relate primarily to functions which under the plan will no longer be a responsibility of those  
882 cities or towns shall be blanketed in and transferred to the consolidated government as officers  
883 and employees of it. Standards and procedures relating to such personnel transfers and for  
884 resolving disputes or grievances relating to them shall be provided in the plan.

885 Section 31. Section **17-36-10** is amended to read:

886 **17-36-10. Preparation of tentative budget.**

887 (1) On or before the first day of the next to last month of every fiscal period, the budget  
888 officer shall prepare for the next budget period and file with the governing body a tentative  
889 budget for each fund for which a budget is required.

890 (2) The tentative budget shall set forth in tabular form:

891 (a) actual revenues and expenditures in the last completed fiscal period;

892 (b) estimated total revenues and expenditures for the current fiscal period;

893 (c) the estimated available revenues and expenditures for the ensuing budget period  
894 computed by determining:

895 (i) the estimated expenditure for each fund after review of each departmental budget

896 request;

897 (ii) (A) the total revenue requirements of the fund;

898 (B) the part of the total revenue that will be derived from revenue sources other than  
899 property tax; and

900 (C) the part of the total revenue that [~~must~~] shall be derived from property taxes; and

901 (d) if required by the governing body, actual performance experience to the extent  
902 available in work units, unit costs, man hours, and man years for each budgeted fund that  
903 includes an appropriation for salaries or wages for the last completed fiscal period and the first  
904 eight months of the current fiscal period if the county is on an annual fiscal period, or the first  
905 20 months of the current fiscal period if the county is on a biennial fiscal period, together with  
906 the total estimated performance data of like character for the current fiscal period and for the  
907 ensuing budget period.

908 (3) The budget officer may recommend modification of any departmental budget  
909 request under Subsection (2)(c)(i) before it is filed with the governing body, if each department  
910 head has been given an opportunity to be heard concerning the modification.

911 (4) Each tentative budget shall contain the estimates of expenditures submitted by any  
912 department together with specific work programs and other supportive data as the governing  
913 body requests. The tentative budget shall be accompanied by a supplementary estimate of all  
914 capital projects or planned capital projects within the budget period and within the next three  
915 succeeding years.

916 (5) (a) Each tentative budget submitted in a county with a population in excess of  
917 25,000 determined pursuant to Section 17-36-4 shall be accompanied by a budget message in  
918 explanation of the budget.

919 (b) The budget message shall contain an outline of the proposed financial policies of  
920 the county for the budget period and describe the important features of the budgetary plan. It  
921 shall also state the reasons for changes from the previous fiscal period in appropriation and  
922 revenue items and explain any major changes in financial policy.

923 (c) A budget message for counties with a population of less than 25,000 is  
924 recommended but not incumbent upon the budget officer.

925 (6) The tentative budget shall be reviewed, considered, and tentatively adopted by the  
926 governing body in a regular or special meeting called for that purpose. It may thereafter be

927 amended or revised by the governing body prior to public hearings thereon, except that no  
928 appropriation required for debt retirement and interest or reduction, pursuant to Section  
929 17-36-17, of any deficits which exist may be reduced below the required minimum.

930 Section 32. Section **17-36-17** is amended to read:

931 **17-36-17. Appropriations in final budget -- Limitations.**

932 (1) The governing body of a county [~~shall not~~] may not make any appropriation in the  
933 final budget of any fund in excess of the estimated expendable revenue of the fund for the  
934 budget period.

935 (2) There shall be included as an item of appropriation in the budget of each fund for  
936 any fiscal period any existing deficit as of the close of the last completed fiscal period to the  
937 extent of at least 5% of the total revenue of the fund in the last completed fiscal period or if the  
938 deficit is less than 5% of the total revenue, an amount equal to the deficit.

939 Section 33. Section **17-37-4** is amended to read:

940 **17-37-4. Delegation of management and control authority to directors by county**  
941 **executive body -- Contract or lease with private entity for management -- Deposit of**  
942 **money collected -- Expenditures -- Recommendations by directors to county executive**  
943 **body.**

944 (1) Upon the appointment of a planetarium board of directors, the county executive  
945 may delegate to the board of directors the authority to manage and control the functions,  
946 activities, operations, maintenance, and repair of any county planetarium, and shall include in  
947 its delegation the authority to approve and control all expenditures from the county planetarium  
948 fund. Any delegation of authority made to the board of directors under this section shall at all  
949 times be subject to the ultimate authority and responsibility of the county executive for the  
950 management and control of all county funds and properties as conferred upon that board by  
951 general law applicable to counties.

952 (2) (a) Upon the recommendation of the board of directors, the county may enter into a  
953 contract or lease agreement with a private organization or entity for partial or full management,  
954 operation and maintenance of any county planetarium and for other planetarium services,  
955 which may include providing the physical facilities and equipment for the operation of a  
956 planetarium.

957 (b) A contract or lease for [~~such~~] the purposes [~~shall not~~] described in Subsection (2)(a)

958 may not extend for more than a four-year period and shall be subject to annual review by the  
959 board of directors to determine if performance is in conformance with the terms of the contract  
960 or lease and to establish the level of the subsequent funding pursuant to the contract or lease.

961 (3) All money collected from a county planetarium tax levy shall be deposited in the  
962 county treasury to the credit of the county planetarium fund. All money collected from  
963 operations of or from donations to any planetarium owned and operated by the county shall  
964 also be deposited in the county treasury to the credit of the planetarium fund. Any money  
965 collected from operations of a planetarium by a contracting party or lessee shall be used or  
966 deposited as the contract or lease may provide. Income or proceeds from any investment by the  
967 county treasurer of county planetarium funds shall be credited to the county planetarium fund  
968 and used only for planetarium purposes.

969 (4) Expenditures from the county planetarium fund shall be drawn upon by the  
970 authorized officers of the county upon presentation of properly authenticated vouchers or  
971 documentation of the board of directors or other appropriate planetarium official. The fund  
972 [~~shall not~~] may not be used for any purpose other than to pay the costs of acquiring,  
973 constructing, operating, managing, equipping, furnishing, maintaining or repairing a  
974 planetarium, including appropriate, reasonable and proportionate costs allocated by the county  
975 for support of the planetarium, or to pay the cost of financing and funding a contract or lease  
976 agreement for facilities, equipment, management, operation, and maintenance of a planetarium.

977 (5) The board of directors shall provide recommendations to the county executive with  
978 respect to the purchase, lease, exchange, construction, erection, or other acquisition of land,  
979 real property improvements, and fixtures or the sale, lease, exchange, or other disposition of  
980 land, real property improvements, and fixtures for the use or benefit of a county planetarium.

981 Section 34. Section **17-38-4** is amended to read:

982 **17-38-4. Nontermination of taxing power.**

983 The power to levy a tax as provided in Section 17-38-1 [~~shall~~] does not terminate on  
984 June 30, 1983.

985 Section 35. Section **17-41-301** is amended to read:

986 **17-41-301. Proposal for creation of agriculture protection area or industrial**  
987 **protection area.**

988 (1) (a) A proposal to create an agriculture protection area or an industrial protection

989 area may be filed with:

990 (i) the legislative body of the county in which the area is located, if the area is within  
991 the unincorporated part of a county; or

992 (ii) the legislative body of the city or town in which the area is located, if the area is  
993 within a city or town.

994 (b) (i) To be accepted for processing by the applicable legislative body, a proposal  
995 under Subsection (1)(a) shall be signed by a majority in number of all owners of real property  
996 and the owners of a majority of the land area in agricultural production or industrial use within  
997 the proposed agriculture protection area or industrial protection area, respectively.

998 (ii) For purposes of Subsection (1)(b)(i), the owners of real property shall be  
999 determined by the records of the county recorder.

1000 (2) The proposal shall identify:

1001 (a) the boundaries of the land proposed to become part of an agriculture protection area  
1002 or industrial protection area;

1003 (b) any limits on the types of agriculture production or industrial use to be allowed  
1004 within the agriculture protection area or industrial protection area, respectively; and

1005 (c) for each parcel of land:

1006 (i) the names of the owners of record of the land proposed to be included within the  
1007 agriculture protection area or industrial protection area;

1008 (ii) the tax parcel number or account number identifying each parcel; and

1009 (iii) the number of acres of each parcel.

1010 (3) An agriculture protection area or industrial protection area may include within its  
1011 boundaries land used for a roadway, dwelling site, park, or other nonagricultural or, in the case  
1012 of an industrial protection area, nonindustrial use if that land constitutes a minority of the total  
1013 acreage within the agriculture protection area or industrial protection area, respectively.

1014 (4) A county or municipal legislative body may establish:

1015 (a) the manner and form for submission of proposals; and

1016 (b) reasonable fees for accepting and processing the proposal.

1017 (5) Each county and municipal legislative body shall establish the minimum number of  
1018 continuous acres that ~~[must]~~ shall be included in an agriculture protection area or industrial  
1019 protection area.

1020 Section 36. Section **17-41-401** is amended to read:

1021 **17-41-401. Farmland Assessment Act benefits not affected.**

1022 (1) Creation of an agriculture protection area [~~shall not~~ may not impair the ability of  
1023 land within the area to obtain the benefits of Title 59, Chapter 2, Part 5, Farmland Assessment  
1024 Act.

1025 (2) The eligibility of land for the benefits of Title 59, Chapter 2, Part 5, Farmland  
1026 Assessment Act, shall be determined exclusively by the provisions of that act, notwithstanding  
1027 the land's location within an agriculture protection area.

1028 Section 37. Section **17-52-401** is amended to read:

1029 **17-52-401. Contents of proposed optional plan.**

1030 (1) Each optional plan proposed under this chapter:

1031 (a) shall propose the adoption of one of the forms of county government listed in  
1032 Subsection 17-52-402(1)(a);

1033 (b) shall contain detailed provisions relating to the transition from the existing form of  
1034 county government to the form proposed in the optional plan, including provisions relating to  
1035 the:

1036 (i) election or appointment of officers specified in the optional plan for the new form of  
1037 county government;

1038 (ii) retention, elimination, or combining of existing offices and, if an office is  
1039 eliminated, the division or department of county government responsible for performing the  
1040 duties of the eliminated office;

1041 (iii) continuity of existing ordinances and regulations;

1042 (iv) continuation of pending legislative, administrative, or judicial proceedings;

1043 (v) making of interim and temporary appointments; and

1044 (vi) preparation, approval, and adjustment of necessary budget appropriations;

1045 (c) shall specify the date it is to become effective if adopted, which [~~shall not~~ may not  
1046 be earlier than the first day of January next following the election of officers under the new  
1047 plan; and

1048 (d) notwithstanding any other provision of this title and except with respect to an  
1049 optional plan that proposes the adoption of the county commission or expanded county  
1050 commission form of government, with respect to the county budget:

1051 (i) may provide that the county auditor's role is to be the budget officer, to project  
1052 county revenues, and to prepare a tentative budget to present to the county executive; and

1053 (ii) shall provide that the county executive's role is to prepare and present a proposed  
1054 budget to the county legislative body, and the county legislative body's role is to adopt a final  
1055 budget.

1056 (2) Subject to Subsection (3), an optional plan may include provisions that are  
1057 considered necessary or advisable to the effective operation of the proposed optional plan.

1058 (3) An optional plan may not include any provision that is inconsistent with or  
1059 prohibited by the Utah Constitution or any statute.

1060 (4) Each optional plan proposing to change the form of government to a form under  
1061 Section 17-52-504 or 17-52-505 shall:

1062 (a) provide for the same executive and legislative officers as are specified in the  
1063 applicable section for the form of government being proposed by the optional plan;

1064 (b) provide for the election of the county council;

1065 (c) specify the number of county council members, which shall be an odd number from  
1066 three to nine;

1067 (d) specify whether the members of the county council are to be elected from districts,  
1068 at large, or by a combination of at large and by district;

1069 (e) specify county council members' qualifications and terms and whether the terms are  
1070 to be staggered;

1071 (f) contain procedures for filling vacancies on the county council, consistent with the  
1072 provisions of Section 20A-1-508; and

1073 (g) state the initial compensation, if any, of county council members and procedures for  
1074 prescribing and changing compensation.

1075 (5) Each optional plan proposing to change the form of government to the county  
1076 commission form under Section 17-52-501 or the expanded county commission form under  
1077 Section 17-52-502 shall specify:

1078 (a) (i) for the county commission form of government, that the county commission  
1079 shall have three members; or

1080 (ii) for the expanded county commission form of government, whether the county  
1081 commission shall have five or seven members;

1082 (b) the terms of office for county commission members and whether the terms are to be  
1083 staggered;

1084 (c) whether members of the county commission are to be elected from districts, at  
1085 large, or by a combination of at large and from districts; and

1086 (d) if any members of the county commission are to be elected from districts, the  
1087 district residency requirements for those commission members.

1088 Section 38. Section **17-53-209** is amended to read:

1089 **17-53-209. Records to be kept.**

1090 The legislative body of each county shall cause to be kept:

1091 (1) a minute record, in which ~~[must]~~ shall be recorded all orders and decisions made by  
1092 the county legislative body and the daily proceedings had at all regular and special meetings;

1093 (2) an allowance record, in which ~~[must]~~ shall be recorded all orders for the allowance  
1094 of money from the county treasury, to whom made and on what account, dating, numbering,  
1095 and indexing the same through each year;

1096 (3) a road record, containing all proceedings and adjudications relating to the  
1097 establishment, maintenance, charge, and discontinuance of roads and road districts, and all  
1098 contracts and other matters pertaining thereto;

1099 (4) a franchise record, containing all franchises granted by the board, for what purpose,  
1100 the length of time, and to whom granted, the amount of bond and license tax required or other  
1101 consideration to be paid;

1102 (5) an ordinance record, in which ~~[must]~~ shall be entered all ordinances or laws duly  
1103 passed by the county legislative body; and

1104 (6) a warrant record, to be kept by the county auditor, in which ~~[must]~~ shall be entered  
1105 in the order of drawing all warrants drawn on the treasurer, with their number and reference to  
1106 the order on the minute record, with date, amount, on what account, and the name of the payee.

1107 Section 39. Section **17-53-311** is amended to read:

1108 **17-53-311. Contracting for management, maintenance, operation, or construction**  
1109 **of jails.**

1110 (1) (a) With the approval of the sheriff, a county executive may contract with private  
1111 contractors for management, maintenance, operation, and construction of county jails.

1112 (b) A county executive may include a provision in the contract that allows use of a

1113 building authority created under the provisions of Title 17D, Chapter 2, Local Building  
1114 Authority Act, to construct or acquire a jail facility.

1115 (c) A county executive may include a provision in the contract that requires that any  
1116 jail facility meet any federal, state, or local standards for the construction of jails.

1117 (2) If a county executive contracts only for the management, maintenance, or operation  
1118 of a jail, the county executive shall include provisions in the contract that:

1119 (a) require the private contractor to post a performance bond in the amount set by the  
1120 county legislative body;

1121 (b) establish training standards that [~~must~~] shall be met by jail personnel;

1122 (c) require the private contractor to provide and fund training for jail personnel so that  
1123 the personnel meet the standards established in the contract and any other federal, state, or local  
1124 standards for the operation of jails and the treatment of jail prisoners;

1125 (d) require the private contractor to indemnify the county for errors, omissions,  
1126 defalcations, and other activities committed by the private contractor that result in liability to  
1127 the county;

1128 (e) require the private contractor to show evidence of liability insurance protecting the  
1129 county and its officers, employees, and agents from liability arising from the construction,  
1130 operation, or maintenance of the jail, in an amount not less than those specified in Title 63G,  
1131 Chapter 7, Governmental Immunity Act of Utah;

1132 (f) require the private contractor to:

1133 (i) receive all prisoners committed to the jail by competent authority; and

1134 (ii) provide them with necessary food, clothing, and bedding in the manner prescribed  
1135 by the governing body; and

1136 (g) prohibit the use of inmates by the private contractor for private business purposes  
1137 of any kind.

1138 (3) A contractual provision requiring the private contractor to maintain liability  
1139 insurance in an amount not less than the liability limits established by Title 63G, Chapter 7,  
1140 Governmental Immunity Act of Utah, may not be construed as waiving the limitation on  
1141 damages recoverable from a governmental entity or its employees established by that chapter.

1142 Section 40. Section **17B-1-304** is amended to read:

1143 **17B-1-304. Appointment procedures for appointed members.**

1144 (1) The appointing authority may, by resolution, appoint persons to serve as members  
1145 of a local district board by following the procedures established by this section.

1146 (2) (a) In any calendar year when appointment of a new local district board member is  
1147 required, the appointing authority shall prepare a notice of vacancy that contains:

1148 (i) the positions that are vacant that [~~must~~] shall be filled by appointment;

1149 (ii) the qualifications required to be appointed to those positions;

1150 (iii) the procedures for appointment that the governing body will follow in making  
1151 those appointments; and

1152 (iv) the person to be contacted and any deadlines that a person [~~must~~] shall meet who  
1153 wishes to be considered for appointment to those positions.

1154 (b) The appointing authority shall:

1155 (i) post the notice of vacancy in four public places within the local district at least one  
1156 month before the deadline for accepting nominees for appointment; and

1157 (ii) (A) publish the notice of vacancy:

1158 (I) in a daily newspaper of general circulation within the local district for five  
1159 consecutive days before the deadline for accepting nominees for appointment; or

1160 (II) in a local weekly newspaper circulated within the local district in the week before  
1161 the deadline for accepting nominees for appointment; and

1162 (B) in accordance with Section 45-1-101 for five days before the deadline for accepting  
1163 nominees for appointment.

1164 (c) The appointing authority may bill the local district for the cost of preparing,  
1165 printing, and publishing the notice.

1166 (3) (a) Not sooner than two months after the appointing authority is notified of the  
1167 vacancy, the appointing authority shall select a person to fill the vacancy from the applicants  
1168 who meet the qualifications established by law.

1169 (b) The appointing authority shall:

1170 (i) comply with Title 52, Chapter 4, Open and Public Meetings Act, in making the  
1171 appointment;

1172 (ii) allow any interested persons to be heard; and

1173 (iii) adopt a resolution appointing a person to the local district board.

1174 (c) If no candidate for appointment to fill the vacancy receives a majority vote of the

1175 appointing authority, the appointing authority shall select the appointee from the two top  
1176 candidates by lot.

1177 (4) Persons appointed to serve as members of the local district board serve four-year  
1178 terms, but may be removed for cause at any time after a hearing by 2/3 vote of the appointing  
1179 body.

1180 (5) At the end of each board member's term, the position is considered vacant and the  
1181 appointing authority may either reappoint the old board member or appoint a new member after  
1182 following the appointment procedures established in this section.

1183 (6) Notwithstanding any other provision of this section, if the appointing authority  
1184 appoints one of its own members, it need not comply with the provisions of this section.

1185 Section 41. Section **17B-1-506** is amended to read:

1186 **17B-1-506. Withdrawal petition requirements.**

1187 (1) Each petition under Section 17B-1-504 shall:

1188 (a) indicate the typed or printed name and current address of each owner of acre-feet of  
1189 water, property owner, registered voter, or authorized representative of the governing body  
1190 signing the petition;

1191 (b) separately group signatures by municipality and, in the case of unincorporated  
1192 areas, by county;

1193 (c) if it is a petition signed by the owners of land, the assessment of which is based on  
1194 acre-feet of water, indicate the address of the property and the property tax identification parcel  
1195 number of the property as to which the owner is signing the request;

1196 (d) designate up to three signers of the petition as sponsors, or in the case of a petition  
1197 filed under Subsection 17B-1-504(1)(a)(iv), designate a governmental representative as a  
1198 sponsor, and in each case, designate one sponsor as the contact sponsor with the mailing  
1199 address and telephone number of each;

1200 (e) state the reasons for withdrawal; and

1201 (f) when the petition is filed with the local district board of trustees, be accompanied by  
1202 a map generally depicting the boundaries of the area proposed to be withdrawn and a legal  
1203 description of the area proposed to be withdrawn.

1204 (2) (a) The local district may prepare an itemized list of expenses, other than attorney  
1205 expenses, that will necessarily be incurred by the local district in the withdrawal proceeding.

1206 The itemized list of expenses may be submitted to the contact sponsor. If the list of expenses is  
1207 submitted to the contact sponsor within 21 days after receipt of the petition, the contact sponsor  
1208 on behalf of the petitioners shall be required to pay the expenses to the local district within 90  
1209 days of receipt. Until funds to cover the expenses are delivered to the local district, the district  
1210 will have no obligation to proceed with the withdrawal and the time limits on the district stated  
1211 in this part will be tolled. If the expenses are not paid within the 90 days, or within 90 days  
1212 from the conclusion of any arbitration under Subsection (2)(b), the petition requesting the  
1213 withdrawal shall be considered to have been withdrawn.

1214 (b) If there is no agreement between the board of trustees of the local district and the  
1215 contact sponsor on the amount of expenses that will necessarily be incurred by the local district  
1216 in the withdrawal proceeding, either the board of trustees or the contact sponsor may submit  
1217 the matter to binding arbitration in accordance with Title 78B, Chapter 6, Part 2, Alternative  
1218 Dispute Resolution Act; provided that, if the parties cannot agree upon an arbitrator and the  
1219 rules and procedures that will control the arbitration, either party may pursue arbitration under  
1220 Title 78B, Chapter 11, Utah Uniform Arbitration Act.

1221 (3) A signer of a petition may withdraw or, once withdrawn, reinstate the signer's  
1222 signature at any time before the public hearing under Section 17B-1-508 by submitting a  
1223 written withdrawal or reinstatement with the board of trustees of the local district in which the  
1224 area proposed to be withdrawn is located.

1225 (4) If it reasonably appears that, if the withdrawal which is the subject of a petition  
1226 filed under Subsection 17B-1-504(1)(a)(i) or (ii) is granted, it will be necessary for a  
1227 municipality to provide to the withdrawn area the service previously supplied by the local  
1228 district, the board of trustees of the local district may, within 21 days after receiving the  
1229 petition, notify the contact sponsor in writing that, before it will be considered by the board of  
1230 trustees, the petition [~~must~~] shall be presented to and approved by the governing body of the  
1231 municipality as provided in Subsection 17B-1-504(1)(a)(iv) before it will be considered by the  
1232 local district board of trustees. If the notice is timely given to the contact sponsor, the petition  
1233 shall be considered to have been withdrawn until the municipality files a petition with the local  
1234 district under Subsection 17B-1-504(1)(a)(iv).

1235 (5) (a) After receiving the notice required by Subsection 17B-1-504(2), unless  
1236 specifically allowed by law, a public entity may not make expenditures from public funds to

1237 support or oppose the gathering of signatures on a petition for withdrawal.

1238 (b) Nothing in this section prohibits a public entity from providing factual information  
1239 and analysis regarding a withdrawal petition to the public, so long as the information grants  
1240 equal access to both the opponents and proponents of the petition for withdrawal.

1241 (c) Nothing in this section prohibits a public official from speaking, campaigning,  
1242 contributing personal money, or otherwise exercising the public official's constitutional rights.

1243 Section 42. Section **17B-1-510** is amended to read:

1244 **17B-1-510. Resolution approving or rejecting withdrawal -- Criteria for approval**  
1245 **or rejection -- Terms and conditions.**

1246 (1) (a) On or before the date of the board meeting next following the public hearing  
1247 under Section 17B-1-508, but in no case later than 90 days after the public hearing or, if no  
1248 hearing is held, within 90 days after the filing of a petition under Section 17B-1-504, the board  
1249 of trustees of the local district in which the area proposed to be withdrawn is located shall  
1250 adopt a resolution:

1251 (i) approving the withdrawal of some or all of the area from the local district; or  
1252 (ii) rejecting the withdrawal.

1253 (b) Each resolution approving a withdrawal shall:

1254 (i) include a legal description of the area proposed to be withdrawn;  
1255 (ii) state the effective date of the withdrawal; and  
1256 (iii) set forth the terms and conditions under Subsection (5), if any, of the withdrawal.

1257 (c) Each resolution rejecting a withdrawal shall include a detailed explanation of the  
1258 board of trustees' reasons for the rejection.

1259 (2) Unless denial of the petition is required under Subsection (3), the board of trustees  
1260 shall adopt a resolution approving the withdrawal of some or all of the area from the local  
1261 district if the board of trustees determines that:

1262 (a) the area to be withdrawn does not and will not require the service that the local  
1263 district provides;

1264 (b) the local district will not be able to provide service to the area to be withdrawn for  
1265 the reasonably foreseeable future; or

1266 (c) the area to be withdrawn has obtained the same service that is provided by the local  
1267 district or a commitment to provide the same service that is provided by the local district from

1268 another source.

1269 (3) The board of trustees shall adopt a resolution denying the withdrawal if it  
1270 determines that the proposed withdrawal would:

1271 (a) result in a breach or default by the local district under:

1272 (i) any of its notes, bonds, or other debt or revenue obligations;

1273 (ii) any of its agreements with entities which have insured, guaranteed, or otherwise  
1274 credit-enhanced any debt or revenue obligations of the local district; or

1275 (iii) any of its agreements with the United States or any agency of the United States;  
1276 provided, however, that, if the local district has entered into an agreement with the United  
1277 States that requires the consent of the United States for a withdrawal of territory from the  
1278 district, a withdrawal under this part may occur if the written consent of the United States is  
1279 obtained and filed with the board of trustees;

1280 (b) adversely affect the ability of the local district to make any payments or perform  
1281 any other material obligations under:

1282 (i) any of its agreements with the United States or any agency of the United States;

1283 (ii) any of its notes, bonds, or other debt or revenue obligations; or

1284 (iii) any of its agreements with entities which have insured, guaranteed, or otherwise  
1285 credit-enhanced any debt or revenue obligations of the local district;

1286 (c) result in the reduction or withdrawal of any rating on an outstanding note, bond, or  
1287 other debt or revenue obligation of the local district;

1288 (d) create an island or peninsula of nondistrict territory within the local district or of  
1289 district territory within nondistrict territory that has a material adverse affect on the local  
1290 district's ability to provide service or materially increases the cost of providing service to the  
1291 remainder of the local district;

1292 (e) materially impair the operations of the remaining local district; or

1293 (f) require the local district to materially increase the fees it charges or property taxes  
1294 or other taxes it levies in order to provide to the remainder of the district the same level and  
1295 quality of service that was provided before the withdrawal.

1296 (4) In determining whether the withdrawal would have any of the results described in  
1297 Subsection (3), the board of trustees may consider the cumulative impact that multiple  
1298 withdrawals over a specified period of time would have on the local district.

1299 (5) (a) Despite the presence of one or more of the conditions listed in Subsection (3),  
1300 the board of trustees may approve a resolution withdrawing an area from the local district  
1301 imposing terms or conditions that mitigate or eliminate the conditions listed in Subsection (3),  
1302 including:

1303 (i) a requirement that the owners of property located within the area proposed to be  
1304 withdrawn or residents within that area pay their proportionate share of any outstanding district  
1305 bond or other obligation as determined pursuant to Subsection (5)(b);

1306 (ii) a requirement that the owners of property located within the area proposed to be  
1307 withdrawn or residents within that area make one or more payments in lieu of taxes, fees, or  
1308 assessments;

1309 (iii) a requirement that the board of trustees and the receiving entity agree to reasonable  
1310 payment and other terms in accordance with Subsections (5)(f) through (g) regarding the  
1311 transfer to the receiving entity of district assets that the district used before withdrawal to  
1312 provide service to the withdrawn area but no longer needs because of the withdrawal; provided  
1313 that, if those district assets are allocated in accordance with Subsections (5)(f) through (g), the  
1314 district shall immediately transfer to the receiving entity on the effective date of the  
1315 withdrawal, all title to and possession of district assets allocated to the receiving entity; or

1316 (iv) any other reasonable requirement considered to be necessary by the board of  
1317 trustees.

1318 (b) Other than as provided for in Subsection 17B-1-511(2), and except as provided in  
1319 Subsection (5)(e), in determining the proportionate share of outstanding bonded indebtedness  
1320 or other obligations under Subsection (5)(a)(i) and for purposes of determining the allocation  
1321 and transfer of district assets under Subsection (5)(a)(iii), the board of trustees and the  
1322 receiving entity, or in cases where there is no receiving entity, the board and the sponsors of the  
1323 petition shall:

1324 (i) engage engineering and accounting consultants chosen by the procedure provided in  
1325 Subsection (5)(d); provided however, that if the withdrawn area is not receiving service, an  
1326 engineering consultant need not be engaged; and

1327 (ii) require the engineering and accounting consultants engaged under Subsection  
1328 (5)(b)(i) to communicate in writing to the board of trustees and the receiving entity, or in cases  
1329 where there is no receiving entity, the board and the sponsors of the petition the information

1330 required by Subsections (5)(f) through (h).

1331 (c) For purposes of this Subsection (5):

1332 (i) "accounting consultant" means a certified public accountant or a firm of certified  
1333 public accountants with the expertise necessary to make the determinations required under  
1334 Subsection (5)(h); and

1335 (ii) "engineering consultant" means a person or firm that has the expertise in the  
1336 engineering aspects of the type of system by which the withdrawn area is receiving service that  
1337 is necessary to make the determination required under Subsections (5)(f) and (g).

1338 (d) (i) Unless the board of trustees and the receiving entity, or in cases where there is  
1339 no receiving entity, the board and the sponsors of the petition agree on an engineering  
1340 consultant and an accounting consultant, each consultant shall be chosen from a list of  
1341 consultants provided by the Consulting Engineers Council of Utah and the Utah Association of  
1342 Certified Public Accountants, respectively, as provided in this Subsection (5)(d).

1343 (ii) A list under Subsection (5)(d)(i) may not include a consultant who has had a  
1344 contract for services with the district or the receiving entity during the two-year period  
1345 immediately before the list is provided to the local district.

1346 (iii) Within 20 days of receiving the lists described in Subsection (5)(d)(i), the board of  
1347 trustees shall eliminate the name of one engineering consultant from the list of engineering  
1348 consultants and the name of one accounting consultant from the list of accounting consultants  
1349 and shall notify the receiving entity, or in cases where there is no receiving entity, the sponsors  
1350 of the petition in writing of the eliminations.

1351 (iv) Within three days of receiving notification under Subsection (5)(d), the receiving  
1352 entity, or in cases where there is no receiving entity, the sponsors of the petition shall eliminate  
1353 another name of an engineering consultant from the list of engineering consultants and another  
1354 name of an accounting consultant from the list of accounting consultants and shall notify the  
1355 board of trustees in writing of the eliminations.

1356 (v) The board of trustees and the receiving entity, or in cases where there is no  
1357 receiving entity, the board and the sponsors of the petition shall continue to alternate between  
1358 them, each eliminating the name of one engineering consultant from the list of engineering  
1359 consultants and the name of one accounting consultant from the list of accounting consultants  
1360 and providing written notification of the eliminations within three days of receiving

1361 notification of the previous notification, until the name of only one engineering consultant  
1362 remains on the list of engineering consultants and the name of only one accounting consultant  
1363 remains on the list of accounting consultants.

1364 (e) The requirement under Subsection (5)(b) to engage engineering and accounting  
1365 consultants does not apply if the board of trustees and the receiving entity, or in cases where  
1366 there is no receiving entity, the board and the sponsors of the petition agree on the allocations  
1367 that are the engineering consultant's responsibility under Subsection (5)(f) or the  
1368 determinations that are the accounting consultant's responsibility under Subsection (5)(h);  
1369 provided however, that if engineering and accounting consultants are engaged, the district and  
1370 the receiving entity, or in cases where there is no receiving entity, the district and the sponsors  
1371 of the petition shall equally share the cost of the engineering and accounting consultants.

1372 (f) (i) The engineering consultant shall allocate the district assets between the district  
1373 and the receiving entity as provided in this Subsection (5)(f).

1374 (ii) The engineering consultant shall allocate:

1375 (A) to the district those assets reasonably needed by the district to provide to the area  
1376 of the district remaining after withdrawal the kind, level, and quality of service that was  
1377 provided before withdrawal; and

1378 (B) to the receiving entity those assets reasonably needed by the receiving entity to  
1379 provide to the withdrawn area the kind and quality of service that was provided before  
1380 withdrawal.

1381 (iii) If the engineering consultant determines that both the local district and the  
1382 receiving entity reasonably need a district asset to provide to their respective areas the kind and  
1383 quality of service provided before withdrawal, the engineering consultant shall:

1384 (A) allocate the asset between the local district and the receiving entity according to  
1385 their relative needs, if the asset is reasonably susceptible of division; or

1386 (B) allocate the asset to the local district, if the asset is not reasonably susceptible of  
1387 division.

1388 (g) All district assets remaining after application of Subsection (5)(f) shall be allocated  
1389 to the local district.

1390 (h) (i) The accounting consultant shall determine the withdrawn area's proportionate  
1391 share of any redemption premium and the principal of and interest on:

1392 (A) the local district's revenue bonds that were outstanding at the time the petition was  
1393 filed;

1394 (B) the local district's general obligation bonds that were outstanding at the time the  
1395 petition was filed; and

1396 (C) the local district's general obligation bonds that:

1397 (I) were outstanding at the time the petition was filed; and

1398 (II) are treated as revenue bonds under Subsection (5)(i); and

1399 (D) the district's bonds that were issued prior to the date the petition was filed to refund  
1400 the district's revenue bonds, general obligation bonds, or general obligation bonds treated as  
1401 revenue bonds.

1402 (ii) For purposes of Subsection (5)(h)(i), the withdrawn area's proportionate share of  
1403 redemption premium, principal, and interest shall be the amount that bears the same  
1404 relationship to the total redemption premium, principal, and interest for the entire district that  
1405 the average annual gross revenues from the withdrawn area during the three most recent  
1406 complete fiscal years before the filing of the petition bears to the average annual gross revenues  
1407 from the entire district for the same period.

1408 (i) For purposes of Subsection (5)(h)(i), a district general obligation bond shall be  
1409 treated as a revenue bond if:

1410 (i) the bond is outstanding on the date the petition was filed; and

1411 (ii) the principal of and interest on the bond, as of the date the petition was filed, had  
1412 been paid entirely from local district revenues and not from a levy of ad valorem tax.

1413 (j) (i) Before the board of trustees of the local district files a resolution approving a  
1414 withdrawal, the receiving entity, or in cases where there is no receiving entity, the sponsors of  
1415 the petition shall irrevocably deposit government obligations, as defined in Subsection  
1416 11-27-2(6), into an escrow trust fund the principal of and interest on which are sufficient to  
1417 provide for the timely payment of the amount determined by the accounting consultant under  
1418 Subsection (5)(h) or in an amount mutually agreeable to the board of trustees of the local  
1419 district and the receiving entity, or in cases where there is no receiving entity, the board and the  
1420 sponsors of the petition. Notwithstanding Subsection 17B-1-512(1), the board of trustees  
1421 [~~shall not~~] may not be required to file a resolution approving a withdrawal until the  
1422 requirements for establishing and funding an escrow trust fund in this Subsection (5)(j)(i) have

1423 been met; provided that, if the escrow trust fund has not been established and funded within  
1424 180 days after the board of trustees passes a resolution approving a withdrawal, the resolution  
1425 approving the withdrawal shall be void.

1426 (ii) Concurrently with the creation of the escrow, the receiving entity, or in cases where  
1427 there is no receiving entity, the sponsors of the petition shall provide to the board of trustees of  
1428 the local district:

1429 (A) a written opinion of an attorney experienced in the tax-exempt status of municipal  
1430 bonds stating that the establishment and use of the escrow to pay the proportionate share of the  
1431 district's outstanding revenue bonds and general obligation bonds that are treated as revenue  
1432 bonds will not adversely affect the tax-exempt status of the bonds; and

1433 (B) a written opinion of an independent certified public accountant verifying that the  
1434 principal of and interest on the deposited government obligations are sufficient to provide for  
1435 the payment of the withdrawn area's proportionate share of the bonds as provided in Subsection  
1436 (5)(h).

1437 (iii) The receiving entity, or in cases where there is no receiving entity, the sponsors of  
1438 the petition shall bear all expenses of the escrow and the redemption of the bonds.

1439 (iv) The receiving entity may issue bonds under Title 11, Chapter 14, Local  
1440 Government Bonding Act, and Title 11, Chapter 27, Utah Refunding Bond Act, to fund the  
1441 escrow.

1442 (6) A requirement imposed by the board of trustees as a condition to withdrawal under  
1443 Subsection (5) shall, in addition to being expressed in the resolution, be reduced to a duly  
1444 authorized and executed written agreement between the parties to the withdrawal.

1445 (7) An area that is the subject of a withdrawal petition under Section 17B-1-504 that  
1446 results in a board of trustees resolution denying the proposed withdrawal may not be the  
1447 subject of another withdrawal petition under Section 17B-1-504 for two years after the date of  
1448 the board of trustees resolution denying the withdrawal.

1449 Section 43. Section **17B-1-512** is amended to read:

1450 **17B-1-512. Filing of notice and plat -- Recording requirements -- Contest period**  
1451 **-- Judicial review.**

1452 (1) (a) Within the time specified in Subsection (1)(b), the board of trustees shall file  
1453 with the lieutenant governor:

1454 (i) a copy of a notice of an impending boundary action, as defined in Section 67-1a-6.5,  
1455 that meets the requirements of Subsection 67-1a-6.5(3); and

1456 (ii) a copy of an approved final local entity plat, as defined in Section 67-1a-6.5.

1457 (b) The board of trustees shall file the documents listed in Subsection (1)(a):

1458 (i) within 10 days after adopting a resolution approving a withdrawal under Section  
1459 17B-1-510; and

1460 (ii) as soon as practicable after receiving a notice under Subsection 10-2-425(2) of an  
1461 automatic withdrawal under Subsection 17B-1-502(2), after receiving a copy of the municipal  
1462 legislative body's resolution approving an automatic withdrawal under Subsection  
1463 17B-1-502(3)(a), or after receiving notice of a withdrawal of a municipality from a local  
1464 district under Section 17B-2-505.

1465 (c) Upon the lieutenant governor's issuance of a certificate of withdrawal under Section  
1466 67-1a-6.5, the board shall:

1467 (i) if the withdrawn area is located within the boundary of a single county, submit to  
1468 the recorder of that county:

1469 (A) the original:

1470 (I) notice of an impending boundary action;

1471 (II) certificate of withdrawal; and

1472 (III) approved final local entity plat; and

1473 (B) if applicable, a certified copy of the resolution or notice referred to in Subsection  
1474 (1)(b); or

1475 (ii) if the withdrawn area is located within the boundaries of more than a single county,  
1476 submit:

1477 (A) the original of the documents listed in Subsections (1)(c)(i)(A)(I), (II), and (III)  
1478 and, if applicable, a certified copy of the resolution or notice referred to in Subsection (1)(b) to  
1479 one of those counties; and

1480 (B) a certified copy of the documents listed in Subsections (1)(c)(i)(A)(I), (II), and (III)  
1481 and a certified copy of the resolution or notice referred to in Subsection (1)(b) to each other  
1482 county.

1483 (2) (a) Upon the lieutenant governor's issuance of the certificate of withdrawal under  
1484 Section 67-1a-6.5 for a withdrawal under Section 17B-1-510, for an automatic withdrawal

1485 under Subsection 17B-1-502(3), or for the withdrawal of a municipality from a local district  
1486 under Section 17B-1-505, the withdrawal shall be effective, subject to the conditions of the  
1487 withdrawal resolution, if applicable.

1488 (b) An automatic withdrawal under Subsection 17B-1-502(3) shall be effective upon  
1489 the lieutenant governor's issuance of a certificate of withdrawal under Section 67-1a-6.5.

1490 (3) (a) The local district may provide for the publication of any resolution approving or  
1491 denying the withdrawal of an area:

1492 (i) in a newspaper of general circulation in the area proposed for withdrawal; and

1493 (ii) as required in Section 45-1-101.

1494 (b) In lieu of publishing the entire resolution, the local district may publish a notice of  
1495 withdrawal or denial of withdrawal, containing:

1496 (i) the name of the local district;

1497 (ii) a description of the area proposed for withdrawal;

1498 (iii) a brief explanation of the grounds on which the board of trustees determined to  
1499 approve or deny the withdrawal; and

1500 (iv) the times and place where a copy of the resolution may be examined, which shall  
1501 be at the place of business of the local district, identified in the notice, during regular business  
1502 hours of the local district as described in the notice and for a period of at least 30 days after the  
1503 publication of the notice.

1504 (4) Any sponsor of the petition or receiving entity may contest the board's decision to  
1505 deny a withdrawal of an area from the local district by submitting a request, within 60 days  
1506 after the resolution is adopted under Section 17B-1-510, to the board of trustees, suggesting  
1507 terms or conditions to mitigate or eliminate the conditions upon which the board of trustees  
1508 based its decision to deny the withdrawal.

1509 (5) Within 60 days after the request under Subsection (4) is submitted to the board of  
1510 trustees, the board may consider the suggestions for mitigation and adopt a resolution  
1511 approving or denying the request in the same manner as provided in Section 17B-1-510 with  
1512 respect to the original resolution denying the withdrawal and file a notice of the action as  
1513 provided in Subsection (1).

1514 (6) (a) Any person in interest may seek judicial review of:

1515 (i) the board of trustees' decision to withdraw an area from the local district;

1516 (ii) the terms and conditions of a withdrawal; or  
1517 (iii) the board's decision to deny a withdrawal.

1518 (b) Judicial review under this Subsection (6) shall be initiated by filing an action in the  
1519 district court in the county in which a majority of the area proposed to be withdrawn is located:

1520 (i) if the resolution approving or denying the withdrawal is published under Subsection  
1521 (3), within 60 days after the publication or after the board of trustees' denial of the request  
1522 under Subsection (5);

1523 (ii) if the resolution is not published pursuant to Subsection (3), within 60 days after  
1524 the resolution approving or denying the withdrawal is adopted; or

1525 (iii) if a request is submitted to the board of trustees of a local district under Subsection  
1526 (4), and the board adopts a resolution under Subsection (5), within 60 days after the board  
1527 adopts a resolution under Subsection (5) unless the resolution is published under Subsection  
1528 (3), in which event the action [~~must~~] shall be filed within 60 days after the publication.

1529 (c) A court in which an action is filed under this Subsection (6) may not overturn, in  
1530 whole or in part, the board of trustees' decision to approve or reject the withdrawal unless:

1531 (i) the court finds the board of trustees' decision to be arbitrary or capricious; or

1532 (ii) the court finds that the board materially failed to follow the procedures set forth in  
1533 this part.

1534 (d) A court may award costs and expenses of an action under this section, including  
1535 reasonable attorney fees, to the prevailing party.

1536 (7) After the applicable contest period under Subsection (4) or (6), no person may  
1537 contest the board of trustees' approval or denial of withdrawal for any cause.

1538 Section 44. Section **17B-1-607** is amended to read:

1539 **17B-1-607. Tentative budget to be prepared -- Review by governing body.**

1540 (1) On or before the first regularly scheduled meeting of the board of trustees in  
1541 November for a calendar year entity and May for a fiscal year entity, the budget officer of each  
1542 local district shall prepare for the ensuing year, on forms provided by the state auditor, and file  
1543 with the board of trustees a tentative budget for each fund for which a budget is required.

1544 (2) (a) Each tentative budget under Subsection (1) shall provide in tabular form:

1545 (i) actual revenues and expenditures for the last completed fiscal year;

1546 (ii) estimated total revenues and expenditures for the current fiscal year; and

1547 (iii) the budget officer's estimates of revenues and expenditures for the budget year.

1548 (b) The budget officer shall estimate the amount of revenue available to serve the needs  
1549 of each fund, estimate the portion to be derived from all sources other than general property  
1550 taxes, and estimate the portion that [~~must~~] shall be derived from general property taxes.

1551 (3) The tentative budget, when filed by the budget officer with the board of trustees,  
1552 shall contain the estimates of expenditures together with specific work programs and any other  
1553 supporting data required by this part or requested by the board.

1554 (4) The board of trustees shall review, consider, and tentatively adopt the tentative  
1555 budget in any regular meeting or special meeting called for that purpose and may amend or  
1556 revise the tentative budget in any manner that the board considers advisable prior to public  
1557 hearings, but no appropriation required for debt retirement and interest or reduction of any  
1558 existing deficits under Section 17B-1-613, or otherwise required by law, may be reduced below  
1559 the minimums so required.

1560 (5) When a new district is created, the board of trustees shall:

1561 (a) prepare a budget covering the period from the date of incorporation to the end of  
1562 the fiscal year;

1563 (b) substantially comply with all other provisions of this part with respect to notices  
1564 and hearings; and

1565 (c) pass the budget as soon after incorporation as feasible.

1566 Section 45. Section ~~17B-2a-807~~ is amended to read:

1567 **17B-2a-807. Public transit district board of trustees -- Appointment --**  
1568 **Apportionment -- Qualifications -- Quorum -- Compensation -- Terms.**

1569 (1) (a) If 200,000 people or fewer reside within the boundaries of a public transit  
1570 district, the board of trustees shall consist of members appointed by the legislative bodies of  
1571 each municipality, county, or unincorporated area within any county on the basis of one  
1572 member for each full unit of regularly scheduled passenger routes proposed to be served by the  
1573 district in each municipality or unincorporated area within any county in the following calendar  
1574 year.

1575 (b) For purposes of determining membership under Subsection (1)(a), the number of  
1576 service miles comprising a unit shall be determined jointly by the legislative bodies of the  
1577 municipalities or counties comprising the district.

1578 (c) The board of trustees of a public transit district under this Subsection (1) may  
1579 include a member that is a commissioner on the Transportation Commission created in Section  
1580 72-1-301 and appointed as provided in Subsection (11), who shall serve as a nonvoting, ex  
1581 officio member.

1582 (d) Members appointed under this Subsection (1) shall be appointed and added to the  
1583 board or omitted from the board at the time scheduled routes are changed, or as municipalities,  
1584 counties, or unincorporated areas of counties annex to or withdraw from the district using the  
1585 same appointment procedures.

1586 (e) For purposes of appointing members under this Subsection (1), municipalities,  
1587 counties, and unincorporated areas of counties in which regularly scheduled passenger routes  
1588 proposed to be served by the district in the following calendar year is less than a full unit, as  
1589 defined in Subsection (1)(b), may combine with any other similarly situated municipality or  
1590 unincorporated area to form a whole unit and may appoint one member for each whole unit  
1591 formed.

1592 (2) (a) Subject to Section 17B-2a-807.5, if more than 200,000 people reside within the  
1593 boundaries of a public transit district, the board of trustees shall consist of:

1594 (i) 11 members:

1595 (A) appointed as described under this Subsection (2); or

1596 (B) retained in accordance with Section 17B-2a-807.5;

1597 (ii) three members appointed as described in Subsection (4); and

1598 (iii) one voting member appointed as provided in Subsection (11).

1599 (b) Except as provided in Subsections (2)(c) and (d), the board shall apportion voting  
1600 members to each county within the district using an average of:

1601 (i) the proportion of population included in the district and residing within each county,  
1602 rounded to the nearest 1/11 of the total transit district population; and

1603 (ii) the cumulative proportion of transit sales and use tax collected from areas included  
1604 in the district and within each county, rounded to the nearest 1/11 of the total cumulative transit  
1605 sales and use tax collected for the transit district.

1606 (c) The board shall join an entire or partial county not apportioned a voting member  
1607 under this Subsection (2) with an adjacent county for representation. The combined  
1608 apportionment basis included in the district of both counties shall be used for the

1609 apportionment.

1610 (d) (i) If rounding to the nearest 1/11 of the total public transit district apportionment  
1611 basis under Subsection (2)(b) results in an apportionment of more than 11 members, the county  
1612 or combination of counties with the smallest additional fraction of a whole member proportion  
1613 shall have one less member apportioned to it.

1614 (ii) If rounding to the nearest 1/11 of the total public transit district apportionment  
1615 basis under Subsection (2)(b) results in an apportionment of less than 11 members, the county  
1616 or combination of counties with the largest additional fraction of a whole member proportion  
1617 shall have one more member apportioned to it.

1618 (e) If the population in the unincorporated area of a county is at least 140,000, the  
1619 county executive, with the advice and consent of the county legislative body, shall appoint one  
1620 voting member to represent the population within a county's unincorporated area.

1621 (f) If a municipality's population is at least 160,000, the chief municipal executive,  
1622 with the advice and consent of the municipal legislative body, shall appoint one voting member  
1623 to represent the population within a municipality.

1624 (g) (i) The number of voting members appointed from a county and municipalities  
1625 within a county under Subsections (2)(e) and (f) shall be subtracted from the county's total  
1626 voting member apportionment under this Subsection (2).

1627 (ii) Notwithstanding Subsections (2)(l) and (10), no more than one voting member  
1628 appointed by an appointing entity may be a locally elected public official.

1629 (h) If the entire county is within the district, the remaining voting members for the  
1630 county shall represent the county or combination of counties, if Subsection (2)(c) applies, or  
1631 the municipalities within the county.

1632 (i) If the entire county is not within the district, and the county is not joined with  
1633 another county under Subsection (2)(c), the remaining voting members for the county shall  
1634 represent a municipality or combination of municipalities.

1635 (j) (i) Except as provided under Subsections (2)(e) and (f), voting members  
1636 representing counties, combinations of counties if Subsection (2)(c) applies, or municipalities  
1637 within the county shall be designated and appointed by a simple majority of the chief  
1638 executives of the municipalities within the county or combinations of counties if Subsection  
1639 (2)(c) applies.

1640 (ii) The appointments shall be made by joint written agreement of the appointing  
1641 municipalities, with the consent and approval of the county legislative body of the county that  
1642 has at least 1/11 of the district's apportionment basis.

1643 (k) Voting members representing a municipality or combination of municipalities shall  
1644 be designated and appointed by the chief executive officer of the municipality or simple  
1645 majority of chief executive officers of municipalities with the consent of the legislative body of  
1646 the municipality or municipalities.

1647 (l) The appointment of voting members shall be made without regard to partisan  
1648 political affiliation from among citizens in the community.

1649 (m) Each voting member shall be a bona fide resident of the municipality, county, or  
1650 unincorporated area or areas which the voting member is to represent for at least six months  
1651 before the date of appointment, and ~~must~~ shall continue in that residency to remain qualified  
1652 to serve as a voting member.

1653 (n) (i) All population figures used under this section shall be derived from the most  
1654 recent official census or census estimate of the United States Bureau of the Census.

1655 (ii) If population estimates are not available from the United States Bureau of Census,  
1656 population figures shall be derived from the estimate from the Utah Population Estimates  
1657 Committee.

1658 (iii) All transit sales and use tax totals shall be obtained from the State Tax  
1659 Commission.

1660 (o) (i) The board shall be apportioned as provided under this section in conjunction  
1661 with the decennial United States Census Bureau report every 10 years.

1662 (ii) Within 120 days following the receipt of the population estimates under this  
1663 Subsection (2)(o), the district shall reapportion representation on the board of trustees in  
1664 accordance with this section.

1665 (iii) The board shall adopt by resolution a schedule reflecting the current and proposed  
1666 apportionment.

1667 (iv) Upon adoption of the resolution, the board shall forward a copy of the resolution to  
1668 each of its constituent entities as defined under Section 17B-1-701.

1669 (v) The appointing entities gaining a new board member shall appoint a new member  
1670 within 30 days following receipt of the resolution.

1671 (vi) The appointing entities losing a board member shall inform the board of which  
1672 member currently serving on the board will step down:

1673 (A) upon appointment of a new member under Subsection (2)(o)(v); or

1674 (B) in accordance with Section 17B-2a-807.5.

1675 (3) Upon the completion of an annexation to a public transit district under Chapter 1,  
1676 Part 4, Annexation, the annexed area shall have a representative on the board of trustees on the  
1677 same basis as if the area had been included in the district as originally organized.

1678 (4) In addition to the voting members appointed in accordance with Subsection (2), the  
1679 board shall consist of three voting members appointed as follows:

1680 (a) one member appointed by the speaker of the House of Representatives;

1681 (b) one member appointed by the president of the Senate; and

1682 (c) one member appointed by the governor.

1683 (5) (a) Except as provided in Section 17B-2a-807.5, the terms of office of the voting  
1684 members of the board shall be four years or until a successor is appointed, qualified, seated,  
1685 and has taken the oath of office.

1686 (b) (i) A voting member may not be appointed for more than three successive full  
1687 terms regardless of the appointing entity that appoints the voting member.

1688 (ii) A person:

1689 (A) may serve no more than 12 years on a public transit district board of trustees  
1690 described in Subsection (2)(a) regardless of the appointing entity that appoints the member; and

1691 (B) that has served 12 years on a public transit district board of trustees described in  
1692 Subsection (2)(a) is ineligible for reappointment to a public transit board of trustees described  
1693 in Subsection (2)(a).

1694 (6) (a) Vacancies for voting members shall be filled by the official appointing the  
1695 member creating the vacancy for the unexpired term, unless the official fails to fill the vacancy  
1696 within 90 days.

1697 (b) If the appointing official under Subsection (1) does not fill the vacancy within 90  
1698 days, the board of trustees of the authority shall fill the vacancy.

1699 (c) If the appointing official under Subsection (2) does not fill the vacancy within 90  
1700 days, the governor, with the advice and consent of the Senate, shall fill the vacancy.

1701 (7) (a) Each voting member may cast one vote on all questions, orders, resolutions, and

1702 ordinances coming before the board of trustees.

1703 (b) A majority of all voting members of the board of trustees are a quorum for the  
1704 transaction of business.

1705 (c) The affirmative vote of a majority of all voting members present at any meeting at  
1706 which a quorum was initially present shall be necessary and, except as otherwise provided, is  
1707 sufficient to carry any order, resolution, ordinance, or proposition before the board of trustees.

1708 (8) Each public transit district shall pay to each voting member:

1709 (a) an attendance fee of \$50 per board or committee meeting attended, not to exceed  
1710 \$200 in any calendar month to any voting member; and

1711 (b) reasonable mileage and expenses necessarily incurred to attend board or committee  
1712 meetings.

1713 (9) (a) Members of the initial board of trustees shall convene at the time and place  
1714 fixed by the chief executive officer of the entity initiating the proceedings.

1715 (b) The board of trustees shall elect from its voting membership a chair, vice chair, and  
1716 secretary.

1717 (c) The members elected under Subsection (9)(b) shall serve for a period of two years  
1718 or until their successors shall be elected and qualified.

1719 (d) On or after January 1, 2011, a locally elected public official is not eligible to serve  
1720 as the chair, vice chair, or secretary of the board of trustees.

1721 (10) Except as otherwise authorized under Subsection (2)(g) and Section  
1722 17B-2a-807.5, at the time of a voting member's appointment or during a voting member's  
1723 tenure in office, a voting member may not hold any employment, except as an independent  
1724 contractor or locally elected public official, with a county or municipality within the district.

1725 (11) The Transportation Commission created in Section 72-1-301:

1726 (a) for a public transit district serving a population of 200,000 people or fewer, may  
1727 appoint a commissioner of the Transportation Commission to serve on the board of trustees as  
1728 a nonvoting, ex officio member; and

1729 (b) for a public transit district serving a population of more than 200,000 people, shall  
1730 appoint a commissioner of the Transportation Commission to serve on the board of trustees as  
1731 a voting member.

1732 (12) (a) (i) Each member of the board of trustees of a public transit district is subject to

1733 recall at any time by the legislative body of the county or municipality from which the member  
1734 is appointed.

1735 (ii) Each recall of a board of trustees member shall be made in the same manner as the  
1736 original appointment.

1737 (iii) The legislative body recalling a board of trustees member shall provide written  
1738 notice to the member being recalled.

1739 (b) Upon providing written notice to the board of trustees, a member of the board may  
1740 resign from the board of trustees.

1741 (c) Except as provided in Section 17B-2a-807.5, if a board member is recalled or  
1742 resigns under this Subsection (12), the vacancy shall be filled as provided in Subsection (6).

1743 Section 46. Section **17B-2a-818.5** is amended to read:

1744 **17B-2a-818.5. Contracting powers of public transit districts -- Health insurance**  
1745 **coverage.**

1746 (1) For purposes of this section:

1747 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section  
1748 34A-2-104 who:

1749 (i) works at least 30 hours per calendar week; and

1750 (ii) meets employer eligibility waiting requirements for health care insurance which  
1751 may not exceed the first day of the calendar month following 90 days from the date of hire.

1752 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

1753 (c) "Qualified health insurance coverage" means at the time the contract is entered into  
1754 or renewed:

1755 (i) a health benefit plan and employer contribution level with a combined actuarial  
1756 value at least actuarially equivalent to the combined actuarial value of the benchmark plan  
1757 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and  
1758 a contribution level of 50% of the premium for the employee and the dependents of the  
1759 employee who reside or work in the state, in which:

1760 (A) the employer pays at least 50% of the premium for the employee and the  
1761 dependents of the employee who reside or work in the state; and

1762 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

1763 (I) rather than the benchmark plan's deductible, and the benchmark plan's out-of-pocket

1764 maximum based on income levels:  
1765 (Aa) the deductible is \$750 per individual and \$2,250 per family; and  
1766 (Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;  
1767 (II) dental coverage is not required; and  
1768 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not  
1769 apply; or  
1770 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a  
1771 deductible that is either:  
1772 (I) the lowest deductible permitted for a federally qualified high deductible health plan;  
1773 or  
1774 (II) a deductible that is higher than the lowest deductible permitted for a federally  
1775 qualified high deductible health plan, but includes an employer contribution to a health savings  
1776 account in a dollar amount at least equal to the dollar amount difference between the lowest  
1777 deductible permitted for a federally qualified high deductible plan and the deductible for the  
1778 employer offered federally qualified high deductible plan;  
1779 (B) an out-of-pocket maximum that does not exceed three times the amount of the  
1780 annual deductible; and  
1781 (C) under which the employer pays 75% of the premium for the employee and the  
1782 dependents of the employee who work or reside in the state.  
1783 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.  
1784 (2) (a) Except as provided in Subsection (3), this section applies to a design or  
1785 construction contract entered into by the public transit district on or after July 1, 2009, and to a  
1786 prime contractor or to a subcontractor in accordance with Subsection (2)(b).  
1787 (b) (i) A prime contractor is subject to this section if the prime contract is in the  
1788 amount of \$1,500,000 or greater.  
1789 (ii) A subcontractor is subject to this section if a subcontract is in the amount of  
1790 \$750,000 or greater.  
1791 (3) This section does not apply if:  
1792 (a) the application of this section jeopardizes the receipt of federal funds;  
1793 (b) the contract is a sole source contract; or  
1794 (c) the contract is an emergency procurement.

1795 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,  
1796 or a modification to a contract, when the contract does not meet the initial threshold required  
1797 by Subsection (2).

1798 (b) A person who intentionally uses change orders or contract modifications to  
1799 circumvent the requirements of Subsection (2) is guilty of an infraction.

1800 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit  
1801 district that the contractor has and will maintain an offer of qualified health insurance coverage  
1802 for the contractor's employees and the employee's dependents during the duration of the  
1803 contract.

1804 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor  
1805 shall demonstrate to the public transit district that the subcontractor has and will maintain an  
1806 offer of qualified health insurance coverage for the subcontractor's employees and the  
1807 employee's dependents during the duration of the contract.

1808 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during  
1809 the duration of the contract is subject to penalties in accordance with an ordinance adopted by  
1810 the public transit district under Subsection (6).

1811 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the  
1812 requirements of Subsection (5)(b).

1813 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during  
1814 the duration of the contract is subject to penalties in accordance with an ordinance adopted by  
1815 the public transit district under Subsection (6).

1816 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the  
1817 requirements of Subsection (5)(a).

1818 (6) The public transit district shall adopt ordinances:

1819 (a) in coordination with:

1820 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

1821 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

1822 (iii) the State Building Board in accordance with Section 63A-5-205;

1823 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and

1824 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

1825 (b) which establish:

1826 (i) the requirements and procedures a contractor [~~must~~] shall follow to demonstrate to  
1827 the public transit district compliance with this section which shall include:

1828 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or  
1829 (b) more than twice in any 12-month period; and

1830 (B) that the actuarially equivalent determination required in Subsection (1) is met by  
1831 the contractor if the contractor provides the department or division with a written statement of  
1832 actuarial equivalency from either:

1833 (I) the Utah Insurance Department;

1834 (II) an actuary selected by the contractor or the contractor's insurer; or

1835 (III) an underwriter who is responsible for developing the employer group's premium  
1836 rates;

1837 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally  
1838 violates the provisions of this section, which may include:

1839 (A) a three-month suspension of the contractor or subcontractor from entering into  
1840 future contracts with the public transit district upon the first violation;

1841 (B) a six-month suspension of the contractor or subcontractor from entering into future  
1842 contracts with the public transit district upon the second violation;

1843 (C) an action for debarment of the contractor or subcontractor in accordance with  
1844 Section 63G-6-804 upon the third or subsequent violation; and

1845 (D) monetary penalties which may not exceed 50% of the amount necessary to  
1846 purchase qualified health insurance coverage for employees and dependents of employees of  
1847 the contractor or subcontractor who were not offered qualified health insurance coverage  
1848 during the duration of the contract; and

1849 (iii) a website on which the district shall post the benchmark for the qualified health  
1850 insurance coverage identified in Subsection (1)(c)(i).

1851 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(b)(ii), a contractor  
1852 or subcontractor who intentionally violates the provisions of this section shall be liable to the  
1853 employee for health care costs that would have been covered by qualified health insurance  
1854 coverage.

1855 (ii) An employer has an affirmative defense to a cause of action under Subsection  
1856 (7)(a)(i) if:

1857 (A) the employer relied in good faith on a written statement of actuarial equivalency  
 1858 provided by an:

1859 (I) actuary; or

1860 (II) underwriter who is responsible for developing the employer group's premium rates;

1861 or

1862 (B) a department or division determines that compliance with this section is not  
 1863 required under the provisions of Subsection (3) or (4).

1864 (b) An employee has a private right of action only against the employee's employer to  
 1865 enforce the provisions of this Subsection (7).

1866 (8) Any penalties imposed and collected under this section shall be deposited into the  
 1867 Medicaid Restricted Account created in Section 26-18-402.

1868 (9) The failure of a contractor or subcontractor to provide qualified health insurance  
 1869 coverage as required by this section:

1870 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,  
 1871 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,  
 1872 Legal and Contractual Remedies; and

1873 (b) may not be used by the procurement entity or a prospective bidder, offeror, or  
 1874 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design  
 1875 or construction.

1876 Section 47. Section **18-1-1** is amended to read:

1877 **18-1-1. Liability of owners -- Scienter -- Dogs used in law enforcement.**

1878 (1) Every person owning or keeping a dog [~~shall be~~] is liable in damages for injury  
 1879 committed by [~~such~~] the dog, and it [~~shall not be~~] is not necessary in [~~any~~] the action brought  
 1880 therefor to allege or prove that [~~such~~] the dog was of a vicious or mischievous disposition or  
 1881 that the owner or keeper [~~thereof~~] of the dog knew that it was vicious or mischievous[~~; but~~  
 1882 neither].

1883 (2) Notwithstanding Subsection (1), neither the state nor any county, city, or town in  
 1884 the state nor any peace officer employed by any of them shall be liable in damages for injury  
 1885 committed by a dog [~~when: (1) The~~], if:

1886 (a) the dog has been trained to assist in law enforcement[~~;~~]; and [(2)]

1887 (b) the injury occurs while the dog is reasonably and carefully being used in the

1888 apprehension, arrest, or location of a suspected offender or in maintaining or controlling the  
1889 public order.

1890 Section 48. Section **19-1-206** is amended to read:

1891 **19-1-206. Contracting powers of department -- Health insurance coverage.**

1892 (1) For purposes of this section:

1893 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section  
1894 34A-2-104 who:

1895 (i) works at least 30 hours per calendar week; and

1896 (ii) meets employer eligibility waiting requirements for health care insurance which  
1897 may not exceed the first day of the calendar month following 90 days from the date of hire.

1898 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

1899 (c) "Qualified health insurance coverage" means at the time the contract is entered into  
1900 or renewed:

1901 (i) a health benefit plan and employer contribution level with a combined actuarial  
1902 value at least actuarially equivalent to the combined actuarial value of the benchmark plan  
1903 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and  
1904 a contribution level of 50% of the premium for the employee and the dependents of the  
1905 employee who reside or work in the state, in which:

1906 (A) the employer pays at least 50% of the premium for the employee and the  
1907 dependents of the employee who reside or work in the state; and

1908 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

1909 (I) rather than the benchmark plan's deductible, and the benchmark plan's out-of-pocket  
1910 maximum based on income levels:

1911 (Aa) the deductible is \$750 per individual and \$2,250 per family; and

1912 (Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;

1913 (II) dental coverage is not required; and

1914 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not  
1915 apply; or

1916 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a  
1917 deductible that is either:

1918 (I) the lowest deductible permitted for a federally qualified high deductible health plan;

1919 or

1920 (II) a deductible that is higher than the lowest deductible permitted for a federally  
1921 qualified high deductible health plan, but includes an employer contribution to a health savings  
1922 account in a dollar amount at least equal to the dollar amount difference between the lowest  
1923 deductible permitted for a federally qualified high deductible plan and the deductible for the  
1924 employer offered federally qualified high deductible plan;

1925 (B) an out-of-pocket maximum that does not exceed three times the amount of the  
1926 annual deductible; and

1927 (C) under which the employer pays 75% of the premium for the employee and the  
1928 dependents of the employee who work or reside in the state.

1929 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

1930 (2) (a) Except as provided in Subsection (3), this section applies to a design or  
1931 construction contract entered into by or delegated to the department or a division or board of  
1932 the department on or after July 1, 2009, and to a prime contractor or subcontractor in  
1933 accordance with Subsection (2)(b).

1934 (b) (i) A prime contractor is subject to this section if the prime contract is in the  
1935 amount of \$1,500,000 or greater.

1936 (ii) A subcontractor is subject to this section if a subcontract is in the amount of  
1937 \$750,000 or greater.

1938 (3) This section does not apply to contracts entered into by the department or a division  
1939 or board of the department if:

1940 (a) the application of this section jeopardizes the receipt of federal funds;

1941 (b) the contract or agreement is between:

1942 (i) the department or a division or board of the department; and

1943 (ii) (A) another agency of the state;

1944 (B) the federal government;

1945 (C) another state;

1946 (D) an interstate agency;

1947 (E) a political subdivision of this state; or

1948 (F) a political subdivision of another state;

1949 (c) the executive director determines that applying the requirements of this section to a

1950 particular contract interferes with the effective response to an immediate health and safety  
1951 threat from the environment; or

1952 (d) the contract is:

1953 (i) a sole source contract; or

1954 (ii) an emergency procurement.

1955 (4) (a) This section does not apply to a change order as defined in Section 63G-6-103,  
1956 or a modification to a contract, when the contract does not meet the initial threshold required  
1957 by Subsection (2).

1958 (b) A person who intentionally uses change orders or contract modifications to  
1959 circumvent the requirements of Subsection (2) is guilty of an infraction.

1960 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive  
1961 director that the contractor has and will maintain an offer of qualified health insurance  
1962 coverage for the contractor's employees and the employees' dependents during the duration of  
1963 the contract.

1964 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall  
1965 demonstrate to the executive director that the subcontractor has and will maintain an offer of  
1966 qualified health insurance coverage for the subcontractor's employees and the employees'  
1967 dependents during the duration of the contract.

1968 (c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration  
1969 of the contract is subject to penalties in accordance with administrative rules adopted by the  
1970 department under Subsection (6).

1971 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the  
1972 requirements of Subsection (5)(b).

1973 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during  
1974 the duration of the contract is subject to penalties in accordance with administrative rules  
1975 adopted by the department under Subsection (6).

1976 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the  
1977 requirements of Subsection (5)(a).

1978 (6) The department shall adopt administrative rules:

1979 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

1980 (b) in coordination with:

- 1981 (i) a public transit district in accordance with Section 17B-2a-818.5;
- 1982 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- 1983 (iii) the State Building Board in accordance with Section 63A-5-205;
- 1984 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;
- 1985 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- 1986 (vi) the Legislature's Administrative Rules Review Committee; and
- 1987 (c) which establish:
- 1988 (i) the requirements and procedures a contractor [~~must~~] shall follow to demonstrate to
- 1989 the public transit district compliance with this section [~~which~~] that shall include:
- 1990 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
- 1991 (b) more than twice in any 12-month period; and
- 1992 (B) that the actuarially equivalent determination required in Subsection (1) is met by
- 1993 the contractor if the contractor provides the department or division with a written statement of
- 1994 actuarial equivalency from either:
- 1995 (I) the Utah Insurance Department;
- 1996 (II) an actuary selected by the contractor or the contractor's insurer; or
- 1997 (III) an underwriter who is responsible for developing the employer group's premium
- 1998 rates;
- 1999 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
- 2000 violates the provisions of this section, which may include:
- 2001 (A) a three-month suspension of the contractor or subcontractor from entering into
- 2002 future contracts with the state upon the first violation;
- 2003 (B) a six-month suspension of the contractor or subcontractor from entering into future
- 2004 contracts with the state upon the second violation;
- 2005 (C) an action for debarment of the contractor or subcontractor in accordance with
- 2006 Section 63G-6-804 upon the third or subsequent violation; and
- 2007 (D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%
- 2008 of the amount necessary to purchase qualified health insurance coverage for an employee and
- 2009 the dependents of an employee of the contractor or subcontractor who was not offered qualified
- 2010 health insurance coverage during the duration of the contract; and
- 2011 (iii) a website on which the department shall post the benchmark for the qualified

2012 health insurance coverage identified in Subsection (1)(c)(i).

2013 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or  
2014 subcontractor who intentionally violates the provisions of this section shall be liable to the  
2015 employee for health care costs that would have been covered by qualified health insurance  
2016 coverage.

2017 (ii) An employer has an affirmative defense to a cause of action under Subsection  
2018 (7)(a)(i) if:

2019 (A) the employer relied in good faith on a written statement of actuarial equivalency  
2020 provided by:

2021 (I) an actuary; or

2022 (II) an underwriter who is responsible for developing the employer group's premium  
2023 rates; or

2024 (B) the department determines that compliance with this section is not required under  
2025 the provisions of Subsection (3) or (4).

2026 (b) An employee has a private right of action only against the employee's employer to  
2027 enforce the provisions of this Subsection (7).

2028 (8) Any penalties imposed and collected under this section shall be deposited into the  
2029 Medicaid Restricted Account created in Section 26-18-402.

2030 (9) The failure of a contractor or subcontractor to provide qualified health insurance  
2031 coverage as required by this section:

2032 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,  
2033 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,  
2034 Legal and Contractual Remedies; and

2035 (b) may not be used by the procurement entity or a prospective bidder, offeror, or  
2036 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design  
2037 or construction.

2038 Section 49. Section **19-2-109.1** is amended to read:

2039 **19-2-109.1. Operating permit required -- Emissions fee -- Implementation.**

2040 (1) As used in this section and Sections 19-2-109.2 and 19-2-109.3:

2041 (a) "EPA" means the federal Environmental Protection Agency.

2042 (b) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.

2043 (c) "Operating permit" means a permit issued by the executive secretary to sources of  
2044 air pollution that meet the requirements of Titles IV and V of the 1990 Clean Air Act.

2045 (d) "Program" means the air pollution operating permit program established under this  
2046 section to comply with Title V of the 1990 Clean Air Act.

2047 (e) "Regulated pollutant" has the same meaning as defined in Title V of the 1990 Clean  
2048 Air Act and implementing federal regulations.

2049 (2) (a) A person may not operate any source of air pollution required to have a permit  
2050 under Title V of the 1990 Clean Air Act without having obtained an operating permit from the  
2051 executive secretary under procedures the board establishes by rule.

2052 (b) A person is not required to submit an operating permit application until the  
2053 governor has submitted an operating permit program to the EPA.

2054 (c) Any operating permit issued under this section may not become effective until the  
2055 day after the EPA issues approval of the permit program or November 15, 1995, whichever  
2056 occurs first.

2057 (3) (a) Operating permits issued under this section shall be for a period of five years  
2058 unless the board makes a written finding, after public comment and hearing, and based on  
2059 substantial evidence in the record, that an operating permit term of less than five years is  
2060 necessary to protect the public health and the environment of the state.

2061 (b) The executive secretary may issue, modify, or renew an operating permit only after  
2062 providing public notice, an opportunity for public comment, and an opportunity for a public  
2063 hearing.

2064 (c) The executive secretary shall, in conformity with the 1990 Clean Air Act and  
2065 implementing federal regulations, revise the conditions of issued operating permits to  
2066 incorporate applicable federal regulations in conformity with Section 502(b)(9) of the 1990  
2067 Clean Air Act, if the remaining period of the permit is three or more years.

2068 (d) The executive secretary may terminate, modify, revoke, or reissue an operating  
2069 permit for cause.

2070 (4) (a) The board shall establish a proposed annual emissions fee that conforms with  
2071 Title V of the 1990 Clean Air Act for each ton of regulated pollutant, applicable to all sources  
2072 required to obtain a permit. The emissions fee established under this section is in addition to  
2073 fees assessed under Section 19-2-108 for issuance of an approval order.

2074 (b) In establishing the fee the board shall comply with the provisions of Section  
2075 63J-1-504 that require a public hearing and require the established fee to be submitted to the  
2076 Legislature for its approval as part of the department's annual appropriations request.

2077 (c) The fee shall cover all reasonable direct and indirect costs required to develop and  
2078 administer the program and the small business assistance program established under Section  
2079 19-2-109.2. The board shall prepare an annual report of the emissions fees collected and the  
2080 costs covered by those fees under this Subsection (4).

2081 (d) The fee shall be established uniformly for all sources required to obtain an  
2082 operating permit under the program and for all regulated pollutants.

2083 (e) The fee may not be assessed for emissions of any regulated pollutant if the  
2084 emissions are already accounted for within the emissions of another regulated pollutant.

2085 (f) An emissions fee may not be assessed for any amount of a regulated pollutant  
2086 emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

2087 (5) Emissions fees for the period:

2088 (a) of July 1, 1992, through June 30, 1993, shall be based on the most recent emissions  
2089 inventory prepared by the executive secretary; and

2090 (b) on and after July 1, 1993, but ~~prior to~~ before issuance of an operating permit, shall  
2091 be based on the most recent emissions inventory, unless a source elects prior to July 1, 1992, to  
2092 base the fee on allowable emissions, if applicable for a regulated pollutant.

2093 (6) After an operating permit is issued the emissions fee shall be based on actual  
2094 emissions for a regulated pollutant unless a source elects, prior to the issuance or renewal of a  
2095 permit, to base the fee during the period of the permit on allowable emissions for that regulated  
2096 pollutant.

2097 (7) If the owner or operator of a source subject to this section fails to timely pay an  
2098 annual emissions fee, the executive secretary may:

2099 (a) impose a penalty of not more than 50% of the fee, in addition to the fee, plus  
2100 interest on the fee computed at 12% annually; or

2101 (b) revoke the operating permit.

2102 (8) The owner or operator of a source subject to this section may contest an emissions  
2103 fee assessment or associated penalty in an adjudicative hearing under the Title 63G, Chapter 4,  
2104 Administrative Procedures Act, and Section 19-1-301, as provided in this Subsection (8).

2105 (a) The owner or operator [~~must~~] shall pay the fee under protest prior to being entitled  
2106 to a hearing. Payment of an emissions fee or penalty under protest is not a waiver of the right  
2107 to contest the fee or penalty under this section.

2108 (b) A request for a hearing under this Subsection (8) shall be made after payment of the  
2109 emissions fee and within six months after the emissions fee was due.

2110 (9) To reinstate an operating permit revoked under Subsection (7) the owner or  
2111 operator shall pay all outstanding emissions fees, a penalty of not more than 50% of all  
2112 outstanding fees, and interest on the outstanding emissions fees computed at 12% annually.

2113 (10) All emissions fees and penalties collected by the department under this section  
2114 shall be deposited in the General Fund as the Air Pollution Operating Permit Program  
2115 dedicated credit to be used solely to pay for the reasonable direct and indirect costs incurred by  
2116 the department in developing and administering the program and the small business assistance  
2117 program under Section 19-2-109.2.

2118 (11) Failure of the executive secretary to act on any operating permit application or  
2119 renewal is a final administrative action only for the purpose of obtaining judicial review by any  
2120 of the following persons to require the executive secretary to take action on the permit or its  
2121 renewal without additional delay:

2122 (a) the applicant;

2123 (b) any person who participated in the public comment process; or

2124 (c) any other person who could obtain judicial review of that action under applicable  
2125 law.

2126 Section 50. Section **19-2-113** is amended to read:

2127 **19-2-113. Variances -- Judicial review.**

2128 (1) (a) Any person who owns or is in control of any plant, building, structure,  
2129 establishment, process, or equipment may apply to the board for a variance from its rules.

2130 (b) The board may grant the requested variance following an announced public  
2131 meeting, if it finds, after considering the endangerment to human health and safety and other  
2132 relevant factors, that compliance with the rules from which variance is sought would produce  
2133 serious hardship without equal or greater benefits to the public.

2134 (2) A variance may not be granted under this section until the board has considered the  
2135 relative interests of the applicant, other owners of property likely to be affected by the

2136 discharges, and the general public.

2137 (3) Any variance or renewal of a variance shall be granted within the requirements of  
2138 Subsection (1) and for time periods and under conditions consistent with the reasons for it, and  
2139 within the following limitations:

2140 (a) if the variance is granted on the grounds that there are no practicable means known  
2141 or available for the adequate prevention, abatement, or control of the air pollution involved, it  
2142 shall be only until the necessary means for prevention, abatement, or control become known  
2143 and available, and subject to the taking of any substitute or alternate measures that the board  
2144 may prescribe;

2145 (b) (i) if the variance is granted on the grounds that compliance with the requirements  
2146 from which variance is sought will require that measures, because of their extent or cost, must  
2147 be spread over a long period of time, the variance shall be granted for a reasonable time that, in  
2148 the view of the board, is required for implementation of the necessary measures; and

2149 (ii) a variance granted on this ground shall contain a timetable for the implementation  
2150 of remedial measures in an expeditious manner and shall be conditioned on adherence to the  
2151 timetable; or

2152 (c) if the variance is granted on the ground that it is necessary to relieve or prevent  
2153 hardship of a kind other than that provided for in Subsection (3)(a) or (b), it ~~shall not~~ may not  
2154 be granted for more than one year.

2155 (4) (a) Any variance granted under this section may be renewed on terms and  
2156 conditions and for periods that would be appropriate for initially granting a variance.

2157 (b) If a complaint is made to the board because of the variance, a renewal may not be  
2158 granted unless, following an announced public meeting, the board finds that renewal is  
2159 justified.

2160 (c) To receive a renewal, an applicant shall submit a request for agency action to the  
2161 board requesting a renewal.

2162 (d) Immediately upon receipt of an application for renewal, the board shall give public  
2163 notice of the application as required by its rules.

2164 (5) (a) A variance or renewal is not a right of the applicant or holder but may be  
2165 granted at the board's discretion.

2166 (b) A person aggrieved by the board's decision may obtain judicial review.

2167 (c) Venue for judicial review of informal adjudicative proceedings is in the district  
2168 court in which the air contaminant source is situated.

2169 (6) (a) The board may review any variance during the term for which it was granted.

2170 (b) The review procedure is the same as that for an original application.

2171 (c) The variance may be revoked upon a finding that:

2172 (i) the nature or amount of emission has changed or increased; or

2173 (ii) if facts existing at the date of the review had existed at the time of the original  
2174 application, the variance would not have been granted.

2175 (7) Nothing in this section and no variance or renewal granted pursuant to it shall be  
2176 construed to prevent or limit the application of the emergency provisions and procedures of  
2177 Section 19-2-112 to any person or property.

2178 Section 51. Section **19-2-115** is amended to read:

2179 **19-2-115. Violations -- Penalties -- Reimbursement for expenses.**

2180 (1) As used in this section, the terms "knowingly," "willfully," and "criminal  
2181 negligence" shall mean as defined in Section 76-2-103.

2182 (2) (a) A person who violates this chapter, or any rule, order, or permit issued or made  
2183 under this chapter is subject in a civil proceeding to a penalty not to exceed \$10,000 per day for  
2184 each violation.

2185 (b) Subsection (2)(a) also applies to rules made under the authority of Section  
2186 19-2-104, for implementation of 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act,  
2187 Subchapter II - Asbestos Hazard Emergency Response.

2188 (c) Penalties assessed for violations described in 15 U.S.C.A. 2647, Toxic Substances  
2189 Control Act, Subchapter II - Asbestos Hazard Emergency Response, may not exceed the  
2190 amounts specified in that section and shall be used in accordance with that section.

2191 (3) A person is guilty of a class A misdemeanor and is subject to imprisonment under  
2192 Section 76-3-204 and a fine of not more than \$25,000 per day of violation if that person  
2193 knowingly violates any of the following under this chapter:

2194 (a) an applicable standard or limitation;

2195 (b) a permit condition; or

2196 (c) a fee or filing requirement.

2197 (4) A person is guilty of a third degree felony and is subject to imprisonment under

2198 Section 76-3-203 and a fine of not more than \$25,000 per day of violation who knowingly:

2199 (a) makes any false material statement, representation, or certification, in any notice or  
2200 report required by permit; or

2201 (b) renders inaccurate any monitoring device or method required to be maintained by  
2202 this chapter or applicable rules made under this chapter.

2203 (5) Any fine or penalty assessed under Subsections (2) or (3) is in lieu of any penalty  
2204 under Section 19-2-109.1.

2205 (6) A person who willfully violates Section 19-2-120 is guilty of a class A  
2206 misdemeanor.

2207 (7) A person who knowingly violates any requirement of an applicable implementation  
2208 plan adopted by the board, more than 30 days after having been notified in writing by the  
2209 executive secretary that the person is violating the requirement, knowingly violates an order  
2210 issued under Subsection 19-2-110(1)(a), or knowingly handles or disposes of asbestos in  
2211 violation of a rule made under this chapter is guilty of a third degree felony and subject to  
2212 imprisonment under Section 76-3-203 and a fine of not more than \$25,000 per day of violation  
2213 in the case of the first offense, and not more than \$50,000 per day of violation in the case of  
2214 subsequent offenses.

2215 (8) (a) As used in this section:

2216 (i) "Hazardous air pollutant" means any hazardous air pollutant listed under 42 U.S.C.  
2217 7412 or any extremely hazardous substance listed under 42 U.S.C. 11002(a)(2).

2218 (ii) "Organization" means a legal entity, other than a government, established or  
2219 organized for any purpose, and includes a corporation, company, association, firm, partnership,  
2220 joint stock company, foundation, institution, trust, society, union, or any other association of  
2221 persons.

2222 (iii) "Serious bodily injury" means bodily injury which involves a substantial risk of  
2223 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or  
2224 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

2225 (b) (i) A person is guilty of a class A misdemeanor and subject to imprisonment under  
2226 Section 76-3-204 and a fine of not more than \$25,000 per day of violation if that person with  
2227 criminal negligence:

2228 (A) releases into the ambient air any hazardous air pollutant; and

2229 (B) places another person in imminent danger of death or serious bodily injury.

2230 (ii) As used in this Subsection (8)(b), "person" does not include an employee who is  
2231 carrying out the employee's normal activities and who is not a part of senior management  
2232 personnel or a corporate officer.

2233 (c) A person is guilty of a second degree felony and is subject to imprisonment under  
2234 Section 76-3-203 and a fine of not more than \$50,000 per day of violation if that person:

2235 (i) knowingly releases into the ambient air any hazardous air pollutant; and

2236 (ii) knows at the time that the person is placing another person in imminent danger of  
2237 death or serious bodily injury.

2238 (d) If a person is an organization, it shall, upon conviction of violating Subsection  
2239 (8)(c), be subject to a fine of not more than \$1,000,000.

2240 (e) (i) A defendant who is an individual is considered to have acted knowingly under  
2241 Subsections (8)(c) and (d), if:

2242 (A) the defendant's conduct placed another person in imminent danger of death or  
2243 serious bodily injury; and

2244 (B) the defendant was aware of or believed that there was an imminent danger of death  
2245 or serious bodily injury to another person.

2246 (ii) Knowledge possessed by a person other than the defendant may not be attributed to  
2247 the defendant.

2248 (iii) Circumstantial evidence may be used to prove that the defendant possessed actual  
2249 knowledge, including evidence that the defendant took affirmative steps to be shielded from  
2250 receiving relevant information.

2251 (f) (i) It is an affirmative defense to prosecution under this Subsection (8) that the  
2252 conduct charged was freely consented to by the person endangered and that the danger and  
2253 conduct charged were reasonably foreseeable hazards of:

2254 (A) an occupation, a business, a profession; or

2255 (B) medical treatment or medical or scientific experimentation conducted by  
2256 professionally approved methods and the other person was aware of the risks involved prior to  
2257 giving consent.

2258 (ii) The defendant has the burden of proof to establish any affirmative defense under  
2259 this Subsection (8)(f) and ~~must~~ shall prove that defense by a preponderance of the evidence.

2260 (9) (a) Except as provided in Subsection (9)(b), and unless prohibited by federal law,  
2261 all penalties assessed and collected under the authority of this section shall be deposited in the  
2262 General Fund.

2263 (b) The department may reimburse itself and local governments from money collected  
2264 from civil penalties for extraordinary expenses incurred in environmental enforcement  
2265 activities.

2266 (c) The department shall regulate reimbursements by making rules in accordance with  
2267 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

2268 (i) define qualifying environmental enforcement activities; and

2269 (ii) define qualifying extraordinary expenses.

2270 Section 52. Section **19-3-302** is amended to read:

2271 **19-3-302. Legislative intent.**

2272 (1) (a) The state [~~of Utah~~] enacts this part to prevent the placement of any high-level  
2273 nuclear waste or greater than class C radioactive waste in Utah. The state also recognizes that  
2274 high-level nuclear waste or greater than class C radioactive waste may be placed within the  
2275 exterior boundaries of the state, pursuant to a license from the federal government, or by the  
2276 federal government itself, in violation of this state law.

2277 (b) Due to this possibility, the state also enacts provisions in this part to regulate  
2278 transportation, transfer, storage, decay in storage, treatment, and disposal of any high-level  
2279 nuclear waste and greater than class C radioactive waste in Utah, thereby asserting and  
2280 protecting the state's interests in environmental and economic resources consistent with 42  
2281 U.S.C.A. 2011 et seq., Atomic Energy Act and 42 U.S.C.A. 10101 et seq., Nuclear Waste  
2282 Policy Act, should the federal government decide to authorize any entity to operate, or operate  
2283 itself, in violation of this state law.

2284 (2) Neither the Atomic Energy Act nor the Nuclear Waste Policy Act provides for  
2285 siting a large privately owned high-level nuclear waste transfer, storage, decay in storage, or  
2286 treatment facility away from the vicinity of the reactors. The Atomic Energy Act and the  
2287 Nuclear Waste Policy Act specifically define authorized storage and disposal programs and  
2288 activities. The state [~~of Utah~~] in enacting this part is not preempted by federal law, since any  
2289 proposed facilities that would be sited in Utah are not contemplated or authorized by federal  
2290 law and, in any circumstance, this part is not contrary to or inconsistent with federal law or

2291 congressional intent.

2292 (3) The state [~~of Utah~~] has environmental and economic interests which do not involve  
2293 nuclear safety regulation, and which [~~must~~] shall be considered and complied with in siting a  
2294 high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay in  
2295 storage, treatment, or disposal facility and in transporting these wastes in the state.

2296 (4) An additional primary purpose of this part is to ensure protection of the state from  
2297 nonradiological hazards associated with any waste transportation, transfer, storage, decay in  
2298 storage, treatment, or disposal.

2299 (5) The state recognizes the sovereign rights of Indian tribes within the state [~~of Utah~~].  
2300 However, any proposed transfer, storage, decay in storage, treatment, or disposal facility  
2301 located on a reservation which directly affects and impacts state interests by creating  
2302 off-reservation effects such as potential or actual degradation of soils and groundwater,  
2303 potential or actual contamination of surface water, pollution of the ambient air, emergency  
2304 planning costs, impacts on development, agriculture, and ranching, and increased  
2305 transportation activity, is subject to state jurisdiction.

2306 (6) There is no tradition of regulation by the Indian tribes in Utah of high-level nuclear  
2307 waste or higher than class C radioactive waste. The state does have a long history of regulation  
2308 of radioactive sources and natural resources and in the transfer, storage, treatment, and  
2309 transportation of materials and wastes throughout the state. The state finds that its interests are  
2310 even greater when nonmembers of an Indian tribe propose to locate a facility on tribal trust  
2311 lands primarily to avoid state regulation and state authorities under federal law.

2312 (7) (a) This part is not intended to modify existing state requirements for obtaining  
2313 environmental approvals, permits, and licenses, including surface and groundwater permits and  
2314 air quality permits, when the permits are necessary under state and federal law to construct and  
2315 operate a high-level nuclear waste or greater than class C radioactive waste transfer, storage,  
2316 decay in storage, treatment, or disposal facility.

2317 (b) Any source of air pollution proposed to be located within the state, including  
2318 sources located within the boundaries of an Indian reservation, which will potentially or  
2319 actually have a direct and significant impact on ambient air within the state, is required to  
2320 obtain an approval order and permit from the state under Section 19-2-108.

2321 (c) Any facility which will potentially or actually have a significant impact on the

2322 state's surface or groundwater resources is required to obtain a permit under Section 19-5-107  
2323 even if located within the boundaries of an Indian reservation.

2324 (8) The state finds that the transportation, transfer, storage, decay in storage, treatment,  
2325 and disposal of high-level nuclear waste and greater than class C radioactive waste within the  
2326 state is an ultra-hazardous activity which carries with it the risk that any release of waste may  
2327 result in enormous economic and human injury.

2328 Section 53. Section **19-3-308** is amended to read:

2329 **19-3-308. Application fee and annual fees.**

2330 (1) (a) Any application for a waste transfer, storage, decay in storage, treatment, or  
2331 disposal facility shall be accompanied by an initial fee of \$5,000,000.

2332 (b) The applicant shall subsequently pay an additional fee to cover the costs to the state  
2333 associated with review of the application, including costs to the state and the state's contractors  
2334 for permitting, technical, administrative, legal, safety, and emergency response reviews,  
2335 planning, training, infrastructure, and other impact analyses, studies, and services required to  
2336 evaluate a proposed facility.

2337 (2) For the purpose of funding the state oversight and inspection of any waste transfer,  
2338 storage, decay in storage, treatment, or disposal facility, and to establish state infrastructure,  
2339 including~~[-but not limited to]~~ providing for state Department of Environmental Quality, state  
2340 Department of Transportation, state Department of Public Safety, and other state agencies'  
2341 technical, administrative, legal, infrastructure, maintenance, training, safety, socio-economic,  
2342 law enforcement, and emergency resources necessary to respond to these facilities, the owner  
2343 or operator shall pay to the state a fee as established by department rule under Section  
2344 63J-1-504, to be assessed:

2345 (a) per ton of storage cask and high-level nuclear waste per year for storage, decay in  
2346 storage, treatment, or disposal of high-level nuclear waste;

2347 (b) per ton of transportation cask and high-level nuclear waste for each transfer of  
2348 high-level nuclear waste;

2349 (c) per ton of storage cask and greater than class C radioactive waste for the storage,  
2350 decay in storage, treatment, or disposal of greater than class C radioactive waste; and

2351 (d) per ton of transportation cask and greater than class C radioactive waste for each  
2352 transfer of greater than class C radioactive waste.

2353 (3) Funds collected under Subsection (2) shall be placed in the Nuclear Accident and  
2354 Hazard Compensation Account, created in Subsection 19-3-309(3).

2355 (4) The owner or operator of the facility shall pay the fees imposed under this section  
2356 to the department on or before the 15th day of the month following the month in which the fee  
2357 accrued.

2358 (5) Annual fees due under this part accrue on July 1 of each year and shall be paid to  
2359 the department by July 15 of that year.

2360 Section 54. Section **19-4-112** is amended to read:

2361 **19-4-112. Limit on authority of department and board to control irrigation**  
2362 **facilities -- Precautions relating to nonpotable water systems.**

2363 (1) Except as provided in this section and in Section 19-5-104, nothing contained in  
2364 this chapter authorizes the department or board to:

2365 (a) exercise administrative control over water used solely for irrigation purposes,  
2366 whether conveyed in pipes, ditches, canals, or by other facilities; or

2367 (b) adopt rules relating to the construction, operation, and maintenance of facilities for  
2368 conveying irrigation water to the place of use.

2369 (2) Where nonpotable water is conveyed in pipelines under pressure in areas served by  
2370 a potable water system, the following precautions shall be observed:

2371 (a) a distinctive coloring or other marking on all exposed portions of the nonpotable  
2372 system shall be used;

2373 (b) potable and nonpotable water system service lines and extensions shall be  
2374 completely separated and shall be installed in separate trenches;

2375 (c) all hydrants and sprinkling system control valves shall be operated by a removable  
2376 key so that it is not possible to turn on the hydrant or valve without a key;

2377 (d) there shall be no cross connection between the potable and nonpotable water  
2378 systems;

2379 (e) the nonpotable system [~~shall not~~] may not be extended into any building except  
2380 greenhouses or other buildings for plant and animal production; and

2381 (f) no connection in the nonpotable water system shall be made except by the persons  
2382 responsible for its management.

2383 Section 55. Section **19-5-102** is amended to read:

2384 **19-5-102. Definitions.**

2385 As used in this chapter:

2386 (1) "Board" means the Water Quality Board created in Section 19-1-106.

2387 (2) "Contaminant" means any physical, chemical, biological, or radiological substance  
2388 or matter in water.

2389 (3) "Discharge" means the addition of any pollutant to any waters of the state.

2390 (4) "Discharge permit" means a permit issued to a person who:

2391 (a) discharges or whose activities would probably result in a discharge of pollutants  
2392 into the waters of the state; or

2393 (b) generates or manages sewage sludge.

2394 (5) "Disposal system" means a system for disposing of wastes, and includes sewerage  
2395 systems and treatment works.

2396 (6) "Effluent limitations" means any restrictions, requirements, or prohibitions,  
2397 including schedules of compliance established under this chapter which apply to discharges.

2398 (7) "Executive secretary" means the executive secretary of the board.

2399 (8) "Point source":

2400 (a) means any discernible, confined, and discrete conveyance, including [~~but not~~  
2401 ~~limited to~~] any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling  
2402 stock, concentrated animal feeding operation, or vessel or other floating craft, from which  
2403 pollutants are or may be discharged; and

2404 (b) does not include return flows from irrigated agriculture.

2405 (9) "Pollution" means any man-made or man-induced alteration of the chemical,  
2406 physical, biological, or radiological integrity of any waters of the state, unless the alteration is  
2407 necessary for the public health and safety.

2408 (10) "Publicly owned treatment works" means any facility for the treatment of  
2409 pollutants owned by the state, its political subdivisions, or other public entity.

2410 (11) "Schedule of compliance" means a schedule of remedial measures, including an  
2411 enforceable sequence of actions or operations leading to compliance with this chapter.

2412 (12) "Sewage sludge" means any solid, semisolid, or liquid residue removed during the  
2413 treatment of municipal wastewater or domestic sewage.

2414 (13) "Sewerage system" means pipelines or conduits, pumping stations, and all other

2415 constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to  
2416 a point of ultimate disposal.

2417 (14) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station,  
2418 incinerator, or other works used for the purpose of treating, stabilizing, or holding wastes.

2419 (15) "Underground injection" means the subsurface emplacement of fluids by well  
2420 injection.

2421 (16) "Underground wastewater disposal system" means a system for disposing of  
2422 domestic wastewater discharges as defined by the board and the executive director.

2423 (17) "Waste" or "pollutant" means dredged spoil, solid waste, incinerator residue,  
2424 sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive  
2425 materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial,  
2426 municipal, and agricultural waste discharged into water.

2427 (18) "Waters of the state":

2428 (a) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs,  
2429 irrigation systems, drainage systems, and all other bodies or accumulations of water, surface  
2430 and underground, natural or artificial, public or private, which are contained within, flow  
2431 through, or border upon this state or any portion of the state; and

2432 (b) does not include bodies of water confined to and retained within the limits of  
2433 private property, and which do not develop into or constitute a nuisance, a public health hazard,  
2434 or a menace to fish or wildlife.

2435 Section 56. Section **19-5-115** is amended to read:

2436 **19-5-115. Violations -- Penalties -- Civil actions by board -- Ordinances and rules**  
2437 **of political subdivisions.**

2438 (1) The terms "knowingly," "willfully," and "criminal negligence" [~~shall mean~~] are as  
2439 defined in Section 76-2-103.

2440 (2) Any person who violates this chapter, or any permit, rule, or order adopted under it,  
2441 upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not  
2442 to exceed \$10,000 per day of violation.

2443 (3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment  
2444 under Section 76-3-204 and a fine not exceeding \$25,000 per day who with criminal  
2445 negligence:

2446 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any  
2447 condition or limitation included in a permit issued under Subsection 19-5-107(3);

2448 (ii) violates Section 19-5-113;

2449 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned  
2450 treatment works; or

2451 (iv) manages sewage sludge in violation of this chapter or rules adopted under it.

2452 (b) A person is guilty of a third degree felony and is subject to imprisonment under  
2453 Section 76-3-203 and a fine not to exceed \$50,000 per day of violation who knowingly:

2454 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any  
2455 condition or limitation included in a permit issued under Subsection 19-5-107(3);

2456 (ii) violates Section 19-5-113;

2457 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned  
2458 treatment works; or

2459 (iv) manages sewage sludge in violation of this chapter or rules adopted under it.

2460 (4) A person is guilty of a third degree felony and subject to imprisonment under  
2461 Section 76-3-203 and shall be punished by a fine not exceeding \$10,000 per day of violation if  
2462 that person knowingly:

2463 (a) makes a false material statement, representation, or certification in any application,  
2464 record, report, plan, or other document filed or required to be maintained under this chapter, or  
2465 by any permit, rule, or order issued under it; or

2466 (b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or  
2467 method required to be maintained under this chapter.

2468 (5) (a) As used in this section:

2469 (i) "Organization" means a legal entity, other than a government, established or  
2470 organized for any purpose, and includes a corporation, company, association, firm, partnership,  
2471 joint stock company, foundation, institution, trust, society, union, or any other association of  
2472 persons.

2473 (ii) "Serious bodily injury" means bodily injury which involves a substantial risk of  
2474 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or  
2475 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

2476 (b) A person is guilty of a second degree felony and, upon conviction, is subject to

2477 imprisonment under Section 76-3-203 and a fine of not more than \$250,000 if that person:

2478 (i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and

2479 (ii) knows at that time that he is placing another person in imminent danger of death or  
2480 serious bodily injury.

2481 (c) If a person is an organization, it shall, upon conviction of violating Subsection  
2482 (5)(~~a~~)(b), be subject to a fine of not more than \$1,000,000.

2483 (d) (i) A defendant who is an individual is considered to have acted knowingly if:

2484 (A) the defendant's conduct placed another person in imminent danger of death or  
2485 serious bodily injury; and

2486 (B) the defendant was aware of or believed that there was an imminent danger of death  
2487 or serious bodily injury to another person.

2488 (ii) Knowledge possessed by a person other than the defendant may not be attributed to  
2489 the defendant.

2490 (iii) Circumstantial evidence may be used to prove that the defendant possessed actual  
2491 knowledge, including evidence that the defendant took affirmative steps to be shielded from  
2492 receiving relevant information.

2493 (e) (i) It is an affirmative defense to prosecution under this Subsection (5) that the  
2494 conduct charged was consented to by the person endangered and that the danger and conduct  
2495 charged were reasonably foreseeable hazards of:

2496 (A) an occupation, a business, or a profession; or

2497 (B) medical treatment or medical or scientific experimentation conducted by  
2498 professionally approved methods and the other person was aware of the risks involved prior to  
2499 giving consent.

2500 (ii) The defendant has the burden of proof to establish any affirmative defense under  
2501 this Subsection (5)(e) and [~~must~~] shall prove that defense by a preponderance of the evidence.

2502 (6) For purposes of Subsections 19-5-115(3) through (5), a single operational upset  
2503 which leads to simultaneous violations of more than one pollutant parameter shall be treated as  
2504 a single violation.

2505 (7) (a) The board may begin a civil action for appropriate relief, including a permanent  
2506 or temporary injunction, for any violation or threatened violation for which it is authorized to  
2507 issue a compliance order under Section 19-5-111.

2508 (b) Actions shall be brought in the district court where the violation or threatened  
2509 violation occurs.

2510 (8) (a) The attorney general is the legal advisor for the board and its executive secretary  
2511 and shall defend them in all actions or proceedings brought against them.

2512 (b) The county attorney or district attorney as appropriate under Sections 17-18-1,  
2513 17-18-1.5, and 17-18-1.7 in the county in which a cause of action arises, shall bring any action,  
2514 civil or criminal, requested by the board, to abate a condition that exists in violation of, or to  
2515 prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the  
2516 board or the executive secretary issued under this chapter.

2517 (c) The board may itself initiate any action under this section and be represented by the  
2518 attorney general.

2519 (9) If any person fails to comply with a cease and desist order that is not subject to a  
2520 stay pending administrative or judicial review, the board may, through its executive secretary,  
2521 initiate an action for and be entitled to injunctive relief to prevent any further or continued  
2522 violation of the order.

2523 (10) Any political subdivision of the state may enact and enforce ordinances or rules  
2524 for the implementation of this chapter that are not inconsistent with this chapter.

2525 (11) (a) Except as provided in Subsection (11)(b), all penalties assessed and collected  
2526 under the authority of this section shall be deposited in the General Fund.

2527 (b) The department may reimburse itself and local governments from money collected  
2528 from civil penalties for extraordinary expenses incurred in environmental enforcement  
2529 activities.

2530 (c) The department shall regulate reimbursements by making rules that:

2531 (i) define qualifying environmental enforcement activities; and

2532 (ii) define qualifying extraordinary expenses.

2533 Section 57. Section **19-5-116** is amended to read:

2534 **19-5-116. Limitation on effluent limitation standards for BOD, SS, Coliforms,**  
2535 **and pH for domestic or municipal sewage.**

2536 Unless required to meet instream water quality standards or federal requirements  
2537 established under the federal Water Pollution Control Act, the board [~~shall not~~] may not  
2538 establish, under Section 19-5-104, effluent limitation standards for Biochemical Oxygen

2539 Demand (BOD), Total Suspended Solids (SS), Coliforms, and pH for domestic or municipal  
2540 sewage which are more stringent than the following:

2541 (1) Biochemical Oxygen Demand (BOD): The arithmetic mean of BOD values  
2542 determined on effluent samples collected during any 30-day period [~~shall not~~] may not exceed  
2543 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any seven-day period.

2544 (2) Total Suspended Solids (SS): The arithmetic mean of SS values determined on  
2545 effluent samples collected during any 30-day period [~~shall not~~] may not exceed 25 mg/l, nor  
2546 shall the arithmetic mean exceed 35 mg/l during any seven-day period.

2547 (3) Coliform: The geometric mean of total coliforms and fecal coliform bacteria in  
2548 effluent samples collected during any 30-day period [~~shall not~~] may not exceed either 2000/100  
2549 ml for total coliforms or 200/100 ml for fecal coliforms. The geometric mean during any  
2550 seven-day period [~~shall not~~] may not exceed 2500/100 ml for total coliforms or 250/100 for  
2551 fecal coliforms.

2552 (4) pH: The pH level shall be maintained at a level not less than 6.5 or greater than 9.0.

2553 Section 58. Section **19-5-121** is amended to read:

2554 **19-5-121. Underground wastewater disposal systems -- Certification required to**  
2555 **design, inspect, maintain, or conduct percolation or soil tests -- Exemptions -- Rules --**  
2556 **Fees.**

2557 (1) As used in this section, "maintain" does not include the pumping of an underground  
2558 wastewater disposal system.

2559 (2) (a) Except as provided in Subsections (2)(b) and (2)(c), beginning January 1, 2002,  
2560 a person may not design, inspect, maintain, or conduct percolation or soil tests for an  
2561 underground wastewater disposal system, without first obtaining certification from the board.

2562 (b) An individual is not required to obtain certification from the board to maintain an  
2563 underground wastewater disposal system that serves a noncommercial, private residence owned  
2564 by the individual or a member of the individual's family and in which the individual or a  
2565 member of the individual's family resides or an employee of the individual resides without  
2566 payment of rent.

2567 (c) The board shall make rules allowing an uncertified individual to conduct  
2568 percolation or soil tests for an underground wastewater disposal system that serves a  
2569 noncommercial, private residence owned by the individual and in which the individual resides

2570 or intends to reside, or which is intended for use by an employee of the individual without  
2571 payment of rent, if the individual:

2572 (i) has the capability of properly conducting the tests; and

2573 (ii) is supervised by a certified individual when conducting the tests.

2574 (3) (a) The board shall adopt and enforce rules for the certification and recertification  
2575 of individuals who design, inspect, maintain, or conduct percolation or soil tests for  
2576 underground wastewater disposal systems.

2577 (b) (i) The rules shall specify requirements for education and training and the type and  
2578 duration of experience necessary to obtain certification.

2579 (ii) The rules shall recognize the following in meeting the requirements for  
2580 certification:

2581 (A) the experience of a contractor licensed under Title 58, Chapter 55, Utah  
2582 Construction Trades Licensing Act, who has five or more years of experience installing  
2583 underground wastewater disposal systems;

2584 (B) the experience of an environmental health scientist licensed under Title 58, Chapter  
2585 20a, Environmental Health Scientist Act; or

2586 (C) the educational background of a professional engineer licensed under Title 58,  
2587 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

2588 (iii) If eligibility for certification is based on experience, the applicant for certification  
2589 ~~must~~ shall show proof of experience.

2590 (4) The department may establish fees in accordance with Section 63J-1-504 for the  
2591 testing and certification of individuals who design, inspect, maintain, or conduct percolation or  
2592 soil tests for underground wastewater disposal systems.

2593 Section 59. Section **19-6-108** is amended to read:

2594 **19-6-108. New nonhazardous solid or hazardous waste operation plans for**  
2595 **facility or site -- Administrative and legislative approval required -- Exemptions from**  
2596 **legislative and gubernatorial approval -- Time periods for review -- Information required**  
2597 **-- Other conditions -- Revocation of approval -- Periodic review.**

2598 (1) For purposes of this section, the following items shall be treated as submission of a  
2599 new operation plan:

2600 (a) the submission of a revised operation plan specifying a different geographic site

2601 than a previously submitted plan;

2602 (b) an application for modification of a commercial hazardous waste incinerator if the  
2603 construction or the modification would increase the hazardous waste incinerator capacity above  
2604 the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in  
2605 the operation plan application as of January 1, 1990, if no operation plan approval has been  
2606 issued as of January 1, 1990;

2607 (c) an application for modification of a commercial nonhazardous solid waste  
2608 incinerator if the construction of the modification would cost 50% or more of the cost of  
2609 construction of the original incinerator or the modification would result in an increase in the  
2610 capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity  
2611 or throughput that was approved in the operation plan as of January 1, 1990, or the initial  
2612 approved operation plan if the initial approval is subsequent to January 1, 1990; or

2613 (d) an application for modification of a commercial nonhazardous solid or hazardous  
2614 waste treatment, storage, or disposal facility, other than an incinerator, if the modification  
2615 would be outside the boundaries of the property owned or controlled by the applicant, as shown  
2616 in the application or approved operation plan as of January 1, 1990, or the initial approved  
2617 operation plan if the initial approval is subsequent to January 1, 1990.

2618 (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput  
2619 tonnage specified for the trial burn in the operation plan or the operation plan application if no  
2620 operation plan approval has been issued as of January 1, 1990, and on annual operations of  
2621 7,000 hours.

2622 (3) (a) (i) No person may own, construct, modify, or operate any facility or site for the  
2623 purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of  
2624 hazardous waste without first submitting and receiving the approval of the executive secretary  
2625 for an operation plan for that facility or site.

2626 (ii) (A) A permittee who is the current owner of a facility or site that is subject to an  
2627 operation plan may submit to the executive secretary information, a report, a plan, or other  
2628 request for approval for a proposed activity under an operation plan:

2629 (I) after obtaining the consent of any other permittee who is a current owner of the  
2630 facility or site; and

2631 (II) without obtaining the consent of any other permittee who is not a current owner of

2632 the facility or site.

2633 (B) The executive secretary may not:

2634 (I) withhold an approval of an operation plan requested by a permittee who is a current  
2635 owner of the facility or site on the grounds that another permittee who is not a current owner of  
2636 the facility or site has not consented to the request; or

2637 (II) give an approval of an operation plan requested by a permittee who is not a current  
2638 owner before receiving consent of the current owner of the facility or site.

2639 (b) (i) Except for facilities that receive the following wastes solely for the purpose of  
2640 recycling, reuse, or reprocessing, no person may own, construct, modify, or operate any  
2641 commercial facility that accepts for treatment or disposal, with the intent to make a profit, any  
2642 of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving  
2643 the approval of the executive secretary for an operation plan for that facility site.

2644 (ii) Wastes referred to in Subsection (3)(b)(i) are:

2645 (A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste  
2646 generated primarily from the combustion of coal or other fossil fuels;

2647 (B) wastes from the extraction, beneficiation, and processing of ores and minerals; or

2648 (C) cement kiln dust wastes.

2649 (c) (i) No person may construct any facility listed under Subsection (3)(c)(ii) until ~~he~~  
2650 the person receives, in addition to and subsequent to local government approval and subsequent  
2651 to the approval required in Subsection (3)(a), approval by the governor and the Legislature.

2652 (ii) Facilities referred to in Subsection (3)(c)(i) are:

2653 (A) commercial nonhazardous solid or hazardous waste treatment or disposal facilities;  
2654 and

2655 (B) except for facilities that receive the following wastes solely for the purpose of  
2656 recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal,  
2657 with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas  
2658 emission control waste generated primarily from the combustion of coal or other fossil fuels;  
2659 wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln  
2660 dust wastes.

2661 (d) No person need obtain gubernatorial or legislative approval for the construction of  
2662 a hazardous waste facility for which an operating plan has been approved by or submitted for

2663 approval to the executive secretary under this section before April 24, 1989, and which has  
2664 been determined, on or before December 31, 1990, by the executive secretary to be complete,  
2665 in accordance with state and federal requirements for operating plans for hazardous waste  
2666 facilities even if a different geographic site is subsequently submitted.

2667 (e) No person need obtain gubernatorial and legislative approval for the construction of  
2668 a commercial nonhazardous solid waste disposal facility for which an operation plan has been  
2669 approved by or submitted for approval to the executive secretary under this section on or before  
2670 January 1, 1990, and which, on or before December 31, 1990, the executive secretary  
2671 determines to be complete, in accordance with state and federal requirements applicable to  
2672 operation plans for nonhazardous solid waste facilities.

2673 (f) Any person owning or operating a facility or site on or before November 19, 1980,  
2674 who has given timely notification as required by Section 3010 of the Resource Conservation  
2675 and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has submitted a proposed  
2676 hazardous waste plan under this section for that facility or site, may continue to operate that  
2677 facility or site without violating this section until the plan is approved or disapproved under  
2678 this section.

2679 (g) (i) The executive secretary shall suspend acceptance of further applications for a  
2680 commercial nonhazardous solid or hazardous waste facility upon a finding that ~~he~~ the  
2681 executive secretary cannot adequately oversee existing and additional facilities for permit  
2682 compliance, monitoring, and enforcement.

2683 (ii) The executive secretary shall report any suspension to the Natural Resources,  
2684 Agriculture, and Environment Interim Committee.

2685 (4) The executive secretary shall review each proposed nonhazardous solid or  
2686 hazardous waste operation plan to determine whether that plan complies with the provisions of  
2687 this part and the applicable rules of the board.

2688 (5) (a) If the facility is a class I or class II facility, the executive secretary shall approve  
2689 or disapprove that plan within 270 days from the date it is submitted.

2690 (b) Within 60 days after receipt of the plans, specifications, or other information  
2691 required by this section for a class I or II facility, the executive secretary shall determine  
2692 whether the plan is complete and contains all information necessary to process the plan for  
2693 approval.

2694 (c) (i) If the plan for a class I or II facility is determined to be complete, the executive  
2695 secretary shall issue a notice of completeness.

2696 (ii) If the plan is determined by the executive secretary to be incomplete, [~~he~~] the  
2697 executive secretary shall issue a notice of deficiency, listing the additional information to be  
2698 provided by the owner or operator to complete the plan.

2699 (d) The executive secretary shall review information submitted in response to a notice  
2700 of deficiency within 30 days after receipt.

2701 (e) The following time periods may not be included in the 270 day plan review period  
2702 for a class I or II facility:

2703 (i) time awaiting response from the owner or operator to requests for information  
2704 issued by the executive secretary;

2705 (ii) time required for public participation and hearings for issuance of plan approvals;  
2706 and

2707 (iii) time for review of the permit by other federal or state government agencies.

2708 (6) (a) If the facility is a class III or class IV facility, the executive secretary shall  
2709 approve or disapprove that plan within 365 days from the date it is submitted.

2710 (b) The following time periods may not be included in the 365 day review period:

2711 (i) time awaiting response from the owner or operator to requests for information  
2712 issued by the executive secretary;

2713 (ii) time required for public participation and hearings for issuance of plan approvals;  
2714 and

2715 (iii) time for review of the permit by other federal or state government agencies.

2716 (7) If, within 365 days after receipt of a modification plan or closure plan for any  
2717 facility, the executive secretary determines that the proposed plan, or any part of it, will not  
2718 comply with applicable rules, the executive secretary shall issue an order prohibiting any action  
2719 under the proposed plan for modification or closure in whole or in part.

2720 (8) Any person who owns or operates a facility or site required to have an approved  
2721 hazardous waste operation plan under this section and who has pending a permit application  
2722 before the United States Environmental Protection Agency shall be treated as having an  
2723 approved plan until final administrative disposition of the permit application is made under this  
2724 section, unless the board determines that final administrative disposition of the application has

2725 not been made because of the failure of the owner or operator to furnish any information  
2726 requested, or the facility's interim status has terminated under Section 3005 (e) of the Resource  
2727 Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).

2728 (9) No proposed nonhazardous solid or hazardous waste operation plan may be  
2729 approved unless it contains the information that the board requires, including:

2730 (a) estimates of the composition, quantities, and concentrations of any hazardous waste  
2731 identified under this part and the proposed treatment, storage, or disposal of it;

2732 (b) evidence that the disposal of nonhazardous solid waste or treatment, storage, or  
2733 disposal of hazardous waste will not be done in a manner that may cause or significantly  
2734 contribute to an increase in mortality, an increase in serious irreversible or incapacitating  
2735 reversible illness, or pose a substantial present or potential hazard to human health or the  
2736 environment;

2737 (c) consistent with the degree and duration of risks associated with the disposal of  
2738 nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste,  
2739 evidence of financial responsibility in whatever form and amount that the executive secretary  
2740 determines is necessary to insure continuity of operation and that upon abandonment, cessation,  
2741 or interruption of the operation of the facility or site, all reasonable measures consistent with  
2742 the available knowledge will be taken to insure that the waste subsequent to being treated,  
2743 stored, or disposed of at the site or facility will not present a hazard to the public or the  
2744 environment;

2745 (d) evidence that the personnel employed at the facility or site have education and  
2746 training for the safe and adequate handling of nonhazardous solid or hazardous waste;

2747 (e) plans, specifications, and other information that the executive secretary considers  
2748 relevant to determine whether the proposed nonhazardous solid or hazardous waste operation  
2749 plan will comply with this part and the rules of the board; and

2750 (f) compliance schedules, where applicable, including schedules for corrective action  
2751 or other response measures for releases from any solid waste management unit at the facility,  
2752 regardless of the time the waste was placed in the unit.

2753 (10) The executive secretary may not approve a commercial nonhazardous solid or  
2754 hazardous waste operation plan that meets the requirements of Subsection (9) unless it contains  
2755 the information required by the board, including:

2756 (a) evidence that the proposed commercial facility has a proven market of  
2757 nonhazardous solid or hazardous waste, including:

2758 (i) information on the source, quantity, and price charged for treating, storing, and  
2759 disposing of potential nonhazardous solid or hazardous waste in the state and regionally;

2760 (ii) a market analysis of the need for a commercial facility given existing and potential  
2761 generation of nonhazardous solid or hazardous waste in the state and regionally; and

2762 (iii) a review of other existing and proposed commercial nonhazardous solid or  
2763 hazardous waste facilities regionally and nationally that would compete for the treatment,  
2764 storage, or disposal of the nonhazardous solid or hazardous waste;

2765 (b) a description of the public benefits of the proposed facility, including:

2766 (i) the need in the state for the additional capacity for the management of nonhazardous  
2767 solid or hazardous waste;

2768 (ii) the energy and resources recoverable by the proposed facility;

2769 (iii) the reduction of nonhazardous solid or hazardous waste management methods,  
2770 which are less suitable for the environment, that would be made possible by the proposed  
2771 facility; and

2772 (iv) whether any other available site or method for the management of hazardous waste  
2773 would be less detrimental to the public health or safety or to the quality of the environment;  
2774 and

2775 (c) compliance history of an owner or operator of a proposed commercial  
2776 nonhazardous solid or hazardous waste treatment, storage, or disposal facility, which may be  
2777 applied by the executive secretary in a nonhazardous solid or hazardous waste operation plan  
2778 decision, including any plan conditions.

2779 (11) The executive secretary may not approve a commercial nonhazardous solid or  
2780 hazardous waste facility operation plan unless based on the application, and in addition to the  
2781 determination required in Subsections (9) and (10), the executive secretary determines that:

2782 (a) the probable beneficial environmental effect of the facility to the state outweighs  
2783 the probable adverse environmental effect; and

2784 (b) there is a need for the facility to serve industry within the state.

2785 (12) Approval of a nonhazardous solid or hazardous waste operation plan may be  
2786 revoked, in whole or in part, if the person to whom approval of the plan has been given fails to

2787 comply with that plan.

2788 (13) The executive secretary shall review all approved nonhazardous solid and  
2789 hazardous waste operation plans at least once every five years.

2790 (14) The provisions of Subsections (10) and (11) do not apply to hazardous waste  
2791 facilities in existence or to applications filed or pending in the department prior to April 24,  
2792 1989, that are determined by the executive secretary on or before December 31, 1990, to be  
2793 complete, in accordance with state and federal requirements applicable to operation plans for  
2794 hazardous waste facilities.

2795 (15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous  
2796 solid waste facility in existence or to an application filed or pending in the department prior to  
2797 January 1, 1990, that is determined by the executive secretary, on or before December 31,  
2798 1990, to be complete in accordance with state and federal requirements applicable to operation  
2799 plans for nonhazardous solid waste facilities.

2800 (16) Nonhazardous solid waste generated outside of this state that is defined as  
2801 hazardous waste in the state where it is generated and which is received for disposal in this  
2802 state ~~shall not~~ may not be disposed of at a nonhazardous waste disposal facility owned and  
2803 operated by local government or a facility under contract with a local government solely for  
2804 disposal of nonhazardous solid waste generated within the boundaries of the local government,  
2805 unless disposal is approved by the executive secretary.

2806 (17) This section may not be construed to exempt any facility from applicable  
2807 regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through  
2808 2114.

2809 Section 60. Section **19-6-116** is amended to read:

2810 **19-6-116. Application of part subject to state assumption of primary**  
2811 **responsibility from federal government -- Authority of political subdivisions.**

2812 (1) The requirements of this part applicable to the generation, treatment, storage, or  
2813 disposal of hazardous waste, and the rules adopted under this part, ~~shall not~~ do not take effect  
2814 until this state is qualified to assume, and does assume, primacy from the federal government  
2815 for the control of hazardous wastes.

2816 (2) This part does not alter the authority of political subdivisions of the state to control  
2817 solid and hazardous wastes within their local jurisdictions so long as any local laws,

2818 ordinances, or rules are not inconsistent with this part or the rules of the board.

2819 Section 61. Section **19-6-202** is amended to read:

2820 **19-6-202. Definitions.**

2821 As used in this part:

2822 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section  
2823 19-1-106.

2824 (2) "Disposal" means the final disposition of hazardous wastes into or onto the lands,  
2825 waters, and air of this state.

2826 (3) "Hazardous wastes" means wastes as defined in Section 19-6-102.

2827 (4) "Hazardous waste treatment, disposal, and storage facility" means a facility or site  
2828 used or intended to be used for the treatment, storage, or disposal of hazardous waste materials,  
2829 including [~~but not limited to~~] physical, chemical, or thermal processing systems, incinerators,  
2830 and secure landfills.

2831 (5) "Site" means land used for the treatment, disposal, or storage of hazardous wastes.

2832 (6) "Siting plan" means the state hazardous waste facilities siting plan adopted by the  
2833 board pursuant to Sections 19-6-204 and 19-6-205.

2834 (7) "Storage" means the containment of hazardous wastes for a period of more than 90  
2835 days.

2836 (8) "Treatment" means any method, technique, or process designed to change the  
2837 physical, chemical, or biological character or composition of any hazardous waste to neutralize  
2838 or render it nonhazardous, safer for transport, amenable to recovery or storage, convertible to  
2839 another usable material, or reduced in volume and suitable for ultimate disposal.

2840 Section 62. Section **19-6-203** is amended to read:

2841 **19-6-203. Other provisions relating to hazardous waste.**

2842 This part [~~shall not~~] may not be construed to supersede any other state or local law  
2843 relating to hazardous waste, except as otherwise provided in Section 19-6-207.

2844 Section 63. Section **19-6-205** is amended to read:

2845 **19-6-205. Siting plan -- Procedure for adoption -- Review -- Effect.**

2846 (1) After completion of the guidelines, the board shall prepare and publish a  
2847 preliminary siting plan for the state. The preliminary siting plan is not final until adopted by the  
2848 board in accordance with Subsection (2) and shall be based upon the guidelines adopted under

2849 Section 19-6-204 and be published within one year after adoption of the guidelines.

2850 (2) (a) After completion of its guidelines, the board shall publish notice of intent to  
2851 prepare a siting plan. The notice shall invite all interested persons to nominate sites for  
2852 inclusion in the siting plan. It shall be published at least twice in not less than two newspapers  
2853 with statewide circulation and shall also be sent to any person, business, or other organization  
2854 that has notified the board of an interest or involvement in hazardous waste management  
2855 activities.

2856 (b) Nominations for the location of hazardous waste sites shall be accepted by the  
2857 board for a period of 120 days after the date of first publication of notice. Nominations may  
2858 include a description of the site or sites suggested or may simply suggest a general area. In  
2859 addition, any nomination may provide data and reasons in support of inclusion of the site  
2860 nominated.

2861 (c) The board, in cooperation with other state agencies and private sources, shall then  
2862 prepare an inventory of:

2863 (i) the hazardous wastes generated in the state;

2864 (ii) those likely to be generated in the future;

2865 (iii) those being generated in other states that are likely to be treated, disposed of, or  
2866 stored in the state;

2867 (iv) the sites within the state currently being used for hazardous waste and those  
2868 suggested through the nomination process;

2869 (v) the treatment, storage, and disposal processes and management practices that are  
2870 required to comply with Section 19-6-108; and

2871 (vi) an estimate of the public and private costs for meeting the long-term demand for  
2872 hazardous waste treatment, disposal, and storage facilities.

2873 (d) (i) After the hazardous waste inventory and cost estimate are complete, the board,  
2874 with the use of the guidelines developed in Section 19-6-204, shall provide for the geographical  
2875 distribution of enough sites to fulfill the state's needs for hazardous waste disposal, treatment,  
2876 and storage for the next 25 years.

2877 (ii) The board [~~shall not~~] may not exclude any area of the state from consideration in  
2878 the selection of potential sites but, to the maximum extent possible, shall give preference to  
2879 sites located in areas already dedicated through zoning or other land use regulations to

2880 industrial use or to areas located near industrial uses. However, the board shall give  
2881 consideration to excluding an area designated for disposal of uranium mill tailings or for  
2882 disposal of nuclear wastes unless the proposed disposal site is approved by the affected county  
2883 through its county executive and county legislative body.

2884 (e) The board shall also analyze and identify areas of the state where, due to the  
2885 concentration of industrial waste generation processes or to favorable geology or hydrology, the  
2886 construction and operation of hazardous waste treatment, disposal, and storage facilities  
2887 appears to be technically, environmentally, and economically feasible.

2888 (3) (a) The preliminary siting plan prepared pursuant to Subsection (2) shall, before  
2889 adoption, be distributed to all units of local government located near existing or proposed sites.

2890 (b) Notice of the availability of the preliminary siting plan for examination shall be  
2891 published at least twice in two newspapers, if available, with general circulation in the areas of  
2892 the state that potentially will be affected by the plan.

2893 (c) The board shall also issue a statewide news release that informs persons where  
2894 copies of the preliminary siting plan may be inspected or purchased at cost.

2895 (d) After release of the preliminary siting plan, the board shall hold not less than two  
2896 public hearings in different areas of the state affected by the proposed siting plan to allow local  
2897 officials and other interested persons to express their views and submit information relevant to  
2898 the plan. The hearings shall be conducted not less than 60 nor more than 90 days after release  
2899 of the plan. Within 30 days after completion of the hearings, the board shall prepare and make  
2900 available for public inspection a summary of public comments.

2901 (4) (a) The board, between 30 and 60 days after publication of the public comments,  
2902 shall prepare a final siting plan.

2903 (b) The final siting plan shall be widely distributed to members of the public.

2904 (c) The board, at any time between 30 and 60 days after release of the final plan, on its  
2905 own initiative or that of interested parties, shall hold not less than two public hearings in each  
2906 area of the state affected by the final plan to allow local officials and other interested persons to  
2907 express their views.

2908 (d) The board, within 30 days after the last hearing, shall vote to adopt, adopt with  
2909 modification, or reject the final siting plan.

2910 (5) (a) Any person adversely affected by the board's decision may seek judicial review

2911 of the decision by filing a petition for review with the district court for Salt Lake County within  
2912 90 days after the board's decision.

2913 (b) Judicial review may be had, however, only on the grounds that the board violated  
2914 the procedures set forth in this section, that it acted without or in excess of its powers, or that  
2915 its actions were arbitrary or capricious and not based on substantial evidence.

2916 (6) If the final siting plan is adopted, the board shall cause it to be published.

2917 (7) After publication of the final siting plan, the board shall engage in a continuous  
2918 monitoring and review process to ensure that the long-range needs of hazardous waste  
2919 producers likely to dispose of hazardous wastes in this state are met at a reasonable cost. An  
2920 annual review of the adequacy of the plan shall be conducted and published by the board.

2921 (8) (a) If necessary, the board may amend the siting plan to provide additional sites or  
2922 delete sites which are no longer suitable.

2923 (b) Before any plan amendment adding or deleting a site is adopted, the board, upon  
2924 not less than 20 days' public notice, shall hold at least one public hearing in the area where the  
2925 affected site is located.

2926 (9) After adoption of the final plan, an applicant for approval of a plan to construct and  
2927 operate a hazardous waste treatment, storage, and disposal facility who seeks protection under  
2928 this part shall select a site contained on the final site plan.

2929 (10) Nothing in this part, however, shall be construed to prohibit the construction and  
2930 operation of an approved hazardous waste treatment, storage, and disposal facility at a site  
2931 which is not included within the final site plan, but such a facility is not entitled to the  
2932 protections afforded under this part.

2933 Section 64. Section **19-6-413** is amended to read:

2934 **19-6-413. Tank tightness test -- Actions required after testing.**

2935 (1) The owner or operator of any petroleum storage tank registered [~~prior to~~] before  
2936 July 1, 1991, [~~must~~] shall submit to the executive secretary the results of a tank tightness test  
2937 conducted:

2938 (a) on or after September 1, 1989, and [~~prior to~~] before January 1, 1990, if the test  
2939 meets requirements set by rule regarding tank tightness tests that were applicable during that  
2940 period; or

2941 (b) on or after January 1, 1990, and [~~prior to~~] before July 1, 1991.

2942 (2) The owner or operator of any petroleum storage tank registered on or after July 1,  
2943 1991, [~~must~~] shall submit to the executive secretary the results of a tank tightness test  
2944 conducted within the six months before the tank was registered or within 60 days after the date  
2945 the tank was registered.

2946 (3) If the tank test performed under Subsection (1) or (2) shows no release of  
2947 petroleum, the owner or operator of the petroleum storage tank shall submit a letter to the  
2948 executive secretary at the same time the owner or operator submits the test results, stating that  
2949 under customary business inventory practices standards, the owner or operator is not aware of  
2950 any release of petroleum from the tank.

2951 (4) (a) If the tank test shows a release of petroleum from the petroleum storage tank,  
2952 the owner or operator of the tank shall:

2953 (i) correct the problem; and

2954 (ii) submit evidence of the correction to the executive secretary.

2955 (b) When the executive secretary receives evidence from an owner or operator of a  
2956 petroleum storage tank that the problem with the tank has been corrected, the executive  
2957 secretary shall:

2958 (i) approve or disapprove the correction; and

2959 (ii) notify the owner or operator that the correction has been approved or disapproved.

2960 (5) The executive secretary shall review the results of the tank tightness test to  
2961 determine compliance with this part and any rules adopted under the authority of Section  
2962 19-6-403.

2963 (6) If the owner or operator of the tank is required by 40 C.F.R., Part 280, Subpart D,  
2964 to perform release detection on the tank, the owner or operator shall submit the results of the  
2965 tank tests in compliance with 40 C.F.R., Part 280, Subpart D.

2966 Section 65. Section **19-6-714** is amended to read:

2967 **19-6-714. Recycling fee on sale of oil.**

2968 (1) On and after October 1, 1993, a recycling fee of \$.04 per quart or \$.16 per gallon is  
2969 imposed upon the first sale in Utah by a lubricating oil vendor of lubricating oil. The  
2970 lubricating oil vendor shall collect the fee at the time the lubricating oil is sold.

2971 (2) A fee under this section [~~shall not~~] may not be collected on sales of lubricating oil:

2972 (a) shipped outside the state;

2973 (b) purchased in five-gallon or smaller containers and used solely in underground  
2974 mining operations; or

2975 (c) in bulk containers of 55 gallons or more.

2976 (3) This fee is in addition to all other state, county, or municipal fees and taxes  
2977 imposed on the sale of lubricating oil.

2978 (4) The exemptions from sales and use tax provided in Section 59-12-104 do not apply  
2979 to this part.

2980 (5) The commission may make rules to implement and enforce the provisions of this  
2981 section.

2982 Section 66. Section **19-6-814** is amended to read:

2983 **19-6-814. Local health department responsibility.**

2984 (1) A local health department that has received an application for partial  
2985 reimbursement from a recycler shall within 15 calendar days after receiving the application:

2986 (a) review the application for completeness;

2987 (b) conduct an on-site investigation of the recycler's waste tire use if the application is  
2988 the initial application of the recycler; and

2989 (c) submit the recycler's application for partial reimbursement together with a brief  
2990 written report of the results of the investigation and the dollar amount approved for payment to  
2991 the Division of Finance.

2992 (2) If the local health department approves a dollar amount for partial reimbursement  
2993 which is less than the amount requested by the recycler, the local health department [~~must~~]  
2994 shall submit its written report of the investigation and recommendation to the recycler at least  
2995 five days prior to submitting the report and recommendation to the Division of Finance.

2996 Section 67. Section **19-9-105** is amended to read:

2997 **19-9-105. Powers of authority.**

2998 The authority is a body corporate and politic that may:

2999 (1) sue and be sued in its own name;

3000 (2) have a seal and alter the seal at will;

3001 (3) borrow money and issue obligations, including refunding obligations, and provide  
3002 for the rights of holders of those obligations;

3003 (4) establish hazardous waste treatment, disposal, or storage surcharge schedules for

3004 facilities operated by, or under authority of, the authority, and require all private facility  
3005 operators who contract with the authority to collect fees for all hazardous waste received for  
3006 treatment, disposal, or storage by those private facilities;

3007 (5) promulgate rules pursuant to Title 63G, Chapter 3, Utah Administrative  
3008 Rulemaking Act, governing the exercise of its powers and fulfillment of its purposes;

3009 (6) enter into contracts and leases and execute all instruments necessary, convenient, or  
3010 desirable;

3011 (7) acquire, purchase, hold, lease, use, or dispose of any property or any interest in  
3012 property that is necessary, convenient, or desirable to carry out the purposes of this chapter, and  
3013 sell, lease, transfer, and dispose of any property or interest in property at any time required in  
3014 the exercise of its power, including~~[-, but not limited to,]~~ the sale, transfer, or disposal of any  
3015 materials, substances, or sources or forms of energy derived from any activity engaged in by  
3016 the authority;

3017 (8) contract with experts, advisers, consultants, and agents for needed services;

3018 (9) appoint officers and employees required for the performance of its duties, and fix  
3019 and determine their qualifications and duties;

3020 (10) make, or contract for, plans, surveys, and studies necessary, convenient, or  
3021 desirable to effectuate its purposes and powers and prepare any recommendations with respect  
3022 to those plans, surveys, or studies;

3023 (11) receive and accept aid or contributions from any source, including the United  
3024 States or the state, in the form of money, property, labor, or other things of value to be held,  
3025 used, and applied to carry out the purposes of this chapter, subject to the conditions imposed  
3026 upon that aid or contributions consistent with this chapter;

3027 (12) enter into agreements with any department, agency, or instrumentality of the  
3028 United States or this state, or any financial institution, or contractor for the purpose of leasing  
3029 and operating any facility;

3030 (13) consent to the modification of any obligation with the holder of that obligation, to  
3031 the extent permitted by the obligation, relating to rates of interest or to the time and payment of  
3032 any installment of principal or interest, or to the modification of any other contract, mortgage,  
3033 mortgage loan, mortgage loan commitment, or agreement of any kind to which it is a party;

3034 (14) pledge revenues from any hazardous waste treatment, disposal, and storage facility

3035 to secure payment of any obligations relating to that facility, including interest on, and  
3036 redemption of, those obligations;

3037 (15) execute or cause to be executed, mortgages, trust deeds, indentures, pledge  
3038 agreements, assignments, security agreements, and financing statements that encumber  
3039 property acquired, constructed, reconstructed, renovated, or repaired with the proceeds from the  
3040 sale of such obligations;

3041 (16) exercise the power of eminent domain;

3042 (17) do all other things necessary to comply with the requirements of 42 U.S.C.  
3043 Sections 6901-6986, the Resource Conservation and Recovery Act of 1976, and this part;

3044 (18) contract for the construction, operation, and maintenance of hazardous waste  
3045 treatment, storage, and disposal facilities, including plants, works, instrumentalities, or parts  
3046 thereof, for the collection, conveyance, treatment, exchange, storage, and disposal of hazardous  
3047 waste, subject to approval by the board; and

3048 (19) exercise any other powers or duties necessary or appropriate to carry out and  
3049 effectuate this chapter.

3050 Section 68. Section **19-9-109** is amended to read:

3051 **19-9-109. Security for obligations -- Provisions of security instruments.**

3052 (1) The principal and interest on any obligation issued pursuant to this chapter shall be  
3053 secured by:

3054 (a) a pledge and assignment of the proceeds earned by the facility built and acquired  
3055 with the proceeds of the obligations;

3056 (b) a mortgage or trust deed on the facility built and acquired with the proceeds from  
3057 the obligations; and

3058 (c) such other security on the facility as is deemed most advantageous by the authority.

3059 (2) Obligations authorized for issuance under this chapter and any mortgage or other  
3060 security given to secure such obligations may contain any provisions customarily contained in  
3061 security instruments, including~~[, but not limited to]~~:

3062 (a) the fixing and collection of fees from the facility;

3063 (b) the maintenance of insurance on the facility;

3064 (c) the creation and maintenance of special funds to receive revenues earned by the  
3065 facility; and

3066 (d) the rights and remedies available to obligation holders in the event of default.

3067 (3) All mortgages, trust deeds, security agreements, or trust indentures on a facility  
3068 shall provide, in the event of foreclosure, that no deficiency judgment may be entered against  
3069 the authority, the state, or any of the state's political subdivisions.

3070 (4) Any mortgage or other security instrument securing such obligations may provide  
3071 that in the event of a default in the payment of principal or interest or in the performance of any  
3072 agreement, that payment or performance may be enforced by the appointment of a receiver with  
3073 power to charge and collect fees and to apply the revenues from the facility in accordance with  
3074 the provisions of the security instrument.

3075 (5) Any mortgage or other security instrument made pursuant to this chapter may also  
3076 provide that in the event of default in payment or breach of a condition, that the mortgage may  
3077 be foreclosed or otherwise satisfied in any manner permitted by law, and that the trustee under  
3078 the mortgage or the holder of any obligation secured by such mortgage may, if the highest  
3079 bidder, purchase the security at foreclosure sale.

3080 Section 69. Section **19-10-104** is amended to read:

3081 **19-10-104. Requirements for creation of institutional control.**

3082 An environmental institutional control shall:

3083 (1) be in writing and shall be recorded by the owner of the real property in the county  
3084 recorder's office in the county where the real property is located;

3085 (2) contain a legal description of the area of the real property that is subject to the  
3086 institutional control;

3087 (3) include a statement documenting any requirements for maintenance of the  
3088 institutional control, including a description of the institutional control and the reason it must  
3089 remain in place to protect the public health, safety, or welfare, or the environment;

3090 (4) include a statement that the institutional control runs with the land and is binding  
3091 on all successors in interest unless or until the institutional control is removed as provided in  
3092 Section 19-10-105;

3093 (5) include a statement acknowledging the department's right of access to the property  
3094 at all reasonable times to verify that the institutional controls are being maintained;

3095 (6) include a statement explaining how the institutional control can be modified or  
3096 terminated and stating that if any person desires to cancel or modify the institutional control in

3097 the future, the person [~~must~~] shall obtain prior written approval from the executive director  
3098 pursuant to this chapter;

3099 (7) include a notarized signature of the executive director indicating approval of the  
3100 environmental institutional control; and

3101 (8) include the notarized signature of the property owner indicating approval of the  
3102 environmental institutional control.

3103 Section 70. Section **20A-1-401** is amended to read:

3104 **20A-1-401. Interpretation of election laws -- Computation of time.**

3105 (1) Courts and election officers shall construe the provisions of [~~Title 20A, Election~~  
3106 ~~Code,~~] this title liberally to carry out the intent of this title.

3107 (2) Except as provided under Subsection (3), Saturdays, Sundays, and holidays shall be  
3108 included in all computations of days made under the provisions of [~~Title 20A, Election Code~~]  
3109 this title.

3110 (3) Unless otherwise specifically provided for under this title [~~20A~~]:

3111 (a) when computing any number of days before or after a specified date or event under  
3112 this [~~Title 20A~~] title, the specified date or day of the event [~~shall not be~~] is not included in the  
3113 count; and

3114 (b) (i) if the commencement date of a time period preceding a specified date or event  
3115 falls on a Saturday, Sunday, or legal holiday, the following business day shall be used;

3116 (ii) if the last day of a time period following a specified date or event falls on a  
3117 Saturday, Sunday, or legal holiday, the time period shall be extended to the following business  
3118 day; and

3119 (iii) if a deadline that falls before or after a specified date or event falls on a Saturday,  
3120 Sunday, or legal holiday, the deadline shall be considered to fall on the following business day.

3121 Section 71. Section **20A-1-508** is amended to read:

3122 **20A-1-508. Midterm vacancies in county elected offices.**

3123 (1) As used in this section:

3124 (a) "County offices" includes the county executive, members of the county legislative  
3125 body, the county treasurer, the county sheriff, the county clerk, the county auditor, the county  
3126 recorder, the county surveyor, and the county assessor.

3127 (b) "County offices" does not mean the offices of president and vice president of the

3128 United States, United States senators and representatives, members of the Utah Legislature,  
3129 state constitutional officers, county attorneys, district attorneys, and judges.

3130 (2) (a) Until a replacement is selected as provided in this section and has qualified, the  
3131 county legislative body shall appoint an interim replacement to fill the vacant office by  
3132 following the procedures and requirements of this Subsection (2).

3133 (b) (i) To appoint an interim replacement, the county legislative body shall give notice  
3134 of the vacancy to the county central committee of the same political party of the prior office  
3135 holder and invite that committee to submit the names of three nominees to fill the vacancy.

3136 (ii) That county central committee shall, within 30 days, submit the names of three  
3137 nominees for the interim replacement to the county legislative body.

3138 (iii) The county legislative body shall, within 45 days after the vacancy occurs, appoint  
3139 one of those nominees to serve out the unexpired term.

3140 (c) (i) If the county legislative body fails to appoint an interim replacement to fill the  
3141 vacancy within 45 days, the county clerk shall send to the governor a letter that:

3142 (A) informs the governor that the county legislative body has failed to appoint a  
3143 replacement within the statutory time period; and

3144 (B) contains the list of nominees submitted by the party central committee.

3145 (ii) The governor shall appoint an interim replacement from that list of nominees to fill  
3146 the vacancy within 30 days after receipt of the letter.

3147 (d) A person appointed as interim replacement under this Subsection (2) shall hold  
3148 office until their successor is elected and has qualified.

3149 (3) (a) The requirements of this Subsection (3) apply to all county offices that become  
3150 vacant if:

3151 (i) the vacant office has an unexpired term of two years or more; and

3152 (ii) the vacancy occurs after the election at which the person was elected but before  
3153 April 10 of the next even-numbered year.

3154 (b) (i) When the conditions established in Subsection (3)(a) are met, the county clerk  
3155 shall notify the public and each registered political party that the vacancy exists.

3156 (ii) All persons intending to become candidates for the vacant office shall:

3157 (A) file a declaration of candidacy according to the procedures and requirements of  
3158 Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy; and

3159 (B) if nominated as a party candidate or qualified as an independent or write-in  
3160 candidate under Chapter 8, Political Party Formation and Procedures, run in the regular general  
3161 election.

3162 (4) (a) The requirements of this Subsection (4) apply to all county offices that become  
3163 vacant if:

3164 (i) the vacant office has an unexpired term of two years or more; and

3165 (ii) the vacancy occurs after April 9 of the next even-numbered year but more than 50  
3166 days before the regular primary election.

3167 (b) (i) When the conditions established in Subsection (4)(a) are met, the county clerk  
3168 shall notify the public and each registered political party that:

3169 (A) the vacancy exists; and

3170 (B) identifies the date and time by which a person interested in becoming a candidate  
3171 ~~[must]~~ shall file a declaration of candidacy.

3172 (ii) All persons intending to become candidates for the vacant offices shall, within five  
3173 days after the date that the notice is made, ending at the close of normal office hours on the  
3174 fifth day, file a declaration of candidacy for the vacant office as required by Chapter 9, Part 2,  
3175 Candidate Qualifications and Declarations of Candidacy.

3176 (iii) The county central committee of each party shall:

3177 (A) select a candidate or candidates from among those qualified candidates who have  
3178 filed declarations of candidacy; and

3179 (B) certify the name of the candidate or candidates to the county clerk at least 35 days  
3180 before the regular primary election.

3181 (5) (a) The requirements of this Subsection (5) apply to all county offices that become  
3182 vacant:

3183 (i) if the vacant office has an unexpired term of two years or more; and

3184 (ii) when 50 days or less remain before the regular primary election but more than 50  
3185 days remain before the regular general election.

3186 (b) When the conditions established in Subsection (5)(a) are met, the county central  
3187 committees of each political party registered under this title that wishes to submit a candidate  
3188 for the office shall summarily certify the name of one candidate to the county clerk for  
3189 placement on the regular general election ballot.

3190 (6) (a) The requirements of this Subsection (6) apply to all county offices that become  
3191 vacant:

3192 (i) if the vacant office has an unexpired term of less than two years; or

3193 (ii) if the vacant office has an unexpired term of two years or more but 50 days or less  
3194 remain before the next regular general election.

3195 (b) (i) When the conditions established in Subsection (6)(a) are met, the county  
3196 legislative body shall give notice of the vacancy to the county central committee of the same  
3197 political party as the prior office holder and invite that committee to submit the names of three  
3198 nominees to fill the vacancy.

3199 (ii) That county central committee shall, within 30 days, submit the names of three  
3200 nominees to fill the vacancy to the county legislative body.

3201 (iii) The county legislative body shall, within 45 days after the vacancy occurs, appoint  
3202 one of those nominees to serve out the unexpired term.

3203 (c) (i) If the county legislative body fails to appoint a person to fill the vacancy within  
3204 45 days, the county clerk shall send to the governor a letter that:

3205 (A) informs the governor that the county legislative body has failed to appoint a person  
3206 to fill the vacancy within the statutory time period; and

3207 (B) contains the list of nominees submitted by the party central committee.

3208 (ii) The governor shall appoint a person to fill the vacancy from that list of nominees to  
3209 fill the vacancy within 30 days after receipt of the letter.

3210 (d) A person appointed to fill the vacancy under this Subsection (6) shall hold office  
3211 until their successor is elected and has qualified.

3212 (7) Except as otherwise provided by law, the county legislative body may appoint  
3213 replacements to fill all vacancies that occur in those offices filled by appointment of the county  
3214 legislative body.

3215 (8) Nothing in this section prevents or prohibits independent candidates from filing a  
3216 declaration of candidacy for the office within the same time limits.

3217 (9) (a) Each person elected under Subsection (3), (4), or (5) to fill a vacancy in a  
3218 county office shall serve for the remainder of the unexpired term of the person who created the  
3219 vacancy and until a successor is elected and qualified.

3220 (b) Nothing in this section may be construed to contradict or alter the provisions of

3221 Section 17-16-6.

3222 Section 72. Section **20A-1-509.1** is amended to read:

3223 **20A-1-509.1. Procedure for filling midterm vacancy in county or district with 15**  
3224 **or more attorneys.**

3225 (1) When a vacancy occurs in the office of county or district attorney in a county or  
3226 district having 15 or more attorneys who are licensed active members in good standing with the  
3227 Utah State Bar and registered voters, the vacancy shall be filled as provided in this section.

3228 (2) (a) The requirements of this Subsection (2) apply when the office of county  
3229 attorney or district attorney becomes vacant and:

3230 (i) the vacant office has an unexpired term of two years or more; and

3231 (ii) the vacancy occurs before the third Friday in March of the even-numbered year.

3232 (b) When the conditions established in Subsection (2)(a) are met, the county clerk shall  
3233 notify the public and each registered political party that the vacancy exists.

3234 (c) All persons intending to become candidates for the vacant office shall:

3235 (i) file a declaration of candidacy according to the procedures and requirements of  
3236 [~~Title 20A,~~] Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy;

3237 (ii) if nominated as a party candidate or qualified as an independent or write-in  
3238 candidate under [~~Title 20A,~~] Chapter 9, Candidate Qualifications and Nominating Procedures,  
3239 run in the regular general election; and

3240 (iii) if elected, complete the unexpired term of the person who created the vacancy.

3241 (d) If the vacancy occurs after the second Friday in March and before the third Friday  
3242 in March, the time for filing a declaration of candidacy under Section 20A-9-202 shall be  
3243 extended until seven days after the county clerk gives notice under Subsection (2)(b), but no  
3244 later than the fourth Friday in March.

3245 (3) (a) The requirements of this Subsection (3) apply when the office of county  
3246 attorney or district attorney becomes vacant and:

3247 (i) the vacant office has an unexpired term of two years or more; and

3248 (ii) the vacancy occurs after the third Friday in March of the even-numbered year but  
3249 more than 50 days before the regular primary election.

3250 (b) When the conditions established in Subsection (3)(a) are met, the county clerk  
3251 shall:

3252 (i) notify the public and each registered political party that the vacancy exists; and  
3253 (ii) identify the date and time by which a person interested in becoming a candidate  
3254 ~~[must]~~ shall file a declaration of candidacy.

3255 (c) All persons intending to become candidates for the vacant office shall:  
3256 (i) within five days after the date that the notice is made, ending at at the close of  
3257 normal office hours on the fifth day, file a declaration of candidacy for the vacant office as  
3258 required by ~~[Title 20A,]~~ Chapter 9, Part 2, Candidate Qualifications and ~~[Nominating~~  
3259 ~~Procedures]~~ Declarations of Candidacy; and

3260 (ii) if elected, complete the unexpired term of the person who created the vacancy.

3261 (d) The county central committee of each party shall:  
3262 (i) select a candidate or candidates from among those qualified candidates who have  
3263 filed declarations of candidacy; and  
3264 (ii) certify the name of the candidate or candidates to the county clerk at least 35 days  
3265 before the regular primary election.

3266 (4) (a) The requirements of this Subsection (4) apply when the office of county  
3267 attorney or district attorney becomes vacant and:  
3268 (i) the vacant office has an unexpired term of two years or more; and  
3269 (ii) 50 days or less remain before the regular primary election but more than 50 days  
3270 remain before the regular general election.

3271 (b) When the conditions established in Subsection (4)(a) are met, the county central  
3272 committees of each registered political party that wish to submit a candidate for the office shall  
3273 summarily certify the name of one candidate to the county clerk for placement on the regular  
3274 general election ballot.

3275 (c) The candidate elected shall complete the unexpired term of the person who created  
3276 the vacancy.

3277 (5) (a) The requirements of this Subsection (5) apply when the office of county  
3278 attorney or district attorney becomes vacant and:  
3279 (i) the vacant office has an unexpired term of less than two years; or  
3280 (ii) the vacant office has an unexpired term of two years or more but 50 days or less  
3281 remain before the next regular general election.

3282 (b) When the conditions established in Subsection (5)(a) are met, the county legislative

3283 body shall give notice of the vacancy to the county central committee of the same political  
3284 party of the prior officeholder and invite that committee to submit the names of three nominees  
3285 to fill the vacancy.

3286 (c) That county central committee shall, within 30 days of receiving notice from the  
3287 county legislative body, submit to the county legislative body the names of three nominees to  
3288 fill the vacancy.

3289 (d) The county legislative body shall, within 45 days after the vacancy occurs, appoint  
3290 one of those nominees to serve out the unexpired term.

3291 (e) If the county legislative body fails to appoint a person to fill the vacancy within 45  
3292 days, the county clerk shall send to the governor a letter that:

3293 (i) informs the governor that the county legislative body has failed to appoint a person  
3294 to fill the vacancy within the statutory time period; and

3295 (ii) contains the list of nominees submitted by the party central committee.

3296 (f) The governor shall appoint a person to fill the vacancy from that list of nominees  
3297 within 30 days after receipt of the letter.

3298 (g) A person appointed to fill the vacancy under Subsection (5) shall complete the  
3299 unexpired term of the person who created the vacancy.

3300 (6) Nothing in this section prevents or prohibits independent candidates from filing a  
3301 declaration of candidacy for the office within the required time limits.

3302 Section 73. Section **20A-1-703** is amended to read:

3303 **20A-1-703. Proceedings by registered voter.**

3304 (1) Any registered voter who has information that any provisions of this title have been  
3305 violated by any candidate for whom the registered voter had the right to vote, by any personal  
3306 campaign committee of that candidate, by any member of that committee, or by any election  
3307 official, may file a verified petition with the lieutenant governor.

3308 (2) (a) The lieutenant governor shall gather information and determine if a special  
3309 investigation is necessary.

3310 (b) If the lieutenant governor determines that a special investigation is necessary, the  
3311 lieutenant governor shall refer the information to the attorney general, who shall:

3312 (i) bring a special proceeding to investigate and determine whether or not there has  
3313 been a violation; and

3314 (ii) appoint special counsel to conduct that proceeding on behalf of the state.  
3315 (3) If it appears from the petition or otherwise that sufficient evidence is obtainable to  
3316 show that there is probable cause to believe that a violation has occurred, the attorney general  
3317 shall:

- 3318 (a) grant leave to bring the proceeding; and
- 3319 (b) appoint special counsel to conduct the proceeding.

3320 (4) (a) If leave is granted, the registered voter may, by a special proceeding brought in  
3321 the district court in the name of the state upon the relation of the registered voter, investigate  
3322 and determine whether or not the candidate, candidate's personal campaign committee, any  
3323 member of the candidate's personal campaign committee, or any election officer has violated  
3324 any provision of this title.

- 3325 (b) (i) In the proceeding, the complaint shall:
  - 3326 (A) be served with the summons; and
  - 3327 (B) set forth the name of the person or persons who have allegedly violated this title  
3328 and the grounds of those violations in detail.
- 3329 (ii) The complaint may not be amended except by leave of the court.
- 3330 (iii) The summons and complaint in the proceeding shall be filed with the court no  
3331 later than five days after they are served.
- 3332 (c) (i) The answer to the complaint shall be served and filed within 10 days after the  
3333 service of the summons and complaint.
  - 3334 (ii) Any allegation of new matters in the answer shall be considered controverted by the  
3335 adverse party without reply, and the proceeding shall be considered at issue and stand ready for  
3336 trial upon five days' notice of trial.
- 3337 (d) (i) All proceedings initiated under this section have precedence over any other civil  
3338 actions.
  - 3339 (ii) The court shall always be considered open for the trial of the issues raised in this  
3340 proceeding.
  - 3341 (iii) The proceeding shall be tried and determined as a civil action without a jury, with  
3342 the court determining all issues of fact and issues of law.
  - 3343 (iv) If more than one proceeding is pending or the election of more than one person is  
3344 investigated and contested, the court may:

3345 (A) order the proceedings consolidated and heard together; and

3346 (B) equitably apportion costs and disbursements.

3347 (e) (i) Either party may request a change of venue as provided by law in civil actions,  
3348 but application for a change of venue [~~must~~] shall be made within five days after service of  
3349 summons and complaint.

3350 (ii) The judge shall decide the request for a change of venue and issue any necessary  
3351 orders within three days after the application is made.

3352 (iii) If a party fails to request a change of venue within five days of service, [~~he~~] that  
3353 party has waived [~~his~~] that party's right to a change of venue.

3354 (f) (i) If judgment is in favor of the plaintiff, the relator may petition the judge to  
3355 recover his taxable costs and disbursements against the person whose right to the office is  
3356 contested.

3357 (ii) The judge may not award costs to the defendant unless it appears that the  
3358 proceeding was brought in bad faith.

3359 (iii) Subject to the limitations contained in Subsection (4)(f), the judge may decide  
3360 whether or not to award costs and disbursements.

3361 (5) Nothing in this section may be construed to prohibit any other civil or criminal  
3362 actions or remedies against alleged violators.

3363 (6) In the event a witness asserts a privilege against self-incrimination, testimony and  
3364 evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of  
3365 Immunity.

3366 Section 74. Section **20A-2-102.5** is amended to read:

3367 **20A-2-102.5. Voter registration deadline.**

3368 (1) Except as provided in Section 20A-2-201 and in [~~Title 20A,~~] Chapter 3, Part 4,  
3369 Voting by Members of the Military and by Other Persons Living or Serving Abroad, a person  
3370 who fails to submit a correctly completed voter registration form on or before the voter  
3371 registration deadline [~~shall not~~] may not be permitted to vote in the election.

3372 (2) The voter registration deadline shall be the date that is 30 calendar days before the  
3373 date of the election.

3374 Section 75. Section **20A-2-105** is amended to read:

3375 **20A-2-105. Determining residency.**

3376 (1) Except as provided in Subsection (4), election officials and judges shall apply the  
3377 standards and requirements of this section when determining whether or not a person is a  
3378 resident for purposes of interpreting this title or the Utah Constitution.

3379 (2) A "resident" is a person who resides within a specific voting precinct in Utah as  
3380 provided in this section.

3381 (3) (a) A person resides in Utah if:

3382 (i) the person's principal place of residence is within Utah; and

3383 (ii) the person has a present intention to continue residency within Utah permanently or  
3384 indefinitely.

3385 (b) A person resides within a particular voting precinct if, as of the date of registering  
3386 to vote, the person has the person's principal place of residence in that voting precinct.

3387 (4) (a) The principal place of residence of any person shall be determined by applying  
3388 the provisions of this Subsection (4).

3389 (b) A person's "principal place of residence" is that place in which the person's  
3390 habitation is fixed and to which, whenever the person is absent, the person has the intention of  
3391 returning.

3392 (c) A person has not gained or lost a residence solely because the person is present in  
3393 Utah or present in a voting precinct or absent from Utah or absent from the person's voting  
3394 precinct because the person is:

3395 (i) employed in the service of the United States or of Utah;

3396 (ii) a student at any institution of learning;

3397 (iii) incarcerated in prison or jail; or

3398 (iv) residing upon any Indian or military reservation.

3399 (d) (i) A member of the armed forces of the United States is not a resident of Utah  
3400 merely because that member is stationed at any military facility within Utah.

3401 (ii) In order to be a resident of Utah, that member [~~must~~] shall meet the other  
3402 requirements of this section.

3403 (e) (i) Except as provided in Subsection (4)(e)(ii), a person has not lost the person's  
3404 residence if that person leaves the person's home to go into a foreign country or into another  
3405 state or into another voting precinct within Utah for temporary purposes with the intention of  
3406 returning.

3407 (ii) If that person has voted in that other state or voting precinct, the person is a resident  
3408 of that other state or voting precinct.

3409 (f) A person is not a resident of any county or voting precinct if that person comes for  
3410 temporary purposes and does not intend to make that county or voting precinct the person's  
3411 home.

3412 (g) If a person removes to another state with the intention of making it the person's  
3413 principal place of residence, the person loses the person's residence in Utah.

3414 (h) If a person moves to another state with the intent of remaining there for an  
3415 indefinite time as a place of permanent residence, the person loses the person's residence in  
3416 Utah, even though the person intends to return at some future time.

3417 (i) (i) Except as provided in Subsection (4)(i)(ii), the place where a person's family  
3418 resides is presumed to be the person's place of residence.

3419 (ii) A person may rebut the presumption established in Subsection (4)(i)(i) by proving  
3420 the person's intent to remain at a place other than where the person's family resides.

3421 (j) (i) A person has changed [~~his~~] the person's residence if:

3422 (A) the person has acted affirmatively to [~~remove himself~~] move from one geographic  
3423 location; and

3424 (B) the person has an intent to remain in another place.

3425 (ii) There can only be one residence.

3426 (iii) A residence cannot be lost until another is gained.

3427 (5) In computing the period of residence, a person shall:

3428 (a) include the day on which the person's residence begins; and

3429 (b) exclude the day of the next election.

3430 (6) (a) There is a presumption that a person is a resident of Utah and of a voting  
3431 precinct and intends to remain in Utah permanently or indefinitely if the person makes an oath  
3432 or affirmation upon a registration application form that the person's residence address and place  
3433 of residence is within a specific voting precinct in Utah.

3434 (b) The election officers and election officials shall allow that person to register and  
3435 vote unless, upon a challenge by a registrar or some other person, it is shown by law or by clear  
3436 and convincing evidence that:

3437 (i) the person does not intend to remain permanently or indefinitely in Utah; or

3438 (ii) the person is incarcerated in prison or jail.

3439 (7) (a) The rules set forth in this section for determining place of residence for voting  
3440 purposes do not apply to a person incarcerated in prison or jail.

3441 (b) For voting registration purposes, a person incarcerated in prison or jail is  
3442 considered to reside in the voting precinct in which the person's place of residence was located  
3443 before incarceration.

3444 (8) If a person's principal place of residence is a residential parcel of one acre in size or  
3445 smaller that is divided by the boundary line between two or more counties, that person shall be  
3446 considered a resident of the county in which a majority of the residential parcel lies.

3447 Section 76. Section **20A-2-306** is amended to read:

3448 **20A-2-306. Removing names from the official register -- Determining and**  
3449 **confirming change of residence.**

3450 (1) A county clerk may not remove a voter's name from the official register on the  
3451 grounds that the voter has changed residence unless the voter:

3452 (a) confirms in writing that the voter has changed residence to a place outside the  
3453 county; or

3454 (b) (i) has not voted in an election during the period beginning on the date of the notice  
3455 required by Subsection (3), and ending on the day after the date of the second regular general  
3456 election occurring after the date of the notice; and

3457 (ii) has failed to respond to the notice required by Subsection (3).

3458 (2) (a) When a county clerk obtains information that a voter's address has changed and  
3459 it appears that the voter still resides within the same county, the county clerk shall:

3460 (i) change the official register to show the voter's new address; and

3461 (ii) send to the voter, by forwardable mail, the notice required by Subsection (3)  
3462 printed on a postage prepaid, preaddressed return form.

3463 (b) When a county clerk obtains information that a voter's address has changed and it  
3464 appears that the voter now resides in a different county, the county clerk shall verify the  
3465 changed residence by sending to the voter, by forwardable mail, the notice required by  
3466 Subsection (3) printed on a postage prepaid, preaddressed return form.

3467 (3) Each county clerk shall use substantially the following form to notify voters whose  
3468 addresses have changed:

3469 "VOTER REGISTRATION NOTICE

3470 We have been notified that your residence has changed. Please read, complete, and  
3471 return this form so that we can update our voter registration records. What is your current  
3472 street address?

3473 \_\_\_\_\_  
3474 Street City County State Zip

3475 If you have not changed your residence or have moved but stayed within the same  
3476 county, you must complete and return this form to the county clerk so that it is received by the  
3477 county clerk no later than 30 days before the date of the election. If you fail to return this form  
3478 within that time:

3479 - you may be required to show evidence of your address to the poll worker before being  
3480 allowed to vote in either of the next two regular general elections; or

3481 - if you fail to vote at least once from the date this notice was mailed until the passing  
3482 of two regular general elections, you will no longer be registered to vote. If you have changed  
3483 your residence and have moved to a different county in Utah, you may register to vote by  
3484 contacting the county clerk in your county.

3485 \_\_\_\_\_  
3486 Signature of Voter"

3487 (4) (a) Except as provided in Subsection (4)(b), the county clerk may not remove the  
3488 names of any voters from the official register during the 90 days before a regular primary  
3489 election and the 90 days before a regular general election.

3490 (b) The county clerk may remove the names of voters from the official register during  
3491 the 90 days before a regular primary election and the 90 days before a regular general election  
3492 if:

- 3493 (i) the voter requests, in writing, that [~~his~~] the voter's name be removed; or
- 3494 (ii) the voter has died.

3495 (c) (i) After a county clerk mails a notice as required in this section, the clerk may list  
3496 that voter as inactive.

3497 (ii) An inactive voter [~~must~~] shall be allowed to vote, sign petitions, and have all other  
3498 privileges of a registered voter.

3499 (iii) A county is not required to send routine mailings to inactive voters and is not

3500 required to count inactive voters when dividing precincts and preparing supplies.

3501 Section 77. Section **20A-4-201** is amended to read:

3502 **20A-4-201. Delivery of election returns.**

3503 (1) One poll worker shall deliver the ballot box, the lock, and the key to:

3504 (a) the election officer; or

3505 (b) the location directed by the election officer.

3506 (2) (a) Before they adjourn, the poll workers shall choose one or more of their number  
3507 to deliver the election returns to the election officer.

3508 (b) That poll worker or those poll workers shall:

3509 (i) deliver the unopened envelopes or pouches to the election officer or counting center  
3510 immediately but no later than 24 hours after the polls close; or

3511 (ii) if the polling place is 15 miles or more from the county seat, mail the election  
3512 returns to the election officer by registered mail from the post office most convenient to the  
3513 polling place within 24 hours after the polls close.

3514 (3) The election officer shall pay each poll worker reasonable compensation for travel  
3515 that is necessary to deliver the election returns and to return to the polling place.

3516 (4) The requirements of this section [~~shall not~~] do not prohibit transmission of the  
3517 unofficial vote count to the counting center via electronic means, provided that reasonable  
3518 security measures are taken to preserve the integrity and privacy of the transmission.

3519 Section 78. Section **20A-5-403** is amended to read:

3520 **20A-5-403. Polling places -- Booths -- Ballot boxes -- Inspections --**  
3521 **Arrangements.**

3522 (1) Each election officer shall:

3523 (a) designate polling places for each voting precinct in the jurisdiction; and

3524 (b) obtain the approval of the county or municipal legislative body or local district  
3525 governing board for those polling places.

3526 (2) (a) For each polling place, the election officer shall provide:

3527 (i) an American flag;

3528 (ii) a sufficient number of voting booths or compartments;

3529 (iii) the voting devices, voting booths, ballots, ballot boxes, ballot labels, ballot sheets,  
3530 write-in ballots, and any other records and supplies necessary to enable a voter to vote;

- 3531 (iv) the constitutional amendment cards required by Part 1, Election Notices and  
3532 Instructions;
- 3533 (v) voter information pamphlets required by [~~Title 20A,~~] Chapter 7, Part 7, Voter  
3534 Information Pamphlet;
- 3535 (vi) the instruction cards required by Section 20A-5-102; and
- 3536 (vii) a sign, to be prominently displayed in the polling place, indicating that valid voter  
3537 identification is required for every voter before the voter may vote and listing the forms of  
3538 identification that constitute valid voter identification.
- 3539 (b) Each election officer shall ensure that:
- 3540 (i) each voting booth is at a convenient height for writing, and is arranged so that the  
3541 voter can prepare [~~his~~] the voter's ballot screened from observation;
- 3542 (ii) there are a sufficient number of voting booths or voting devices to accommodate  
3543 the voters at that polling place; and
- 3544 (iii) there is at least one voting booth or voting device that is configured to  
3545 accommodate persons with disabilities.
- 3546 (c) Each county clerk shall provide a ballot box for each polling place that is large  
3547 enough to properly receive and hold the ballots to be cast.
- 3548 (3) (a) All polling places shall be physically inspected by each county clerk to ensure  
3549 access by a person with a disability.
- 3550 (b) Any issues concerning inaccessibility to polling places by a person with a disability  
3551 discovered during the inspections referred to in Subsection (3)(a) or reported to the county  
3552 clerk shall be:
- 3553 (i) forwarded to the Office of the Lieutenant Governor; and
- 3554 (ii) within six months of the time of the complaint, the issue of inaccessibility shall be  
3555 either:
- 3556 (A) remedied at the particular location by the county clerk;
- 3557 (B) the county clerk shall designate an alternative accessible location for the particular  
3558 precinct; or
- 3559 (C) if no practical solution can be identified, file with the Office of the Lieutenant  
3560 Governor a written explanation identifying the reasons compliance cannot reasonably be met.
- 3561 (4) (a) The municipality in which the election is held shall pay the cost of conducting

3562 each municipal election, including the cost of printing and supplies.

3563 (b) (i) Costs assessed by a county clerk to a municipality under this section [~~shall not~~]  
3564 may not exceed the actual costs incurred by the county clerk.

3565 (ii) The actual costs shall include:

3566 (A) costs of or rental fees associated with the use of election equipment and supplies;  
3567 and

3568 (B) reasonable and necessary administrative costs.

3569 (5) The county clerk shall make detailed entries of all proceedings had under this  
3570 chapter.

3571 Section 79. Section **20A-6-302** is amended to read:

3572 **20A-6-302. Paper ballots -- Placement of candidates' names.**

3573 (1) Each election officer shall ensure, for paper ballots in regular general elections,  
3574 that:

3575 (a) except for candidates for state school board and local school boards:

3576 (i) each candidate is listed by party; and

3577 (ii) candidates' surnames are listed in alphabetical order on the ballots when two or  
3578 more candidates' names are required to be listed on a ticket under the title of an office;

3579 (b) the names of candidates for the State Board of Education are placed on the ballot as  
3580 certified by the lieutenant governor under Section 20A-14-105;

3581 (c) if candidates for membership on a local board of education were selected in a  
3582 regular primary election, the name of the candidate who received the most votes in the regular  
3583 primary election is listed first on the ballot; and

3584 (d) if candidates for membership on a local board of education were not selected in the  
3585 regular primary election, the names of the candidates are listed on the ballot in the order  
3586 determined by a lottery conducted by the county clerk.

3587 (2) (a) The election officer may not allow the name of a candidate who dies or  
3588 withdraws before election day to be printed upon the ballots.

3589 (b) If the ballots have already been printed, the election officer:

3590 (i) shall, if possible, cancel the name of the dead or withdrawn candidate by drawing a  
3591 line through the candidate's name before the ballots are delivered to voters; and

3592 (ii) may not count any votes for that dead or withdrawn candidate.

3593 (3) (a) When there is only one candidate for county attorney at the regular general  
3594 election in counties that have three or fewer registered voters of the county who are licensed  
3595 active members in good standing of the Utah State Bar, the county clerk shall cause that  
3596 candidate's name and party affiliation, if any, to be placed on a separate section of the ballot  
3597 with the following question: "Shall (name of candidate) be elected to the office of county  
3598 attorney? Yes \_\_\_\_ No \_\_\_\_."

3599 (b) If the number of "Yes" votes exceeds the number of "No" votes, the candidate is  
3600 elected to the office of county attorney.

3601 (c) If the number of "No" votes exceeds the number of "Yes" votes, the candidate is not  
3602 elected and may not take office, nor may ~~he~~ the candidate continue in the office past the end  
3603 of the term resulting from any prior election or appointment.

3604 (d) When the name of only one candidate for county attorney is printed on the ballot  
3605 under authority of this Subsection (3), the county clerk may not count any write-in votes  
3606 received for the office of county attorney.

3607 (e) If no qualified person files for the office of county attorney or if the candidate is not  
3608 elected by the voters, the county legislative body shall appoint the county attorney as provided  
3609 in Section 20A-1-509.2.

3610 (f) If the candidate whose name would, except for this Subsection (3)(f), be placed on  
3611 the ballot under Subsection (3)(a) has been elected on a ballot under Subsection (3)(a) to the  
3612 two consecutive terms immediately preceding the term for which the candidate is seeking  
3613 election, Subsection (3)(a) ~~shall not~~ does not apply and that candidate shall be considered to  
3614 be an unopposed candidate the same as any other unopposed candidate for another office,  
3615 unless a petition is filed with the county clerk before the date of that year's primary election  
3616 that:

3617 (i) requests the procedure set forth in Subsection (3)(a) to be followed; and

3618 (ii) contains the signatures of registered voters in the county representing in number at  
3619 least 25% of all votes cast in the county for all candidates for governor at the last election at  
3620 which a governor was elected.

3621 (4) (a) When there is only one candidate for district attorney at the regular general  
3622 election in a prosecution district that has three or fewer registered voters of the district who are  
3623 licensed active members in good standing of the Utah State Bar, the county clerk shall cause

3624 that candidate's name and party affiliation, if any, to be placed on a separate section of the  
3625 ballot with the following question: "Shall (name of candidate) be elected to the office of district  
3626 attorney? Yes \_\_\_\_ No \_\_\_\_."

3627 (b) If the number of "Yes" votes exceeds the number of "No" votes, the candidate is  
3628 elected to the office of district attorney.

3629 (c) If the number of "No" votes exceeds the number of "Yes" votes, the candidate is not  
3630 elected and may not take office, nor may ~~he~~ the candidate continue in the office past the end  
3631 of the term resulting from any prior election or appointment.

3632 (d) When the name of only one candidate for district attorney is printed on the ballot  
3633 under authority of this Subsection (4), the county clerk may not count any write-in votes  
3634 received for the office of district attorney.

3635 (e) If no qualified person files for the office of district attorney, or if the only candidate  
3636 is not elected by the voters under this subsection, the county legislative body shall appoint a  
3637 new district attorney for a four-year term as provided in Section 20A-1-509.2.

3638 (f) If the candidate whose name would, except for this Subsection (4)(f), be placed on  
3639 the ballot under Subsection (4)(a) has been elected on a ballot under Subsection (4)(a) to the  
3640 two consecutive terms immediately preceding the term for which the candidate is seeking  
3641 election, Subsection (4)(a) ~~shall not~~ does not apply and that candidate shall be considered to  
3642 be an unopposed candidate the same as any other unopposed candidate for another office,  
3643 unless a petition is filed with the county clerk before the date of that year's primary election  
3644 that:

- 3645 (i) requests the procedure set forth in Subsection (4)(a) to be followed; and
- 3646 (ii) contains the signatures of registered voters in the county representing in number at  
3647 least 25% of all votes cast in the county for all candidates for governor at the last election at  
3648 which a governor was elected.

3649 Section 80. Section **20A-7-202** is amended to read:

3650 **20A-7-202. Statewide initiative process -- Application procedures -- Time to**  
3651 **gather signatures -- Grounds for rejection.**

3652 (1) Persons wishing to circulate an initiative petition shall file an application with the  
3653 lieutenant governor.

3654 (2) The application shall contain:

- 3655 (a) the name and residence address of at least five sponsors of the initiative petition;
- 3656 (b) a statement indicating that each of the sponsors:
- 3657 (i) is a resident of Utah; and
- 3658 (ii) has voted in a regular general election in Utah within the last three years;
- 3659 (c) the signature of each of the sponsors, attested to by a notary public;
- 3660 (d) a copy of the proposed law that includes:
- 3661 (i) the title of the proposed law, which clearly expresses the subject of the law; and
- 3662 (ii) the text of the proposed law; and
- 3663 (e) a statement indicating whether or not persons gathering signatures for the petition
- 3664 may be paid for doing so.
- 3665 (3) The application and its contents are public when filed with the lieutenant governor.
- 3666 (4) (a) The sponsors shall qualify the petition for the regular general election ballot no
- 3667 later than one year after the application is filed.
- 3668 (b) If the sponsors fail to qualify the petition for that ballot, the sponsors [~~must~~] shall:
- 3669 (i) submit a new application;
- 3670 (ii) obtain new signature sheets; and
- 3671 (iii) collect signatures again.
- 3672 (5) The lieutenant governor shall reject the application and not issue circulation sheets
- 3673 if:
- 3674 (a) the law proposed by the initiative is patently unconstitutional;
- 3675 (b) the law proposed by the initiative is nonsensical;
- 3676 (c) the proposed law could not become law if passed;
- 3677 (d) the law contains more than one subject;
- 3678 (e) the subject of the law is not clearly expressed in the law's title; or
- 3679 (f) the law proposed by the initiative is identical or substantially similar to a law
- 3680 proposed by an initiative that was submitted to the county clerks and lieutenant governor for
- 3681 certification and evaluation within two years preceding the date on which the application for
- 3682 this initiative was filed.
- 3683 Section 81. Section **20A-7-204.1** is amended to read:
- 3684 **20A-7-204.1. Public hearings to be held before initiative petitions are circulated.**
- 3685 (1) (a) After issuance of the initial fiscal impact estimate by the Governor's Office of

3686 Planning and Budget and before circulating initiative petitions for signature statewide, sponsors  
3687 of the initiative petition shall hold at least seven public hearings throughout Utah as follows:

- 3688 (i) one in the Bear River region -- Box Elder, Cache, or Rich County;
- 3689 (ii) one in the Southwest region -- Beaver, Garfield, Iron, Kane, or Washington  
3690 County;
- 3691 (iii) one in the Mountain region -- Summit, Utah, or Wasatch County;
- 3692 (iv) one in the Central region -- Juab, Millard, Piute, Sanpete, Sevier, or Wayne  
3693 County;
- 3694 (v) one in the Southeast region -- Carbon, Emery, Grand, or San Juan County;
- 3695 (vi) one in the Uintah Basin region -- Daggett, Duchesne, or Uintah County; and
- 3696 (vii) one in the Wasatch Front region -- Davis, Morgan, Salt Lake, Tooele, or Weber  
3697 County.

3698 (b) Of the seven meetings, at least two of the meetings [~~must~~] shall be held in a first or  
3699 second class county, but not in the same county.

3700 (2) At least three calendar days before the date of the public hearing, the sponsors  
3701 shall:

- 3702 (a) provide written notice of the public hearing to:
  - 3703 (i) the lieutenant governor for posting on the state's website; and
  - 3704 (ii) each state senator, state representative, and county commission or county council  
3705 member who is elected in whole or in part from the region where the public hearing will be  
3706 held; and

- 3707 (b) publish written notice of the public hearing detailing its time, date, and location:
  - 3708 (i) in at least one newspaper of general circulation in each county in the region where  
3709 the public hearing will be held; and

3710 (ii) on the Utah Public Notice Website created in Section 63F-1-701.

3711 (3) (a) During the public hearing, the sponsors shall either:

- 3712 (i) video tape or audio tape the public hearing and, when the hearing is complete,  
3713 deposit the complete audio or video tape of the meeting with the lieutenant governor; or
- 3714 (ii) take comprehensive minutes of the public hearing, detailing the names and titles of  
3715 each speaker and summarizing each speaker's comments.

3716 (b) The lieutenant governor shall make copies of the tapes or minutes available to the

3717 public.

3718 Section 82. Section **20A-7-702 (Superseded 01/01/12)** is amended to read:

3719 **20A-7-702 (Superseded 01/01/12). Voter information pamphlet -- Form --**

3720 **Contents -- Distribution.**

3721 (1) The lieutenant governor shall ensure that all information submitted for publication  
3722 in the voter information pamphlet is:

3723 (a) printed and bound in a single pamphlet;

3724 (b) printed in clear readable type, no less than 10 point, except that the text of any  
3725 measure may be set forth in eight-point type; and

3726 (c) printed on a quality and weight of paper that best serves the voters.

3727 (2) The voter information pamphlet shall contain the following items in this order:

3728 (a) a cover title page;

3729 (b) an introduction to the pamphlet by the lieutenant governor;

3730 (c) a table of contents;

3731 (d) a list of all candidates for constitutional offices;

3732 (e) a list of candidates for each legislative district;

3733 (f) a 100-word statement of qualifications for each candidate for the office of governor,  
3734 lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the  
3735 candidate to the lieutenant governor's office before 5 p.m. on the date that falls 105 days before  
3736 the date of the election;

3737 (g) information pertaining to all measures to be submitted to the voters, beginning a  
3738 new page for each measure and containing, in the following order for each measure:

3739 (i) a copy of the number and ballot title of the measure;

3740 (ii) the final vote cast by the Legislature on the measure if it is a measure submitted by  
3741 the Legislature or by referendum;

3742 (iii) the impartial analysis of the measure prepared by the Office of Legislative  
3743 Research and General Counsel;

3744 (iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the  
3745 measure, the arguments against the measure, and the rebuttal to the arguments against the  
3746 measure, with the name and title of the authors at the end of each argument or rebuttal;

3747 (v) for each constitutional amendment, a complete copy of the text of the constitutional

3748 amendment, with all new language underlined, and all deleted language placed within brackets;

3749 (vi) for each initiative qualified for the ballot, a copy of the measure as certified by the  
3750 lieutenant governor and a copy of the fiscal impact estimate prepared according to Section  
3751 20A-7-202.5; and

3752 (vii) for each referendum qualified for the ballot, a complete copy of the text of the law  
3753 being submitted to the voters for their approval or rejection, with all new language underlined  
3754 and all deleted language placed within brackets, as applicable;

3755 (h) a description provided by the Judicial Council of the selection and retention process  
3756 for judges, including, in the following order:

3757 (i) a description of the judicial selection process;

3758 (ii) a description of the judicial performance evaluation process;

3759 (iii) a description of the judicial retention election process;

3760 (iv) a list of the criteria and minimum standards of judicial performance evaluation;

3761 (v) the names of the judges standing for retention election; and

3762 (vi) for each judge:

3763 (A) the counties in which the judge is subject to retention election;

3764 (B) a short biography of professional qualifications and a recent photograph;

3765 (C) for each standard of performance, a statement identifying whether or not the judge  
3766 met the standard and, if not, the manner in which the judge failed to meet the standard;

3767 (D) a statement provided by the Utah Supreme Court identifying the cumulative  
3768 number of informal reprimands, when consented to by the judge in accordance with Title 78A,  
3769 Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders of censure and  
3770 suspension issued by the Utah Supreme Court under Utah Constitution Article VIII, Section 13  
3771 during the judge's current term and the immediately preceding term, and a detailed summary of  
3772 the supporting reasons for each violation of the Code of Judicial Conduct that the judge has  
3773 received; and

3774 (E) a statement identifying whether or not the judge was certified by the Judicial  
3775 Council;

3776 (vii) (A) except as provided in Subsection (2)(h)(vii)(B), for each judge, in graphic  
3777 format, the responses for each attorney, jury, and other survey question used by the Judicial  
3778 Council for certification of judges, displayed in 1% increments; and

3779 (B) notwithstanding Subsection (2)(h)(vii)(A), if the sample size for the survey for a  
3780 particular judge is too small to provide statistically reliable information in 1% increments, the  
3781 survey results for that judge shall be reported as being above or below 70% and a statement by  
3782 the surveyor explaining why the survey is statistically unreliable shall also be included;

3783 (i) an explanation of ballot marking procedures prepared by the lieutenant governor,  
3784 indicating the ballot marking procedure used by each county and explaining how to mark the  
3785 ballot for each procedure;

3786 (j) voter registration information, including information on how to obtain an absentee  
3787 ballot;

3788 (k) a list of all county clerks' offices and phone numbers; and

3789 (l) on the back cover page, a printed copy of the following statement signed by the  
3790 lieutenant governor:

3791 "I, \_\_\_\_\_ (print name), Lieutenant Governor of Utah, certify that the  
3792 measures contained in this pamphlet will be submitted to the voters of Utah at the election to  
3793 be held throughout the state on \_\_\_\_ (date of election), and that this pamphlet is complete and  
3794 correct according to law. SEAL

3795 Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this \_\_\_\_ day  
3796 of \_\_\_\_ (month), \_\_\_\_ (year)

3797 (signed) \_\_\_\_\_  
3798 Lieutenant Governor"

3799 [~~(3) The lieutenant governor shall not more than 40 nor less than 15 days before the~~  
3800 ~~date voting commences:]~~

3801 (3) No earlier than 40 days, and no later than 15 days, before the day on which voting  
3802 commences, the lieutenant governor shall:

3803 (a) (i) distribute one copy of the voter information pamphlet to each household within  
3804 the state; or

3805 (ii) ensure that one copy of the voter information pamphlet is placed in one issue of  
3806 every newspaper of general circulation in the state;

3807 (b) ensure that a sufficient number of printed voter information pamphlets are available  
3808 for distribution as required by this section;

3809 (c) provide voter information pamphlets to each county clerk for free distribution upon

3810 request and for placement at polling places; and

3811 (d) ensure that the distribution of the voter information pamphlets is completed 15 days  
3812 before the election.

3813 Section 83. Section **20A-7-702 (Effective 01/01/12)** is amended to read:

3814 **20A-7-702 (Effective 01/01/12). Voter information pamphlet -- Form -- Contents**  
3815 **-- Distribution.**

3816 (1) The lieutenant governor shall ensure that all information submitted for publication  
3817 in the voter information pamphlet is:

3818 (a) printed and bound in a single pamphlet;

3819 (b) printed in clear readable type, no less than 10 point, except that the text of any  
3820 measure may be set forth in eight-point type; and

3821 (c) printed on a quality and weight of paper that best serves the voters.

3822 (2) The voter information pamphlet shall contain the following items in this order:

3823 (a) a cover title page;

3824 (b) an introduction to the pamphlet by the lieutenant governor;

3825 (c) a table of contents;

3826 (d) a list of all candidates for constitutional offices;

3827 (e) a list of candidates for each legislative district;

3828 (f) a 100-word statement of qualifications for each candidate for the office of governor,  
3829 lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the  
3830 candidate to the lieutenant governor's office before 5 p.m. on the date that falls 105 days before  
3831 the date of the election;

3832 (g) information pertaining to all measures to be submitted to the voters, beginning a  
3833 new page for each measure and containing, in the following order for each measure:

3834 (i) a copy of the number and ballot title of the measure;

3835 (ii) the final vote cast by the Legislature on the measure if it is a measure submitted by  
3836 the Legislature or by referendum;

3837 (iii) the impartial analysis of the measure prepared by the Office of Legislative  
3838 Research and General Counsel;

3839 (iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the  
3840 measure, the arguments against the measure, and the rebuttal to the arguments against the

3841 measure, with the name and title of the authors at the end of each argument or rebuttal;

3842 (v) for each constitutional amendment, a complete copy of the text of the constitutional  
3843 amendment, with all new language underlined, and all deleted language placed within brackets;

3844 (vi) for each initiative qualified for the ballot, a copy of the measure as certified by the  
3845 lieutenant governor and a copy of the fiscal impact estimate prepared according to Section  
3846 20A-7-202.5; and

3847 (vii) for each referendum qualified for the ballot, a complete copy of the text of the law  
3848 being submitted to the voters for their approval or rejection, with all new language underlined  
3849 and all deleted language placed within brackets, as applicable;

3850 (h) a description provided by the Judicial Performance Evaluation Commission of the  
3851 selection and retention process for judges, including, in the following order:

3852 (i) a description of the judicial selection process;

3853 (ii) a description of the judicial performance evaluation process;

3854 (iii) a description of the judicial retention election process;

3855 (iv) a list of the criteria of the judicial performance evaluation and the minimum  
3856 performance standards;

3857 (v) the names of the judges standing for retention election; and

3858 (vi) for each judge:

3859 (A) a list of the counties in which the judge is subject to retention election;

3860 (B) a short biography of professional qualifications and a recent photograph;

3861 (C) for each standard of performance, a statement identifying whether or not the judge  
3862 met the standard and, if not, the manner in which the judge failed to meet the standard;

3863 (D) a statement provided by the Utah Supreme Court identifying the cumulative  
3864 number of informal reprimands, when consented to by the judge in accordance with Title 78A,  
3865 Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders of censure and  
3866 suspension issued by the Utah Supreme Court under Utah Constitution Article VIII, Section 13  
3867 during the judge's current term and the immediately preceding term, and a detailed summary of  
3868 the supporting reasons for each violation of the Code of Judicial Conduct that the judge has  
3869 received;

3870 (E) a statement identifying whether or not the Judicial Performance Evaluation  
3871 Commission recommends the judge be retained or declines to make a recommendation; and

3872 (F) any statement provided by a judge who is not recommended for retention by the  
3873 Judicial Performance Evaluation Commission under Section 78A-12-203;

3874 (vii) for each judge, in a bar graph, the average of responses to each survey category,  
3875 displayed with an identification of the minimum acceptable score as set by Section 78A-12-205  
3876 and the average score of all judges of the same court level; and

3877 (viii) ~~[an Internet]~~ a website address that contains the Judicial Performance Evaluation  
3878 Commission's report on the judge's performance evaluation;

3879 (i) an explanation of ballot marking procedures prepared by the lieutenant governor,  
3880 indicating the ballot marking procedure used by each county and explaining how to mark the  
3881 ballot for each procedure;

3882 (j) voter registration information, including information on how to obtain an absentee  
3883 ballot;

3884 (k) a list of all county clerks' offices and phone numbers; and

3885 (l) on the back cover page, a printed copy of the following statement signed by the  
3886 lieutenant governor:

3887 "I, \_\_\_\_\_ (print name), Lieutenant Governor of Utah, certify that the  
3888 measures contained in this pamphlet will be submitted to the voters of Utah at the election to  
3889 be held throughout the state on \_\_\_\_ (date of election), and that this pamphlet is complete and  
3890 correct according to law. SEAL

3891 Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this \_\_\_\_ day  
3892 of \_\_\_\_ (month), \_\_\_\_ (year)

3893 (signed) \_\_\_\_\_  
3894 Lieutenant Governor"

3895 ~~[(3) The lieutenant governor shall not more than 40 nor less than 15 days before the  
3896 date voting commences:]~~

3897 (3) No earlier than 40 days, and no later than 15 days, before the day on which voting  
3898 commences, the lieutenant governor shall:

3899 (a) (i) distribute one copy of the voter information pamphlet to each household within  
3900 the state; or

3901 (ii) ensure that one copy of the voter information pamphlet is placed in one issue of  
3902 every newspaper of general circulation in the state;

3903 (b) ensure that a sufficient number of printed voter information pamphlets are available  
3904 for distribution as required by this section;

3905 (c) provide voter information pamphlets to each county clerk for free distribution upon  
3906 request and for placement at polling places; and

3907 (d) ensure that the distribution of the voter information pamphlets is completed 15 days  
3908 before the election.

3909 Section 84. Section **20A-7-706** is amended to read:

3910 **20A-7-706. Copies of arguments to be sent to opposing authors -- Rebuttal**

3911 **arguments.**

3912 (1) When the lieutenant governor has received the arguments for and against a measure  
3913 to be submitted to the voters, the lieutenant governor shall immediately send copies of the  
3914 arguments in favor of the measure to the authors of the arguments against and copies of the  
3915 arguments against to the authors of the arguments in favor.

3916 (2) The authors may prepare and submit rebuttal arguments not exceeding 250 words.

3917 (3) (a) The rebuttal arguments [~~must~~] shall be filed with the lieutenant governor:

3918 (i) for constitutional amendments and referendum petitions, not later than the day that  
3919 falls 120 days before the date of the election; and

3920 (ii) for initiatives, not later than August 30.

3921 (b) Except as provided in Subsection (3)(d), the authors may not amend or change the  
3922 rebuttal arguments after they are submitted to the lieutenant governor.

3923 (c) Except as provided in Subsection (3)(d), the lieutenant governor may not alter the  
3924 arguments in any way.

3925 (d) The lieutenant governor and the authors of a rebuttal argument may jointly modify  
3926 a rebuttal argument after it is submitted if:

3927 (i) they jointly agree that changes to the rebuttal argument must be made to correct  
3928 spelling or grammatical errors; and

3929 (ii) the rebuttal argument has not yet been submitted for typesetting.

3930 (4) The lieutenant governor shall ensure that:

3931 (a) rebuttal arguments are printed in the same manner as the direct arguments; and

3932 (b) each rebuttal argument follows immediately after the direct argument which it  
3933 seeks to rebut.

3934 Section 85. Section **20A-9-403** is amended to read:

3935 **20A-9-403. Regular primary elections.**

3936 (1) (a) The fourth Tuesday of June of each even-numbered year is designated as regular  
3937 primary election day.

3938 (b) Each registered political party that chooses to use the primary election process to  
3939 nominate some or all of its candidates shall comply with the requirements of this section.

3940 (2) (a) As a condition for using the state's election system, each registered political  
3941 party that wishes to participate in the primary election shall:

3942 (i) declare their intent to participate in the primary election;

3943 (ii) identify one or more registered political parties whose members may vote for the  
3944 registered political party's candidates and whether or not persons identified as unaffiliated with  
3945 a political party may vote for the registered political party's candidates; and

3946 (iii) certify that information to the lieutenant governor no later than 5 p.m. on March 1  
3947 of each even-numbered year.

3948 (b) As a condition for using the state's election system, each registered political party  
3949 that wishes to participate in the primary election shall:

3950 (i) certify the name and office of all of the registered political party's candidates to the  
3951 lieutenant governor no later than 5 p.m. on May 13 of each even-numbered year; and

3952 (ii) certify the name and office of each of its county candidates to the county clerks by  
3953 5 p.m. on May 13 of each even-numbered year.

3954 (c) By 5 p.m. on May 16 of each even-numbered year, the lieutenant governor shall  
3955 send the county clerks a certified list of the names of all statewide or multicounty candidates  
3956 that ~~must~~ shall be printed on the primary ballot.

3957 (d) (i) Except as provided in Subsection (2)(d)(ii), if a registered political party does  
3958 not wish to participate in the primary election, it shall submit the names of its county  
3959 candidates to the county clerks and the names of all of its candidates to the lieutenant governor  
3960 by 5 p.m. on May 30 of each even-numbered year.

3961 (ii) A registered political party's candidates for President and Vice-President of the  
3962 United States shall be certified to the lieutenant governor as provided in Subsection  
3963 20A-9-202(4).

3964 (e) Each political party shall certify the names of its presidential and vice-presidential

3965 candidates and presidential electors to the lieutenant governor's office no later than September  
3966 8 of each presidential election year.

3967 (3) The county clerk shall:

3968 (a) review the declarations of candidacy filed by candidates for local boards of  
3969 education to determine if more than two candidates have filed for the same seat;

3970 (b) place the names of all candidates who have filed a declaration of candidacy for a  
3971 local board of education seat on the nonpartisan section of the ballot if more than two  
3972 candidates have filed for the same seat; and

3973 (c) conduct a lottery to determine the order of the candidates' names on the ballot.

3974 (4) After the county clerk receives the certified list from a registered political party, the  
3975 county clerk shall post or publish a primary election notice in substantially the following form:

3976 "Notice is given that a primary election will be held Tuesday, June \_\_\_\_\_,  
3977 \_\_\_\_\_(year), to nominate party candidates for the parties and nonpartisan offices listed on  
3978 the primary ballot. The polling place for voting precinct \_\_\_\_\_ is \_\_\_\_\_. The polls will open at 7  
3979 a.m. and continue open until 8 p.m. of the same day. Attest: county clerk".

3980 (5) (a) Candidates receiving the highest number of votes cast for each office at the  
3981 regular primary election are nominated by their party or nonpartisan group for that office.

3982 (b) If two or more candidates are to be elected to the office at the regular general  
3983 election, those party candidates equal in number to positions to be filled who receive the  
3984 highest number of votes at the regular primary election are the nominees of their party for those  
3985 positions.

3986 (6) (a) When a tie vote occurs in any primary election for any national, state, or other  
3987 office that represents more than one county, the governor, lieutenant governor, and attorney  
3988 general shall, at a public meeting called by the governor and in the presence of the candidates  
3989 involved, select the nominee by lot cast in whatever manner the governor determines.

3990 (b) When a tie vote occurs in any primary election for any county office, the district  
3991 court judges of the district in which the county is located shall, at a public meeting called by  
3992 the judges and in the presence of the candidates involved, select the nominee by lot cast in  
3993 whatever manner the judges determine.

3994 (7) The expense of providing all ballots, blanks, or other supplies to be used at any  
3995 primary election provided for by this section, and all expenses necessarily incurred in the

3996 preparation for or the conduct of that primary election shall be paid out of the treasury of the  
3997 county or state, in the same manner as for the regular general elections.

3998 Section 86. Section **20A-11-401** is amended to read:

3999 **20A-11-401. Officeholder financial reporting requirements -- Year-end summary**  
4000 **report.**

4001 (1) (a) Each officeholder shall file a summary report by January 10 of each year.

4002 (b) An officeholder that is required to file a summary report both as an officeholder and  
4003 as a candidate for office under the requirements of this chapter may file a single summary  
4004 report as a candidate and an officeholder, provided that the combined report meets the  
4005 requirements of:

4006 (i) this section; and

4007 (ii) the section that provides the requirements for the summary report [~~that must be~~]  
4008 filed by the officeholder in the officeholder's capacity of a candidate for office.

4009 (2) (a) Each summary report shall include the following information as of December 31  
4010 of the previous year:

4011 (i) the net balance of the last summary report, if any;

4012 (ii) a single figure equal to the total amount of receipts received since the last summary  
4013 report, if any;

4014 (iii) a single figure equal to the total amount of expenditures made since the last  
4015 summary report, if any;

4016 (iv) a detailed listing of each contribution and public service assistance received since  
4017 the last summary report;

4018 (v) for each nonmonetary contribution:

4019 (A) the fair market value of the contribution with that information provided by the  
4020 contributor; and

4021 (B) a specific description of the contribution;

4022 (vi) a detailed listing of each expenditure made since the last summary report;

4023 (vii) for each nonmonetary expenditure, the fair market value of the expenditure; and

4024 (viii) a net balance for the year consisting of the net balance from the last summary  
4025 report plus all receipts minus all expenditures.

4026 (b) (i) For all individual contributions or public service assistance of \$50 or less, a

4027 single aggregate figure may be reported without separate detailed listings.

4028 (ii) Two or more contributions from the same source that have an aggregate total of  
4029 more than \$50 may not be reported in the aggregate, but shall be reported separately.

4030 (c) In preparing the report, all receipts and expenditures shall be reported as of  
4031 December 31 of the previous year.

4032 (3) The summary report shall contain a paragraph signed by the officeholder certifying  
4033 that, to the best of the officeholder's knowledge, all receipts and all expenditures have been  
4034 reported as of December 31 of the last calendar year and that there are no bills or obligations  
4035 outstanding and unpaid except as set forth in that report.

4036 Section 87. Section **20A-11-1603** is amended to read:

4037 **20A-11-1603. Financial disclosure form -- Required when filing for candidacy --**  
4038 **Public availability.**

4039 (1) Candidates seeking the following offices shall file a financial disclosure with the  
4040 filing officer at the time of filing a declaration of candidacy:

4041 (a) state constitutional officer;

4042 (b) state legislator; or

4043 (c) State Board of Education member.

4044 (2) A filing officer [~~shall not~~] may not accept a declaration of candidacy for an office  
4045 listed in Subsection (1) unless the declaration of candidacy is accompanied by the financial  
4046 disclosure required by this section.

4047 (3) The financial disclosure form shall contain the same requirements and shall be in  
4048 the same format as the financial disclosure form described in Section 76-8-109.

4049 (4) The financial disclosure form shall:

4050 (a) be made available for public inspection at the filing officer's place of business;

4051 (b) if the filing officer is an individual other than the lieutenant governor, be provided  
4052 to the lieutenant governor within five business days of the date of filing and be made publicly  
4053 available at the Office of the Lieutenant Governor; and

4054 (c) be made publicly available on the Statewide Electronic Voter Information Website  
4055 administered by the lieutenant governor.

4056 Section 88. Section **20A-14-103** is amended to read:

4057 **20A-14-103. State Board of Education members -- When elected -- Qualifications**

4058 -- **Avoiding conflicts of interest.**

4059 (1) (a) In 2002 and every four years thereafter, one member each shall be elected from  
4060 new Districts 2, 3, 5, 6, 9, 10, 14, and 15 to serve a four-year term.

4061 (b) In 2004 and every four years thereafter, one member each shall be elected from new  
4062 Districts 4, 7, 8, 11, 12, and 13 to serve a four-year term.

4063 (c) (i) Because of the combination of certain former districts, the state school board  
4064 members elected from old Districts 2 and 4 who will reside in new District 1 may not serve out  
4065 the term for which they were elected, but shall stand for election in 2002 for a term of office of  
4066 four years from the realigned district in which each resides.

4067 (ii) If one of the incumbent state school board members from new District 1 indicates  
4068 in writing to the lieutenant governor that the school board member will not seek reelection, that  
4069 incumbent state school board member may serve until January 1, 2003 and the other incumbent  
4070 state school board member shall serve out the term for which the member was elected, which is  
4071 until January 1, 2005.

4072 (2) (a) A person seeking election to the state school board [~~must~~] shall have been a  
4073 resident of the state school board district in which the person is seeking election for at least one  
4074 year as of the date of the election.

4075 (b) A person who has resided within the state school board district, as the boundaries  
4076 of the district exist on the date of the election, for one year immediately preceding the date of  
4077 the election shall be considered to have met the requirements of this Subsection (2).

4078 (3) A member shall:

4079 (a) be and remain a registered voter in the state board district from which the member  
4080 was elected or appointed; and

4081 (b) maintain the member's primary residence within the state board district from which  
4082 the member was elected or appointed during the member's term of office.

4083 (4) A member of the State Board of Education may not, during the member's term of  
4084 office, also serve as an employee of:

4085 (a) the board;

4086 (b) the Utah State Office of Education; or

4087 (c) the Utah State Office of Rehabilitation.

4088 Section 89. Section ~~20A-14-201~~ is amended to read:

4089           **20A-14-201. Boards of education -- School board districts -- Creation --**  
4090 **Reapportionment.**

4091           (1) (a) The county legislative body, for local school districts whose boundaries  
4092 encompass more than a single municipality, and the municipal legislative body, for school  
4093 districts contained completely within a municipality, shall divide the local school district into  
4094 local school board districts as required under Subsection 20A-14-202(1)(a).

4095           (b) The county and municipal legislative bodies shall divide the school district so that  
4096 the local school board districts are substantially equal in population and are as contiguous and  
4097 compact as practicable.

4098           (2) (a) County and municipal legislative bodies shall reapportion district boundaries to  
4099 meet the population, compactness, and contiguity requirements of this section:

4100           (i) at least once every 10 years;

4101           (ii) if a new district is created:

4102           (A) within 45 days after the canvass of an election at which voters approve the creation  
4103 of a new district; and

4104           (B) at least 60 days before the candidate filing deadline for a school board election;

4105           (iii) whenever districts are consolidated;

4106           (iv) whenever a district loses more than 20% of the population of the entire school  
4107 district to another district;

4108           (v) whenever a district loses more than 50% of the population of a local school board  
4109 district to another district;

4110           (vi) whenever a district receives new residents equal to at least 20% of the population  
4111 of the district at the time of the last reapportionment because of a transfer of territory from  
4112 another district; and

4113           (vii) whenever it is necessary to increase the membership of a board from five to seven  
4114 members as a result of changes in student membership under Section 20A-14-202.

4115           (b) If a school district receives territory containing less than 20% of the population of  
4116 the transferee district at the time of the last reapportionment, the local school board may assign  
4117 the new territory to one or more existing school board districts.

4118           (3) (a) Reapportionment does not affect the right of any school board member to  
4119 complete the term for which the member was elected.

4120 (b) (i) After reapportionment, representation in a local school board district shall be  
4121 determined as provided in this Subsection (3).

4122 (ii) If only one board member whose term extends beyond reapportionment lives  
4123 within a reapportioned local school board district, that board member shall represent that local  
4124 school board district.

4125 (iii) (A) If two or more members whose terms extend beyond reapportionment live  
4126 within a reapportioned local school board district, the members involved shall select one  
4127 member by lot to represent the local school board district.

4128 (B) The other members shall serve at-large for the remainder of their terms.

4129 (C) The at-large board members shall serve in addition to the designated number of  
4130 board members for the board in question for the remainder of their terms.

4131 (iv) If there is no board member living within a local school board district whose term  
4132 extends beyond reapportionment, the seat shall be treated as vacant and filled as provided in  
4133 this part.

4134 (4) (a) If, before an election affected by reapportionment, the county or municipal  
4135 legislative body that conducted the reapportionment determines that one or more members  
4136 [~~must~~] shall be elected to terms of two years to meet this part's requirements for staggered  
4137 terms, the legislative body shall determine by lot which of the reapportioned local school board  
4138 districts will elect members to two-year terms and which will elect members to four-year terms.

4139 (b) All subsequent elections are for four-year terms.

4140 (5) Within 10 days after any local school board district boundary change, the county or  
4141 municipal legislative body making the change shall send an accurate map or plat of the  
4142 boundary change to the Automated Geographic Reference Center created under Section  
4143 63F-1-506.

4144 Section 90. Section **20A-14-202** is amended to read:

4145 **20A-14-202. Local boards of education -- Membership -- When elected --**

4146 **Qualifications -- Avoiding conflicts of interest.**

4147 (1) (a) Except as provided in Subsection (1)(b), the board of education of a school  
4148 district with a student population of up to 24,000 students shall consist of five members.

4149 (b) The board of education of a school district with a student population of more than  
4150 10,000 students but fewer than 24,000 students shall increase from five to seven members

4151 beginning with the 2004 regular general election.

4152 (c) The board of education of a school district with a student population of 24,000 or  
4153 more students shall consist of seven members.

4154 (d) Student population is based on the October 1 student count submitted by districts to  
4155 the State Office of Education.

4156 (e) If the number of members of a local school board is required to change under  
4157 Subsection (1)(b), the board shall be reapportioned and elections conducted as provided in  
4158 Sections 20A-14-201 and 20A-14-203.

4159 (f) A school district which now has or increases to a seven-member board shall  
4160 maintain a seven-member board regardless of subsequent changes in student population.

4161 (g) (i) Members of a local board of education shall be elected at each regular general  
4162 election.

4163 (ii) Except as provided in Subsection (1)(g)(iii), no more than three members of a local  
4164 board of education may be elected to a five-member board, nor more than four members  
4165 elected to a seven-member board, in any election year.

4166 (iii) More than three members of a local board of education may be elected to a  
4167 five-member board and more than four members elected to a seven-member board in any  
4168 election year only when required by reapportionment or to fill a vacancy or to implement  
4169 Subsection (1)(b).

4170 (h) One member of the local board of education shall be elected from each local school  
4171 board district.

4172 (2) (a) For an election held after the 2008 general election, a person seeking election to  
4173 a local school board [~~must~~] shall have been a resident of the local school board district in  
4174 which the person is seeking election for at least one year as of the date of the election.

4175 (b) A person who has resided within the local school board district, as the boundaries  
4176 of the district exist on the date of the election, for one year immediately preceding the date of  
4177 the election shall be considered to have met the requirements of this Subsection (2).

4178 (3) A member of a local school board shall:

4179 (a) be and remain a registered voter in the local school board district from which the  
4180 member is elected or appointed; and

4181 (b) maintain the member's primary residence within the local school board district from

4182 which the member is elected or appointed during the member's term of office.

4183 (4) A member of a local school board may not, during the member's term in office, also  
4184 serve as an employee of that board.

4185 Section 91. Section **22-1-11** is amended to read:

4186 **22-1-11. Transactions prior to May 12, 1925, excepted.**

4187 The provisions of this chapter [~~shall not~~] do not apply to transactions taking place prior  
4188 to May 12, 1925.

4189 Section 92. Section **22-3-104** is amended to read:

4190 **22-3-104. Trustee's power to adjust.**

4191 (1) A trustee may adjust between principal and income to the extent the trustee  
4192 considers necessary if the trustee invests and manages trust assets as a prudent investor, the  
4193 terms of the trust describe the amount that may or [~~must~~] shall be distributed to a beneficiary  
4194 by referring to the trust's income, and the trustee determines, after applying the rules in  
4195 Subsection 22-3-103(1), that the trustee is unable to comply with Subsection 22-3-103(2).

4196 (2) In deciding whether and to what extent to exercise the power conferred by  
4197 Subsection (1), a trustee shall consider all factors relevant to the trust and its beneficiaries,  
4198 including the following factors to the extent they are relevant:

4199 (a) the nature, purpose, and expected duration of the trust;

4200 (b) the intent of the settlor;

4201 (c) the identity and circumstances of the beneficiaries;

4202 (d) the needs for liquidity, regularity of income, and preservation and appreciation of  
4203 capital;

4204 (e) (i) the assets held in the trust;

4205 (ii) the extent to which [~~they~~] the assets consist of financial assets, interests in closely  
4206 held enterprises, tangible and intangible personal property, or real property;

4207 (iii) the extent to which an asset is used by a beneficiary; and

4208 (iv) whether an asset was purchased by the trustee or received from the settlor;

4209 (f) the net amount allocated to income under the other sections of this chapter and the  
4210 increase or decrease in the value of the principal assets, which the trustee may estimate as to  
4211 assets for which market values are not readily available;

4212 (g) whether and to what extent the terms of the trust give the trustee the power to

4213 invade principal or accumulate income or prohibit the trustee from invading principal or  
4214 accumulating income, and the extent to which the trustee has exercised a power from time to  
4215 time to invade principal or accumulate income;

4216 (h) the actual and anticipated effect of economic conditions on principal and income  
4217 and effects of inflation and deflation; and

4218 (i) the anticipated tax consequences of an adjustment.

4219 (3) A trustee may not make an adjustment:

4220 (a) that diminishes the income interest in a trust that requires all of the income to be  
4221 paid at least annually to a spouse and for which an estate tax or gift tax marital deduction  
4222 would be allowed, in whole or in part, if the trustee did not have the power to make the  
4223 adjustment;

4224 (b) that reduces the actuarial value of the income interest in a trust to which a person  
4225 transfers property with the intent to qualify for a gift tax exclusion;

4226 (c) that changes the amount payable to a beneficiary as a fixed annuity or a fixed  
4227 fraction of the value of the trust assets;

4228 (d) from any amount that is permanently set aside for charitable purposes under a will  
4229 or the terms of a trust unless both income and principal are so set aside;

4230 (e) if possessing or exercising the power to make an adjustment causes an individual to  
4231 be treated as the owner of all or part of the trust for income tax purposes, and the individual  
4232 would not be treated as the owner if the trustee did not possess the power to make an  
4233 adjustment;

4234 (f) if possessing or exercising the power to make an adjustment causes all or part of the  
4235 trust assets to be included for estate tax purposes in the estate of an individual who has the  
4236 power to remove a trustee or appoint a trustee, or both, and the assets would not be included in  
4237 the estate of the individual if the trustee did not possess the power to make an adjustment;

4238 (g) if the trustee is a beneficiary of the trust; or

4239 (h) if the trustee is not a beneficiary, but the adjustment would benefit the trustee  
4240 directly or indirectly.

4241 (4) If Subsection (3)(e), (f), (g), or (h) applies to a trustee and there is more than one  
4242 trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the  
4243 exercise of the power by the remaining trustee or trustees is not permitted by the terms of the

4244 trust.

4245 (5) A trustee may release the entire power conferred by Subsection (1) or may release  
4246 only the power to adjust from income to principal or the power to adjust from principal to  
4247 income if the trustee is uncertain about whether possessing or exercising the power will cause a  
4248 result described in Subsections (3)(a) through (f) or Subsection (3)(h) or if the trustee  
4249 determines that possessing or exercising the power will or may deprive the trust of a tax benefit  
4250 or impose a tax burden not described in Subsection (3). The release may be permanent or for a  
4251 specified period, including a period measured by the life of an individual.

4252 (6) Terms of a trust that limit the power of a trustee to make an adjustment between  
4253 principal and income do not affect the application of this section unless it is clear from the  
4254 terms of the trust that the terms are intended to deny the trustee the power of adjustment  
4255 conferred by Subsection (1).

4256 Section 93. Section **22-3-202** is amended to read:

4257 **22-3-202. Distribution to residuary and remainder beneficiaries.**

4258 (1) Each beneficiary described in Subsection 22-3-201(4) is entitled to receive a  
4259 portion of the net income equal to the beneficiary's fractional interest in undistributed principal  
4260 assets, using values as of the distribution date. If a fiduciary makes more than one distribution  
4261 of assets to beneficiaries to whom this section applies, each beneficiary, including one who  
4262 does not receive part of the distribution, is entitled, as of each distribution date, to the net  
4263 income the fiduciary has received after the date of death or terminating event or earlier  
4264 distribution date but has not distributed as of the current distribution date.

4265 (2) In determining a beneficiary's share of net income, the following rules apply:

4266 (a) The beneficiary is entitled to receive a portion of the net income equal to the  
4267 beneficiary's fractional interest in the undistributed principal assets immediately before the  
4268 distribution date, including assets that later may be sold to meet principal obligations.

4269 (b) The beneficiary's fractional interest in the undistributed principal assets [~~must~~] shall  
4270 be calculated without regard to property specifically given to a beneficiary and property  
4271 required to pay pecuniary amounts not in trust.

4272 (c) The beneficiary's fractional interest in the undistributed principal assets [~~must~~] shall  
4273 be calculated on the basis of the aggregate value of those assets as of the distribution date  
4274 without reducing the value by any unpaid principal obligation.

4275 (d) The distribution date for purposes of this section may be the date as of which the  
4276 fiduciary calculates the value of the assets if that date is reasonably near the date on which  
4277 assets are actually distributed.

4278 (3) If a fiduciary does not distribute all of the collected but undistributed net income to  
4279 each person as of a distribution date, the fiduciary shall maintain appropriate records showing  
4280 the interest of each beneficiary in that net income.

4281 (4) A fiduciary may apply the rules in this section, to the extent that the fiduciary  
4282 considers it appropriate, to net gain or loss realized after the date of death or terminating event  
4283 or earlier distribution date from the disposition of a principal asset if this section applies to the  
4284 income from the asset.

4285 Section 94. Section **22-3-302** is amended to read:

4286 **22-3-302. Apportionment of receipts and disbursements when decedent dies or**  
4287 **income interest begins.**

4288 (1) A trustee shall allocate an income receipt or disbursement other than one to which  
4289 Subsection 22-3-201(1) applies to principal if its due date occurs before a decedent dies in the  
4290 case of an estate or before an income interest begins in the case of a trust or successive income  
4291 interest.

4292 (2) A trustee shall allocate an income receipt or disbursement to income if its due date  
4293 occurs on or after the date on which a decedent dies or an income interest begins and it is a  
4294 periodic due date. An income receipt or disbursement [~~must~~] shall be treated as accruing from  
4295 day to day if its due date is not periodic or it has no due date. The portion of the receipt or  
4296 disbursement accruing before the date on which a decedent dies or an income interest begins  
4297 [~~must~~] shall be allocated to principal and the balance [~~must~~] shall be allocated to income.

4298 (3) An item of income or an obligation is due on the date the payer is required to make  
4299 a payment. If a payment date is not stated, there is no due date for the purposes of this chapter.  
4300 Distributions to shareholders or other owners from an entity to which Section 22-3-401 applies  
4301 are considered to be due on the date fixed by the entity for determining who is entitled to  
4302 receive the distribution or, if no date is fixed, on the declaration date for the distribution. A  
4303 due date is periodic for receipts or disbursements that must be paid at regular intervals under a  
4304 lease or an obligation to pay interest or if an entity customarily makes distributions at regular  
4305 intervals.

4306 Section 95. Section **22-3-303** is amended to read:

4307 **22-3-303. Apportionment when income interest ends.**

4308 (1) In this section, "undistributed income" means net income received before the date  
4309 on which an income interest ends. The term does not include an item of income or expense  
4310 that is due or accrued or net income that has been added or is required to be added to principal  
4311 under the terms of the trust.

4312 (2) When a mandatory income interest ends, the trustee shall pay to a mandatory  
4313 income beneficiary who survives that date, or the estate of a deceased mandatory income  
4314 beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed  
4315 income that is not disposed of under the terms of the trust unless the beneficiary has an  
4316 unqualified power to revoke more than 5% of the trust immediately before the income interest  
4317 ends. In the latter case, the undistributed income from the portion of the trust that may be  
4318 revoked [~~must~~] shall be added to principal.

4319 (3) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of  
4320 the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by  
4321 applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate,  
4322 or other tax requirements.

4323 Section 96. Section **22-3-403** is amended to read:

4324 **22-3-403. Receipts from entities -- Business and other activities conducted by**  
4325 **trustee.**

4326 (1) If a trustee who conducts a business or other activity determines that it is in the best  
4327 interest of all the beneficiaries to account separately for the business or activity instead of  
4328 accounting for it as part of the trust's general accounting records, the trustee may maintain  
4329 separate accounting records for its transactions, whether or not its assets are segregated from  
4330 other trust assets.

4331 (2) A trustee who accounts separately for a business or other activity may determine  
4332 the extent to which its net cash receipts [~~must~~] shall be retained for working capital, the  
4333 acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the  
4334 business or activity, and the extent to which the remaining net cash receipts are accounted for  
4335 as principal or income in the trust's general accounting records. If a trustee sells assets of the  
4336 business or other activity, other than in the ordinary course of the business or activity, the

4337 trustee shall account for the net amount received as principal in the trust's general accounting  
4338 records to the extent the trustee determines that the amount received is no longer required in  
4339 the conduct of the business.

4340 (3) Activities for which a trustee may maintain separate accounting records include:

4341 (a) retail, manufacturing, service, and other traditional business activities;

4342 (b) farming;

4343 (c) raising and selling livestock and other animals;

4344 (d) management of rental properties;

4345 (e) extraction of minerals and other natural resources;

4346 (f) timber operations; and

4347 (g) activities to which Section 22-3-414 applies.

4348 Section 97. Section **22-3-405** is amended to read:

4349 **22-3-405. Receipts not normally apportioned -- Rental property.**

4350 To the extent that a trustee accounts for receipts from rental property pursuant to this  
4351 section, the trustee shall allocate to income an amount received as rent of real or personal  
4352 property, including an amount received for cancellation or renewal of a lease. An amount  
4353 received as a refundable deposit, including a security deposit or a deposit that is to be applied  
4354 as rent for future periods, [~~must~~] shall be added to principal and held subject to the terms of the  
4355 lease and is not available for distribution to a beneficiary until the trustee's contractual  
4356 obligations have been satisfied with respect to that amount.

4357 Section 98. Section **22-3-406** is amended to read:

4358 **22-3-406. Receipts not normally apportioned -- Obligation to pay money.**

4359 (1) An amount received as interest, whether determined at a fixed, variable, or floating  
4360 rate, on an obligation to pay money to the trustee, including an amount received as  
4361 consideration for prepaying principal, [~~must~~] shall be allocated to income without any  
4362 provision for amortization of premium.

4363 (2) A trustee shall allocate to principal an amount received from the sale, redemption,  
4364 or other disposition of an obligation to pay money to the trustee more than one year after it is  
4365 purchased or acquired by the trustee, including an obligation whose purchase price or value  
4366 when it is acquired is less than its value at maturity. If the obligation matures within one year  
4367 after it is purchased or acquired by the trustee, an amount received in excess of its purchase

4368 price or its value when acquired by the trust [~~must~~] shall be allocated to income.

4369 (3) This section does not apply to an obligation to which Section 22-3-409, 22-3-410,  
4370 22-3-411, 22-3-412, 22-3-414, or 22-3-415 applies.

4371 Section 99. Section **22-3-411** is amended to read:

4372 **22-3-411. Receipts normally apportioned -- Minerals, water, and other natural**  
4373 **resources.**

4374 (1) To the extent that a trustee accounts for receipts from an interest in minerals or  
4375 other natural resources pursuant to this section, the trustee shall allocate them as follows:

4376 (a) If received as nominal delay rental or nominal annual rent on a lease, a receipt  
4377 [~~must~~] shall be allocated to income.

4378 (b) If received from a production payment, a receipt [~~must~~] shall be allocated to income  
4379 if and to the extent that the agreement creating the production payment provides a factor for  
4380 interest or its equivalent. The balance [~~must~~] shall be allocated to principal.

4381 (c) If an amount received as a royalty, shut-in-well payment, take-or-pay payment,  
4382 bonus, or delay rental is more than nominal, 90% [~~must~~] shall be allocated to principal and the  
4383 balance to income.

4384 (d) If an amount is received from a working interest or any other interest not provided  
4385 for in Subsection (1)(a), (b), or (c), 90% of the net amount received [~~must~~] shall be allocated to  
4386 principal and the balance to income.

4387 (2) An amount received on account of an interest in water that is renewable [~~must~~]  
4388 shall be allocated to income. If the water is not renewable, 90% of the amount [~~must~~] shall be  
4389 allocated to principal and the balance to income.

4390 (3) This chapter applies whether or not a decedent or donor was extracting minerals,  
4391 water, or other natural resources before the interest became subject to the trust.

4392 (4) If a trust owns an interest in minerals, water, or other natural resources on May 3,  
4393 2004, the trustee may allocate receipts from the interest as provided in this chapter or in the  
4394 manner used by the trustee before May 3, 2004. If the trust acquires an interest in minerals,  
4395 water, or other natural resources after May 3, 2004, the trustee shall allocate receipts from the  
4396 interest as provided in this chapter.

4397 Section 100. Section **22-3-414** is amended to read:

4398 **22-3-414. Receipts normally apportioned -- Derivatives and options.**

4399 (1) In this section, "derivative" means a contract or financial instrument or a  
4400 combination of contracts and financial instruments which gives a trust the right or obligation to  
4401 participate in some or all changes in the price of a tangible or intangible asset or group of  
4402 assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or  
4403 a group of assets.

4404 (2) To the extent that a trustee does not account under Section 22-3-403 for  
4405 transactions in derivatives, the trustee shall allocate to principal receipts from and  
4406 disbursements made in connection with those transactions.

4407 (3) If a trustee grants an option to buy property from the trust, whether or not the trust  
4408 owns the property when the option is granted, grants an option that permits another person to  
4409 sell property to the trust, or acquires an option to buy property for the trust or an option to sell  
4410 an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the  
4411 asset if the option is exercised, an amount received for granting the option [must] shall be  
4412 allocated to principal. An amount paid to acquire the option [must] shall be paid from  
4413 principal. A gain or loss realized upon the exercise of an option, including an option granted to  
4414 a settlor of the trust for services rendered, [must] shall be allocated to principal.

4415 Section 101. Section **22-3-505** is amended to read:

4416 **22-3-505. Income taxes.**

4417 (1) A tax required to be paid by a trustee based on receipts allocated to income [must]  
4418 shall be paid from income.

4419 (2) A tax required to be paid by a trustee based on receipts allocated to principal [must]  
4420 shall be paid from principal, even if the tax is called an income tax by the taxing authority.

4421 (3) A tax required to be paid by a trustee on the trust's share of an entity's taxable  
4422 income [must] shall be paid:

4423 (a) from income to the extent that receipts from the entity are allocated only to income;

4424 (b) from principal to the extent that receipts from the entity are allocated only to  
4425 principal;

4426 (c) proportionately from principal and income to the extent that receipts from the entity  
4427 are allocated to both income and principal; and

4428 (d) from principal to the extent that the tax exceeds the total receipts from the entity.

4429 (4) After applying Subsections (1) through (3), the trustee shall adjust income or

4430 principal receipts to the extent that the trust's taxes are reduced because the trust receives a  
4431 deduction for payments made to a beneficiary.

4432 Section 102. Section **22-3-506** is amended to read:

4433 **22-3-506. Adjustments between principal and income because of taxes.**

4434 (1) A fiduciary may make adjustments between principal and income to offset the  
4435 shifting of economic interests or tax benefits between income beneficiaries and remainder  
4436 beneficiaries which arise from:

4437 (a) elections and decisions, other than those described in Subsection (2), that the  
4438 fiduciary makes from time to time regarding tax matters;

4439 (b) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as  
4440 a result of a transaction involving or a distribution from the estate or trust; or

4441 (c) the ownership by an estate or trust of an interest in an entity whose taxable income,  
4442 whether or not distributed, is includable in the taxable income of the estate, trust, or a  
4443 beneficiary.

4444 (2) If the amount of an estate tax marital deduction or charitable contribution deduction  
4445 is reduced because a fiduciary deducts an amount paid from principal for income tax purposes  
4446 instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal  
4447 are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each  
4448 estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the  
4449 principal from which the increase in estate tax is paid. The total reimbursement ~~[must]~~ shall  
4450 equal the increase in the estate tax to the extent that the principal used to pay the increase  
4451 would have qualified for a marital deduction or charitable contribution deduction but for the  
4452 payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary  
4453 whose income taxes are reduced ~~[must]~~ shall be the same as its proportionate share of the total  
4454 decrease in income tax. An estate or trust shall reimburse principal from income.

4455 Section 103. Section **22-3-601** is amended to read:

4456 **22-3-601. Uniformity of application and construction.**

4457 In applying and construing this chapter, consideration ~~[must]~~ shall be given to the need  
4458 to promote uniformity of the law with respect to its subject matter among states that enact it.

4459 Section 104. Section **23-13-2** is amended to read:

4460 **23-13-2. Definitions.**

4461 As used in this title:

4462 (1) "Activity regulated under this title" means any act, attempted act, or activity  
4463 prohibited or regulated under any provision of Title 23, Wildlife Resources Code of Utah, or  
4464 the rules, and proclamations promulgated thereunder pertaining to protected wildlife including:

4465 (a) fishing;

4466 (b) hunting;

4467 (c) trapping;

4468 (d) taking;

4469 (e) permitting any dog, falcon, or other domesticated animal to take;

4470 (f) transporting;

4471 (g) possessing;

4472 (h) selling;

4473 (i) wasting;

4474 (j) importing;

4475 (k) exporting;

4476 (l) rearing;

4477 (m) keeping;

4478 (n) utilizing as a commercial venture; and

4479 (o) releasing to the wild.

4480 (2) "Aquatic animal" has the meaning provided in Section 4-37-103.

4481 (3) "Aquatic wildlife" means species of fish, mollusks, crustaceans, aquatic insects, or  
4482 amphibians.

4483 (4) "Aquaculture facility" has the meaning provided in Section 4-37-103.

4484 (5) "Bag limit" means the maximum limit, in number or amount, of protected wildlife  
4485 that one person may legally take during one day.

4486 (6) "Big game" means species of hoofed protected wildlife.

4487 (7) "Carcass" means the dead body of an animal or its parts.

4488 (8) "Certificate of registration" means a document issued under this title, or any rule or  
4489 proclamation of the Wildlife Board granting authority to engage in activities not covered by a  
4490 license, permit, or tag.

4491 (9) "Closed season" means the period of time during which the taking of protected

4492 wildlife is prohibited.

4493 (10) "Conservation officer" means a full-time, permanent employee of the Division of  
4494 Wildlife Resources who is POST certified as a peace or a special function officer.

4495 (11) "Dedicated hunter program" means a program that provides:

4496 (a) expanded hunting opportunities;

4497 (b) opportunities to participate in projects that are beneficial to wildlife; and

4498 (c) education in hunter ethics and wildlife management principles.

4499 (12) "Division" means the Division of Wildlife Resources.

4500 (13) (a) "Domicile" means the place:

4501 (i) where an individual has a fixed permanent home and principal establishment;

4502 (ii) to which the individual if absent, intends to return; and

4503 (iii) in which the individual, and the individual's family voluntarily reside, not for a  
4504 special or temporary purpose, but with the intention of making a permanent home.

4505 (b) To create a new domicile an individual [~~must~~] shall:

4506 (i) abandon the old domicile; and

4507 (ii) be able to prove that a new domicile has been established.

4508 (14) "Endangered" means wildlife designated as endangered according to Section 3 of  
4509 the federal Endangered Species Act of 1973.

4510 (15) "Fee fishing facility" has the meaning provided in Section 4-37-103.

4511 (16) "Feral" means an animal that is normally domesticated but has reverted to the  
4512 wild.

4513 (17) "Fishing" means to take fish or crayfish by any means.

4514 (18) "Furbearer" means species of the Bassariscidae, Canidae, Felidae, Mustelidae, and  
4515 Castoridae families, except coyote and cougar.

4516 (19) "Game" means wildlife normally pursued, caught, or taken by sporting means for  
4517 human use.

4518 (20) "Guide" means a person who receives compensation or advertises services for  
4519 assisting another person to take protected wildlife, including the provision of food, shelter, or  
4520 transportation, or any combination of these.

4521 (21) "Guide's agent" means a person who is employed by a guide to assist another  
4522 person to take protected wildlife.

4523 (22) "Hunting" means to take or pursue a reptile, amphibian, bird, or mammal by any  
4524 means.

4525 (23) "Intimidate or harass" means to physically interfere with or impede, hinder, or  
4526 diminish the efforts of an officer in the performance of the officer's duty.

4527 (24) "Nonresident" means a person who does not qualify as a resident.

4528 (25) "Open season" means the period of time during which protected wildlife may be  
4529 legally taken.

4530 (26) "Pecuniary gain" means the acquisition of money or something of monetary value.

4531 (27) "Permit" means a document, including a stamp, that grants authority to engage in  
4532 specified activities under this title or a rule or proclamation of the Wildlife Board.

4533 (28) "Person" means an individual, association, partnership, government agency,  
4534 corporation, or an agent of the foregoing.

4535 (29) "Possession" means actual or constructive possession.

4536 (30) "Possession limit" means the number of bag limits one individual may legally  
4537 possess.

4538 (31) (a) "Private fish pond" means a body of water where privately owned, protected  
4539 aquatic wildlife are propagated or kept for a noncommercial purpose.

4540 (b) "Private fish pond" does not include an aquaculture facility or fee fishing facility.

4541 (32) "Private wildlife farm" means an enclosed place where privately owned birds or  
4542 furbearers are propagated or kept and that restricts the birds or furbearers from:

4543 (a) commingling with wild birds or furbearers; and

4544 (b) escaping into the wild.

4545 (33) "Proclamation" means the publication used to convey a statute, rule, policy, or  
4546 pertinent information as it relates to wildlife.

4547 (34) (a) "Protected aquatic wildlife" means aquatic wildlife as defined in Subsection  
4548 (3), except as provided in Subsection (34)(b).

4549 (b) "Protected aquatic wildlife" does not include aquatic insects.

4550 (35) (a) "Protected wildlife" means wildlife as defined in Subsection (49), except as  
4551 provided in Subsection (35)(b).

4552 (b) "Protected wildlife" does not include coyote, field mouse, gopher, ground squirrel,  
4553 jack rabbit, muskrat, and raccoon.

- 4554 (36) "Released to the wild" means to be turned loose from confinement.
- 4555 (37) (a) "Resident" means a person who:
- 4556 (i) has been domiciled in the state for six consecutive months immediately preceding
- 4557 the purchase of a license; and
- 4558 (ii) does not claim residency for hunting, fishing, or trapping in any other state or
- 4559 country.
- 4560 (b) A Utah resident retains Utah residency if that person leaves this state:
- 4561 (i) to serve in the armed forces of the United States or for religious or educational
- 4562 purposes; and
- 4563 (ii) the person complies with Subsection (37)(a)(ii).
- 4564 (c) (i) A member of the armed forces of the United States and dependents are residents
- 4565 for the purposes of this chapter as of the date the member reports for duty under assigned
- 4566 orders in the state if the member:
- 4567 (A) is not on temporary duty in this state; and
- 4568 (B) complies with Subsection (37)(a)(ii).
- 4569 (ii) A copy of the assignment orders [~~must~~] shall be presented to a wildlife division
- 4570 office to verify the member's qualification as a resident.
- 4571 (d) A nonresident attending an institution of higher learning in this state as a full-time
- 4572 student may qualify as a resident for purposes of this chapter if the student:
- 4573 (i) has been present in this state for 60 consecutive days immediately preceding the
- 4574 purchase of the license; and
- 4575 (ii) complies with Subsection (37)(a)(ii).
- 4576 (e) A Utah resident license is invalid if a resident license for hunting, fishing, or
- 4577 trapping is purchased in any other state or country.
- 4578 (f) An absentee landowner paying property tax on land in Utah does not qualify as a
- 4579 resident.
- 4580 (38) "Sell" means to offer or possess for sale, barter, exchange, or trade, or the act of
- 4581 selling, bartering, exchanging, or trading.
- 4582 (39) "Small game" means species of protected wildlife:
- 4583 (a) commonly pursued for sporting purposes; and
- 4584 (b) not classified as big game, aquatic wildlife, or furbearers and excluding turkey,

4585 cougar, and bear.

4586 (40) "Spoiled" means impairment of the flesh of wildlife which renders it unfit for  
4587 human consumption.

4588 (41) "Spotlighting" means throwing or casting the rays of any spotlight, headlight, or  
4589 other artificial light on any highway or in any field, woodland, or forest while having in  
4590 possession a weapon by which protected wildlife may be killed.

4591 (42) "Tag" means a card, label, or other identification device issued for attachment to  
4592 the carcass of protected wildlife.

4593 (43) "Take" means to:

4594 (a) hunt, pursue, harass, catch, capture, possess, angle, seine, trap, or kill any protected  
4595 wildlife; or

4596 (b) attempt any action referred to in Subsection (43)(a).

4597 (44) "Threatened" means wildlife designated as such pursuant to Section 3 of the  
4598 federal Endangered Species Act of 1973.

4599 (45) "Trapping" means taking protected wildlife with a trapping device.

4600 (46) "Trophy animal" means an animal described as follows:

4601 (a) deer - a buck with an outside antler measurement of 24 inches or greater;

4602 (b) elk - a bull with six points on at least one side;

4603 (c) bighorn, desert, or rocky mountain sheep - a ram with a curl exceeding half curl;

4604 (d) moose - a bull with at least one antler exceeding five inches in length;

4605 (e) mountain goat - a male or female;

4606 (f) pronghorn antelope - a buck with horns exceeding 14 inches; or

4607 (g) bison - a bull.

4608 (47) "Waste" means to abandon protected wildlife or to allow protected wildlife to  
4609 spoil or to be used in a manner not normally associated with its beneficial use.

4610 (48) "Water pollution" means the introduction of matter or thermal energy to waters  
4611 within this state that:

4612 (a) exceeds state water quality standards; or

4613 (b) could be harmful to protected wildlife.

4614 (49) "Wildlife" means:

4615 (a) crustaceans, including brine shrimp and crayfish;

4616 (b) mollusks; and

4617 (c) vertebrate animals living in nature, except feral animals.

4618 Section 105. Section **23-13-17** is amended to read:

4619 **23-13-17. Spotlighting of coyote, red fox, striped skunk, and raccoon -- County**

4620 **ordinances -- Permits.**

4621 (1) Spotlighting may be used to hunt coyote, red fox, striped skunk, or raccoon where  
4622 allowed by a county ordinance enacted pursuant to this section.

4623 (2) The ordinance shall provide that:

4624 (a) any artificial light used to spotlight coyote, red fox, striped skunk, or raccoon  
4625 [~~must~~] shall be carried by the hunter;

4626 (b) a motor vehicle headlight or light attached to or powered by a motor vehicle may  
4627 not be used to spotlight the animal; and

4628 (c) while hunting with the use of an artificial light, the hunter may not occupy or  
4629 operate any motor vehicle.

4630 (3) For purposes of the county ordinance, "motor vehicle" shall have the meaning as  
4631 defined in Section 41-6a-102.

4632 (4) The ordinance may specify:

4633 (a) the time of day and seasons when spotlighting is permitted;

4634 (b) areas closed or open to spotlighting within the unincorporated area of the county;

4635 (c) safety zones within which spotlighting is prohibited;

4636 (d) the weapons permitted; and

4637 (e) penalties for violation of the ordinance.

4638 (5) (a) A county may restrict the number of hunters engaging in spotlighting by  
4639 requiring a permit to spotlight and issuing a limited number of permits.

4640 (b) (i) A fee may be charged for a spotlighting permit.

4641 (ii) Any permit fee shall be established by the county ordinance.

4642 (iii) Revenues generated by the permit fee shall be remitted to the Division of Wildlife  
4643 Resources for deposit into the Wildlife Resources Account, except the Wildlife Board may  
4644 allow any county that enacts an ordinance pursuant to this section to retain a reasonable amount  
4645 to pay for the costs of administering and enforcing the ordinance, provided this use of the  
4646 permit revenues does not affect federal funds received by the state under 16 U.S.C. Sec. 669 et

4647 seq., Wildlife Restoration Act and 16 U.S.C. Sec. 777 et seq., Sport Fish Restoration Act.

4648 (6) A county may require hunters to notify the county sheriff of the time and place they  
4649 will be engaged in spotlighting.

4650 (7) The requirement that a county ordinance [~~must~~] shall be enacted before a person  
4651 may use spotlighting to hunt coyote, red fox, striped skunk, or raccoon does not apply to:

4652 (a) a person or [~~his~~] the person's agent who is lawfully acting to protect [~~his~~] the  
4653 person's crops or domestic animals from predation by those animals; or

4654 (b) an animal damage control agent acting in [~~his~~] the agent's official capacity under a  
4655 memorandum of agreement with the division.

4656 Section 106. Section **23-14-2** is amended to read:

4657 **23-14-2. Wildlife Board -- Creation -- Membership -- Terms -- Quorum --**  
4658 **Meetings -- Per diem and expenses.**

4659 (1) There is created a Wildlife Board which shall consist of seven members appointed  
4660 by the governor with the consent of the Senate.

4661 (2) (a) In addition to the requirements of Section 79-2-203, the members of the board  
4662 shall have expertise or experience in at least one of the following areas:

4663 (i) wildlife management or biology;

4664 (ii) habitat management, including range or aquatic;

4665 (iii) business, including knowledge of private land issues; and

4666 (iv) economics, including knowledge of recreational wildlife uses.

4667 (b) Each of the areas of expertise under Subsection (2)(a) shall be represented by at  
4668 least one member of the Wildlife Board.

4669 (3) (a) The governor shall select each board member from a list of nominees submitted  
4670 by the nominating committee pursuant to Section 23-14-2.5.

4671 (b) No more than two members shall be from a single wildlife region described in  
4672 Subsection 23-14-2.6(1).

4673 (c) The governor may request an additional list of at least two nominees from the  
4674 nominating committee if the initial list of nominees for a given position is unacceptable.

4675 (d) (i) If the governor fails to appoint a board member within 60 days after receipt of  
4676 the initial or additional list, the nominating committee shall make an interim appointment by  
4677 majority vote.

4678 (ii) The interim board member shall serve until the matter is resolved by the committee  
4679 and the governor or until the board member is replaced pursuant to this chapter.

4680 (4) (a) Except as required by Subsection (4)(b), as terms of current board members  
4681 expire, the governor shall appoint each new member or reappointed member to a six-year term.

4682 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the  
4683 time of appointment or reappointment, adjust the length of terms to ensure that:

4684 (i) the terms of board members are staggered so that approximately [~~1/3~~] one-third of  
4685 the board is appointed every two years; and

4686 (ii) members serving from the same region have staggered terms.

4687 (c) If a vacancy occurs, the nominating committee shall submit two names, as provided  
4688 in Subsection 23-14-2.5(4), to the governor and the governor shall appoint a replacement for  
4689 the unexpired term.

4690 (d) Board members may serve only one term unless:

4691 (i) the member is among the first board members appointed to serve four years or less;

4692 or

4693 (ii) the member filled a vacancy under Subsection (4)(c) for four years or less.

4694 (5) (a) The board shall elect a chair and a vice chair from its membership.

4695 (b) Four members of the board shall constitute a quorum.

4696 (c) The director of the Division of Wildlife Resources shall act as secretary to the  
4697 board but [~~shall not be~~] is not a voting member of the board.

4698 (6) (a) The Wildlife Board shall hold a sufficient number of public meetings each year  
4699 to expeditiously conduct its business.

4700 (b) Meetings may be called by the chair upon five days notice or upon shorter notice in  
4701 emergency situations.

4702 (c) Meetings may be held at the Salt Lake City office of the Division of Wildlife  
4703 Resources or elsewhere as determined by the Wildlife Board.

4704 (7) A member may not receive compensation or benefits for the member's service, but  
4705 may receive per diem and travel expenses in accordance with:

4706 (a) Section 63A-3-106;

4707 (b) Section 63A-3-107; and

4708 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

4709 63A-3-107.

4710 (8) (a) The members of the Wildlife Board shall complete an orientation course to  
4711 assist them in the performance of the duties of their office.

4712 (b) The Department of Natural Resources shall provide the course required under  
4713 Subsection (8)(a).

4714 Section 107. Section **23-15-2** is amended to read:

4715 **23-15-2. Jurisdiction of division over public or private land and waters.**

4716 All wildlife within this state, including [~~but not limited to~~] wildlife on public or private  
4717 land or in public or private waters within this state, shall fall within the jurisdiction of the  
4718 Division of Wildlife Resources.

4719 Section 108. Section **23-15-9** is amended to read:

4720 **23-15-9. Possession or transportation of live aquatic wildlife unlawful except as**  
4721 **authorized -- Exceptions.**

4722 It is unlawful for any person to possess or transport live protected aquatic wildlife  
4723 except as provided by this code or the rules and regulations of the Wildlife Board. This section  
4724 [~~shall not~~] does not apply to tropical and goldfish species intended for exhibition or  
4725 commercial purposes. Operators of a properly registered private fish pond may transport live  
4726 aquatic wildlife specified by the Wildlife Board in the operator's certificate of registration.

4727 Section 109. Section **23-16-3** is amended to read:

4728 **23-16-3. Damage to cultivated crops, livestock forage, fences, or irrigation**  
4729 **equipment by big game animals -- Notice to division.**

4730 (1) (a) If big game animals are damaging cultivated crops, livestock forage, fences, or  
4731 irrigation equipment on private land, the landowner or lessee shall immediately, upon  
4732 discovery of the damage, request that the division take action to alleviate the depredation  
4733 problem.

4734 (b) The landowner or lessee shall allow division personnel reasonable access to the  
4735 property sustaining damage to verify and alleviate the depredation problem.

4736 (2) (a) Within 72 hours after receiving the request for action under Subsection (1)(a),  
4737 the division shall investigate the situation, and if it appears that depredation by big game  
4738 animals may continue, the division shall:

4739 (i) remove the big game animals causing depredation; or

4740 (ii) implement a depredation mitigation plan which has been approved, in writing, by  
4741 the landowner or lessee.

4742 (b) A depredation mitigation plan may provide for any or all of the following:

4743 (i) the scheduling of a depredation hunt;

4744 (ii) issuing permits to the landowners or lessees, to take big game animals causing  
4745 depredation during a general or special season hunt authorized by the Wildlife Board;

4746 (iii) allowing landowners or lessees to designate recipients who may obtain a  
4747 mitigation permit to take big game animals on the landowner's or lessee's land during a general  
4748 or special season hunt authorized by the Wildlife Board; or

4749 (iv) a description of how the division will assess and compensate the landowner or  
4750 lessee under Section 23-16-4 for damage to cultivated crops, fences, or irrigation equipment.

4751 (c) (i) The division shall specify the number and sex of the big game animals that may  
4752 be taken pursuant to Subsections (2)(b)(ii) and (iii).

4753 (ii) Control efforts shall be directed toward antlerless animals, if possible.

4754 (d) A permit issued for an antlered animal [~~must~~] shall be approved by the division  
4755 director or the director's designee.

4756 (e) The division and the landowner or lessee shall jointly determine the number of  
4757 animals taken pursuant to Subsection (2)(b)(ii) of which the landowner or lessee may retain  
4758 possession.

4759 (f) In determining appropriate remedial action under this Subsection (2), the division  
4760 shall consider:

4761 (i) the extent of damage experienced or expected; and

4762 (ii) any revenue the landowner derives from:

4763 (A) participation in a cooperative wildlife management unit;

4764 (B) use of landowner association permits;

4765 (C) use of mitigation permits; and

4766 (D) charging for hunter access.

4767 (3) Any fee for accessing the owner's or lessee's land shall be determined by the  
4768 landowner or lessee.

4769 (4) (a) If the landowner or lessee who approved the depredation mitigation plan under  
4770 Subsection (2)(a)(ii) subsequently determines that the plan is not acceptable, the landowner or

4771 lessee may revoke his or her approval of the plan and again request that the division take action  
4772 pursuant to Subsection (2)(a)(i).

4773 (b) A subsequent request for action provided under Subsection (4)(a) shall be  
4774 considered to be a new request for purposes of the 72-hour time limit specified in Subsection  
4775 (2)(a).

4776 (5) (a) The division may enter into a conservation lease with the owner or lessee of  
4777 private lands for a fee or other remuneration as compensation for depredation.

4778 (b) Any conservation lease entered into under this section shall provide that the  
4779 claimant may not unreasonably restrict hunting on the land or passage through the land to  
4780 access public lands for the purpose of hunting, if those actions are necessary to control or  
4781 mitigate damage by big game.

4782 Section 110. Section **23-16-4** is amended to read:

4783 **23-16-4. Compensation for damage to crops, fences, or irrigation equipment --**  
4784 **Limitations -- Appeals.**

4785 (1) The division may provide compensation to claimants for damage caused by big  
4786 game to:

4787 (a) cultivated crops from or on cleared and planted land;

4788 (b) fences on private land; or

4789 (c) irrigation equipment on private land.

4790 (2) To be eligible to receive compensation as provided in this section, the claimant  
4791 shall:

4792 (a) [~~must~~] notify the division of the damage within 72 hours after the damage is  
4793 discovered; and

4794 (b) allow division personnel reasonable access to the property to verify and alleviate  
4795 the depredation problem.

4796 (3) (a) The appraisal of the damage shall be made by the claimant and the division as  
4797 soon after notification as possible.

4798 (b) In determining damage payment, the division and claimant shall consider:

4799 (i) the extent of damage experienced; and

4800 (ii) any revenue the landowner derives from:

4801 (A) participation in a cooperative wildlife management unit;

4802 (B) use of landowner association permits;

4803 (C) use of mitigation permits; and

4804 (D) charging for hunter access.

4805 (c) In determining how to assess and compensate for damages to cultivated crops, the  
4806 division's determination shall be based on the:

4807 (i) full replacement value in the local market of the cultivated crops that actually have  
4808 been or will be damaged or consumed by big game animals; and

4809 (ii) cost of delivery of a replacement crop to the location of the damaged crop or other  
4810 location that is not farther from the source of the replacement crop.

4811 (d) If the claimant and the division are unable to agree on a fair and equitable damage  
4812 payment, they shall designate a third party, consisting of one or more persons familiar with the  
4813 crops, fences, or irrigation equipment and the type of game animals doing the damage, to  
4814 appraise the damage.

4815 (4) (a) Notwithstanding Section 63J-1-504, the total amount of compensation that may  
4816 be provided by the division pursuant to this section and the total cost of fencing materials  
4817 provided by the division to prevent crop damage may not exceed the legislative appropriation  
4818 for fencing material and compensation for damaged crops, fences, and irrigation equipment.

4819 (b) (i) Any claim of \$1,000 or less may be paid after appraisal of the damage as  
4820 provided in Subsection (3), unless the claim brings the total amount of claims submitted by the  
4821 claimant in the fiscal year to an amount in excess of \$1,000.

4822 (ii) Any claim for damage to irrigation equipment may be paid after appraisal of the  
4823 damage as provided in Subsection (3).

4824 (c) (i) Any claim in excess of \$1,000, or claim that brings the total amount of claims  
4825 submitted by the claimant in the fiscal year to an amount in excess of \$1,000, shall be treated  
4826 as follows:

4827 (A) \$1,000 may be paid pursuant to the conditions of this section; and

4828 (B) the amount in excess of \$1,000 may not be paid until the total amount of the  
4829 approved claims of all the claimants and expenses for fencing materials for the fiscal year are  
4830 determined.

4831 (ii) If the total exceeds the amount appropriated by the Legislature pursuant to  
4832 Subsection (4)(a), claims in excess of \$1,000, or any claim that brings the total amount of a

4833 claimant's claims in a fiscal year to an amount in excess of \$1,000, shall be prorated.

4834 (5) The division may deny or limit compensation if the claimant:

4835 (a) has failed to exercise reasonable care and diligence to avoid the loss or minimize  
4836 the damage; or

4837 (b) has unreasonably restricted hunting on land under the claimant's control or passage  
4838 through the land to access public lands for the purpose of hunting, after receiving written  
4839 notification from the division of the necessity of allowing such hunting or access to control or  
4840 mitigate damage by big game.

4841 (6) (a) The Wildlife Board shall make rules specifying procedures for the appeal of  
4842 division actions under this section.

4843 (b) Upon the petition of an aggrieved party to a final division action, the Wildlife  
4844 Board may review the action on the record and issue an order modifying or rescinding the  
4845 division action.

4846 (c) A qualified hearing examiner may be appointed for purposes of taking evidence and  
4847 making recommendations for a board order. The board shall consider the recommendations of  
4848 the examiner in making decisions.

4849 (d) Board review of final agency action and judicial review of final board action shall  
4850 be governed by Title 63G, Chapter 4, Administrative Procedures Act.

4851 Section 111. Section **23-17-4** is amended to read:

4852 **23-17-4. Crop damage by pheasants -- Notice to division.**

4853 Whenever pheasants are damaging cultivated crops on cleared and planted land, the  
4854 owner of such crops shall immediately upon discovery of such damage notify the Division of  
4855 Wildlife Resources. This notice [~~must~~] shall be made both orally and in writing. Upon being  
4856 notified of such damage, the Division of Wildlife Resources shall, as far as possible, control  
4857 such damage.

4858 Section 112. Section **23-17-6** is amended to read:

4859 **23-17-6. Commercial hunting area -- Registration -- Requirements for hunters.**

4860 (1) (a) Any person desiring to operate a commercial hunting area within this state to  
4861 permit the releasing and shooting of pen-raised birds may apply to the Wildlife Board for  
4862 authorization to do so.

4863 (b) The Wildlife Board may issue the applicant a certificate of registration to operate a

4864 commercial hunting area in accordance with rules prescribed by the board.

4865 (c) The Wildlife Board may determine the number of commercial hunting areas that  
4866 may be established in each county of the state.

4867 (2) Any certificate of registration issued under Subsection (1) shall specify the species  
4868 of birds that the applicant may propagate, keep, and release for shooting on the area covered by  
4869 the certificate of registration. The applicant may charge a fee for harvesting these birds.

4870 (3)(a) Any person hunting within the state on any commercial hunting area [~~must~~]  
4871 shall:

4872 (i) be at least 12 years old;

4873 (ii) possess proof of passing a division-approved hunter education course, if the person  
4874 was born after December 31, 1965; and

4875 (iii) have the permission of the owner or operator of the commercial hunting area.

4876 (b) The operator of a commercial hunting area shall verify that each hunter on the  
4877 commercial hunting area meets the requirements of Subsections (3)(a)(i) and (3)(a)(ii).

4878 (4) Hunting on commercial hunting areas shall be permitted only during the  
4879 commercial hunting area season prescribed by the Wildlife Board.

4880 Section 113. Section **23-17-8** is amended to read:

4881 **23-17-8. Dog field meets.**

4882 It is lawful within the state [~~of Utah~~] to hold dog field meets or trials where dogs are  
4883 permitted to work in exhibition or contest where the skill of dogs is demonstrated by locating  
4884 or retrieving birds which have been obtained from a legal source. Before any meet or trial is  
4885 held, application [~~must~~] shall be made in writing to the Division of Wildlife Resources, which  
4886 may authorize the meet or trial under rules and regulations promulgated by the Wildlife Board.

4887 Section 114. Section **23-18-5** is amended to read:

4888 **23-18-5. Fur dealer and fur dealer's agent -- Definitions -- Certificates of**  
4889 **registration required -- Receipts required.**

4890 (1) Any person engaging in, carrying on, or conducting, wholly or in part, the business  
4891 of buying, selling, trading, or dealing, within the state [~~of Utah~~], in the skins or pelts of  
4892 furbearing mammals shall be deemed a fur dealer within the meaning of this code. All fur  
4893 dealers [~~must~~] shall secure a fur dealer certificate of registration from the Division of Wildlife  
4894 Resources, but no certificate of registration shall be required for a licensed trapper or fur farmer

4895 selling skins or pelts which ~~he~~ the licensed trapper or fur farmer has lawfully taken, or raised,  
4896 nor for any person not a fur dealer who purchases any such skins or pelts exclusively for ~~his~~  
4897 the person's own use and not for sale.

4898 (2) Any person who is employed by a resident or nonresident fur dealer as a fur buyer,  
4899 in the field, is deemed a fur dealer's agent. Application for a fur dealer's agent certificate of  
4900 registration ~~must~~ shall be made by the fur dealer employing the agent, and no agent certificate  
4901 of registration shall be issued until the necessary fur dealer certificate of registration has been  
4902 first secured by the employer of the agent.

4903 (3) Receipts ~~must~~ shall be issued by the vendor to the vendee whenever the skins or  
4904 pelts of furbearing mammals ~~shall~~ change ownership by virtue of sale, exchange, barter or  
4905 gift; and both the vendor and vendee shall produce this receipt or evidence of legal transaction  
4906 upon request by the Division of Wildlife Resources or other person authorized to enforce the  
4907 provisions of this code.

4908 Section 115. Section **23-19-9** is amended to read:

4909 **23-19-9. Suspension of license or permit privileges -- Suspension of certificates of**  
4910 **registration.**

4911 (1) As used in this section, "license or permit privileges" means the privilege of  
4912 applying for, purchasing, and exercising the benefits conferred by a license or permit issued by  
4913 the division.

4914 (2) A hearing officer, appointed by the division, may suspend a person's license or  
4915 permit privileges if:

4916 (a) in a court of law, the person:

4917 (i) is convicted of:

4918 (A) violating this title or a rule of the Wildlife Board;

4919 (B) killing or injuring domestic livestock while engaged in an activity regulated under  
4920 this title; or

4921 (C) violating Section 76-10-508 while engaged in an activity regulated under this title;

4922 (ii) enters into a plea in abeyance agreement, in which the person pleads guilty or no  
4923 contest to an offense listed in Subsection (2)(a)(i), and the plea is held in abeyance; or

4924 (iii) is charged with committing an offense listed in Subsection (2)(a)(i), and the person  
4925 enters into a diversion agreement which suspends the prosecution of the offense; and

4926 (b) the hearing officer determines the person committed the offense intentionally,  
4927 knowingly, or recklessly, as defined in Section 76-2-103.

4928 (3) (a) The Wildlife Board shall make rules establishing guidelines that a hearing  
4929 officer shall consider in determining:

- 4930 (i) the type of license or permit privileges to suspend; and
- 4931 (ii) the duration of the suspension.

4932 (b) The Wildlife Board shall ensure that the guidelines established under Subsection  
4933 (3)(a) are consistent with Subsections (4), (5), and (6).

4934 (4) Except as provided in Subsections (5) and (6), a hearing officer may suspend a  
4935 person's license or permit privileges according to Subsection (2) for a period of time not to  
4936 exceed:

4937 (a) seven years for:

- 4938 (i) a felony conviction;
- 4939 (ii) a plea of guilty or no contest to an offense punishable as a felony, which plea is  
4940 held in abeyance pursuant to a plea in abeyance agreement; or

4941 (iii) being charged with an offense punishable as a felony, the prosecution of which is  
4942 suspended pursuant to a diversion agreement;

4943 (b) five years for:

- 4944 (i) a class A misdemeanor conviction;
- 4945 (ii) a plea of guilty or no contest to an offense punishable as a class A misdemeanor,  
4946 which plea is held in abeyance pursuant to a plea in abeyance agreement; or

4947 (iii) being charged with an offense punishable as a class A misdemeanor, the  
4948 prosecution of which is suspended pursuant to a diversion agreement;

4949 (c) three years for:

- 4950 (i) a class B misdemeanor conviction;
- 4951 (ii) a plea of guilty or no contest to an offense punishable as a class B misdemeanor  
4952 when the plea is held in abeyance according to a plea in abeyance agreement; or

4953 (iii) being charged with an offense punishable as a class B misdemeanor, the  
4954 prosecution of which is suspended pursuant to a diversion agreement; and

4955 (d) one year for:

- 4956 (i) a class C misdemeanor conviction;

4957 (ii) a plea of guilty or no contest to an offense punishable as a class C misdemeanor,  
4958 when the plea is held in abeyance according to a plea in abeyance agreement; or

4959 (iii) being charged with an offense punishable as a class C misdemeanor, the  
4960 prosecution of which is suspended according to a diversion agreement.

4961 (5) The hearing officer may double a suspension period established in Subsection (4)  
4962 for offenses:

4963 (a) committed in violation of an existing suspension or revocation order issued by the  
4964 courts, division, or Wildlife Board; or

4965 (b) involving the unlawful taking of a trophy animal, as defined in Section 23-13-2.

4966 (6) (a) A hearing officer may suspend, according to Subsection (2), a person's license  
4967 or permit privileges for a particular license or permit only once for each single criminal  
4968 episode, as defined in Section 76-1-401.

4969 (b) If a hearing officer addresses two or more single criminal episodes in a hearing, the  
4970 suspension periods of any license or permit privileges of the same type suspended, according to  
4971 Subsection (2), may run consecutively.

4972 (c) If a hearing officer suspends, according to Subsection (2), license or permit  
4973 privileges of the type that have been previously suspended by a court, a hearing officer, or the  
4974 Wildlife Board and the suspension period has not expired, the suspension periods may run  
4975 consecutively.

4976 (7) (a) A hearing officer, appointed by the division, may suspend a person's privilege of  
4977 applying for, purchasing, and exercising the benefits conferred by a certificate of registration if:

4978 (i) the hearing officer determines the person intentionally, knowingly, or recklessly, as  
4979 defined in Section 76-2-103, violated:

4980 (A) this title;

4981 (B) a rule or order of the Wildlife Board;

4982 (C) the terms of a certificate of registration; or

4983 (D) the terms of a certificate of registration application or agreement; or

4984 (ii) the person, in a court of law:

4985 (A) is convicted of an offense that the hearing officer determines bears a reasonable  
4986 relationship to the person's ability to safely and responsibly perform the activities authorized by  
4987 the certificate of registration;

4988 (B) pleads guilty or no contest to an offense that the hearing officer determines bears a  
4989 reasonable relationship to the person's ability to safely and responsibly perform the activities  
4990 authorized by the certificate of registration, and the plea is held in abeyance in accordance with  
4991 a plea in abeyance agreement; or

4992 (C) is charged with an offense that the hearing officer determines bears a reasonable  
4993 relationship to the person's ability to safely and responsibly perform the activities authorized by  
4994 the certificate of registration, and prosecution of the offense is suspended in accordance with a  
4995 diversion agreement.

4996 (b) All certificates of registration for the harvesting of brine shrimp eggs, as defined in  
4997 Section 59-23-3, shall be suspended by a hearing officer, if the hearing officer determines the  
4998 holder of the certificates of registration has violated Section 59-23-5.

4999 (8) (a) The director shall appoint a qualified person as a hearing officer to perform the  
5000 adjudicative functions provided in this section.

5001 (b) The director may not appoint a division employee who investigates or enforces  
5002 wildlife violations.

5003 (9) (a) The courts may suspend, in criminal sentencing, a person's privilege to apply  
5004 for, purchase, or exercise the benefits conferred by a license, permit, or certificate of  
5005 registration.

5006 (b) The courts shall promptly notify the division of any suspension orders or  
5007 recommendations entered.

5008 (c) The division, upon receiving notification of suspension from the courts, shall  
5009 prohibit the person from applying for, purchasing, or exercising the benefits conferred by a  
5010 license, permit, or certification of registration for the duration and of the type specified in the  
5011 court order.

5012 (d) The hearing officer shall consider any recommendation made by a sentencing court  
5013 concerning suspension before issuing a suspension order.

5014 (10) (a) A person may not apply for, purchase, possess, or attempt to exercise the  
5015 benefits conferred by any permit, license, or certificate of registration specified in an order of  
5016 suspension while that order is in effect.

5017 (b) Any license possessed or obtained in violation of the order shall be considered  
5018 invalid.

- 5019 (c) A person who violates Subsection (10)(a) is guilty of a class B misdemeanor.
- 5020 (11) Before suspension under this section, a person [~~must~~] shall be:
- 5021 (a) given written notice of any action the division intends to take; and
- 5022 (b) provided with an opportunity for a hearing.
- 5023 (12) (a) A person may file an appeal of a hearing officer's decision with the Wildlife
- 5024 Board.
- 5025 (b) The Wildlife Board shall review the hearing officer's findings and conclusions and
- 5026 any written documentation submitted at the hearing.
- 5027 (c) The Wildlife Board may:
- 5028 (i) take no action;
- 5029 (ii) vacate or remand the decision; or
- 5030 (iii) amend the period or type of suspension.
- 5031 (13) The division shall suspend and reinstate all hunting, fishing, trapping, and
- 5032 falconry privileges consistent with Title 23, Chapter 25, Wildlife Violator Compact.
- 5033 (14) The Wildlife Board may make rules to implement this section in accordance with
- 5034 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 5035 Section 116. Section **23-19-14** is amended to read:
- 5036 **23-19-14. Persons residing in certain institutions authorized to fish without**
- 5037 **license.**
- 5038 (1) The Division of Wildlife Resources shall permit a person to fish without a license
- 5039 if:
- 5040 (a) (i) the person resides in:
- 5041 (A) the Utah State Developmental Center in American Fork;
- 5042 (B) the state hospital;
- 5043 (C) a veteran's hospital;
- 5044 (D) a veteran's nursing home;
- 5045 (E) a mental health center;
- 5046 (F) an intermediate care facility for the mentally retarded;
- 5047 (G) a group home licensed by the Department of Human Services and operated under
- 5048 contract with the Division of Services for People with Disabilities;
- 5049 (H) a group home or other community-based placement licensed by the Department of

5050 Human Services and operated under contract with the Division of Juvenile Justice Services;  
5051 (I) a private residential facility for at-risk youth licensed by the Department of Human  
5052 Services; or  
5053 (J) another similar institution approved by the division; or  
5054 (ii) the person is a youth who participates in a work camp operated by the Division of  
5055 Juvenile Justice Services;  
5056 (b) the person is properly supervised by a representative of the institution; and  
5057 (c) the institution obtains from the division a certificate of registration that specifies:  
5058 (i) the date and place where the person will fish; and  
5059 (ii) the name of the institution's representative who will supervise the person fishing.  
5060 (2) The institution [~~must~~] shall apply for the certificate of registration at least 10 days  
5061 before the fishing outing.  
5062 (3) (a) An institution that receives a certificate of registration authorizing at-risk youth  
5063 to fish shall provide instruction to the youth on fishing laws and regulations.  
5064 (b) The division shall provide educational materials to the institution to assist it in  
5065 complying with Subsection (3)(a).  
5066 Section 117. Section **23-19-17.5** is amended to read:  
5067 **23-19-17.5. Lifetime hunting and fishing licenses.**  
5068 (1) Lifetime licensees born after December 31, 1965, [~~must~~] shall be certified under  
5069 Section 23-19-11 before engaging in hunting.  
5070 (2) A lifetime license shall remain valid if the residency of the lifetime licensee  
5071 changes to another state or country.  
5072 (3) (a) A lifetime license may be used in lieu of a hunting or fishing license.  
5073 (b) Each year, a lifetime licensee is entitled to receive without charge a permit and tag  
5074 of the lifetime licensee's choice for one of the following general season deer hunts:  
5075 (i) archery;  
5076 (ii) rifle; or  
5077 (iii) muzzleloader.  
5078 (c) A lifetime licensee is subject to each requirement for special hunting and fishing  
5079 permits and tags, except as provided in Subsections (3)(a) and (b).  
5080 (4) The Wildlife Board may adopt rules necessary to carry out the provisions of this

5081 section.

5082 Section 118. Section **23-19-38.2** is amended to read:

5083 **23-19-38.2. Refunds for armed forces or public health or safety organization**  
5084 **members -- Criteria.**

5085 (1) A member of the United States Armed Forces or public health or public safety  
5086 organization who is mobilized or deployed on order in the interest of national defense or  
5087 emergency and is precluded from using a purchased license, certificate, tag, or permit, may, as  
5088 provided in Subsection (2):

5089 (a) receive a refund from the division; and

5090 (b) if the person has drawn a permit, have all opportunities to draw that permit in a  
5091 future draw reinstated.

5092 (2) To qualify, the person or a legal representative [~~must~~] shall:

5093 (a) notify the division within a reasonable amount of time that the person is applying  
5094 for a refund;

5095 (b) surrender the license, certificate, tag, or permit to the division; and

5096 (c) furnish satisfactory proof to the division that the person:

5097 (i) is a member of:

5098 (A) the United States Armed Forces;

5099 (B) a public health organization; or

5100 (C) a public safety organization; and

5101 (ii) was precluded from using the license, certificate, tag, or permit as a result of being  
5102 called to active duty.

5103 (3) The Wildlife Board may adopt rules in accordance with Title 63G, Chapter 3, Utah  
5104 Administrative Rulemaking Act, necessary to administer this section including allowing  
5105 retroactive refund to September 11, 2001.

5106 Section 119. Section **23-20-1** is amended to read:

5107 **23-20-1. Enforcement authority of conservation officers -- Seizure and disposition**  
5108 **of property.**

5109 (1) Conservation officers of the division shall enforce the provisions of this title with  
5110 the same authority and following the same procedures as other law enforcement officers.

5111 (2) (a) Conservation officers shall seize any protected wildlife illegally taken or held.

5112 (b) (i) Upon determination of a defendant's guilt by the court, the protected wildlife  
5113 shall be confiscated by the court and sold or otherwise disposed of by the division.

5114 (ii) Proceeds of the sales shall be deposited in the Wildlife Resources Account.

5115 (iii) Migratory wildfowl may not be sold, but ~~must~~ shall be given to a charitable  
5116 institution or used for other charitable purposes.

5117 (3) Materials and devices used for the unlawful taking or possessing of protected  
5118 wildlife shall be seized, and upon a finding by the court that they were used in the unlawful  
5119 taking or possessing of protected wildlife, the materials and devices shall be subject to criminal  
5120 or civil forfeiture under the procedures and substantive protections established in Title 24,  
5121 Chapter 1, Utah Uniform Forfeiture Procedures Act.

5122 (4) (a) Conservation officers may seize and impound a vehicle used for the unlawful  
5123 taking or possessing of protected wildlife for any of the following purposes:

5124 (i) to provide for the safekeeping of the vehicle, if the owner or operator is arrested;

5125 (ii) to search the vehicle as provided in Subsection (2)(a) or as provided by a search  
5126 warrant; or

5127 (iii) to inspect the vehicle for evidence that protected wildlife was unlawfully taken or  
5128 possessed.

5129 (b) The division shall store any seized vehicle in a public or private garage, state  
5130 impound lot, or other secured storage facility.

5131 (5) A seized vehicle shall be released to the owner no later than 30 days after the date  
5132 the vehicle is seized, unless the vehicle was used for the unlawful taking or possessing of  
5133 wildlife by a person who is charged with committing a felony under this title.

5134 (6) (a) Upon a finding by a court that the person who used the vehicle for the unlawful  
5135 taking or possessing of wildlife is guilty of a felony under this title, the vehicle may be subject  
5136 to criminal or civil forfeiture under the procedures and substantive protections established in  
5137 Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

5138 (b) The owner of a seized vehicle is liable for the payment of any impound fee if ~~he~~  
5139 the owner used the vehicle for the unlawful taking or possessing of wildlife and is found by a  
5140 court to be guilty of a violation of this title.

5141 (c) The owner of a seized vehicle is not liable for the payment of any impound fee or, if  
5142 the fees have been paid, is entitled to reimbursement of the fees paid, if:

5143 (i) no charges are filed or all charges are dropped which involve the use of the vehicle  
5144 for the unlawful taking or possessing of wildlife;

5145 (ii) the person charged with using the vehicle for the unlawful taking or possessing of  
5146 wildlife is found by a court to be not guilty; or

5147 (iii) the owner did not consent to a use of the vehicle which violates this chapter.

5148 Section 120. Section **23-20-9** is amended to read:

5149 **23-20-9. Donating protected wildlife.**

5150 (1) A person may only donate protected wildlife or their parts to another person at:

5151 (a) the residence of the donor;

5152 (b) the residence of the person receiving protected wildlife or their parts;

5153 (c) a meat locker;

5154 (d) a storage plant;

5155 (e) a meat processing facility; or

5156 (f) a location authorized by the Wildlife Board in rule, proclamation, or order.

5157 (2) A written statement of donation [~~must~~] shall be kept with the protected wildlife or  
5158 parts showing:

5159 (a) the number and species of protected wildlife or parts donated;

5160 (b) the date of donation;

5161 (c) the license or permit number of the donor; and

5162 (d) the signature of the donor.

5163 (3) Notwithstanding Subsections (1) and (2), a person may donate the hide of a big  
5164 game animal to another person or organization at any place without a donation slip.

5165 Section 121. Section **23-20-14** is amended to read:

5166 **23-20-14. Definitions -- Posted property -- Hunting by permission -- Entry on**  
5167 **private land while hunting or fishing -- Violations -- Penalty -- Prohibitions inapplicable**  
5168 **to officers -- Promotion of respect for private property.**

5169 (1) As used in this section:

5170 [~~(b)~~] (a) "Cultivated land" means land which is readily identifiable as:

5171 (i) land whose soil is loosened or broken up for the raising of crops;

5172 (ii) land used for the raising of crops; or

5173 (iii) pasturage which is artificially irrigated.

5174 [~~(a)~~] (b) "Division" means the Division of Wildlife Resources.

5175 (c) "Permission" means written authorization from the owner or person in charge to  
5176 enter upon private land that is either cultivated or properly posted, and [~~must~~] shall include:

5177 (i) the signature of the owner or person in charge;

5178 (ii) the name of the person being given permission;

5179 (iii) the appropriate dates; and

5180 (iv) a general description of the property.

5181 (d) "Properly posted" means that "No Trespassing" signs or a minimum of 100 square  
5182 inches of bright yellow, bright orange, or fluorescent paint are displayed at all corners, fishing  
5183 streams crossing property lines, roads, gates, and rights-of-way entering the land. If metal  
5184 fence posts are used, the entire exterior side [~~must~~] shall be painted.

5185 (2) (a) While taking wildlife or engaging in wildlife related activities, a person may  
5186 not:

5187 (i) without the permission of the owner or person in charge, enter upon privately  
5188 owned land that is cultivated or properly posted;

5189 (ii) refuse to immediately leave the private land if requested to do so by the owner or  
5190 person in charge; or

5191 (iii) obstruct any entrance or exit to private property.

5192 (b) "Hunting by permission cards" will be provided to landowners by the division upon  
5193 request.

5194 (c) A person may not post:

5195 (i) private property [~~he~~] the person does not own or legally control; or

5196 (ii) land that is open to the public as provided by Section 23-21-4.

5197 (3) (a) A person convicted of violating any provision of Subsection (2) may have [~~his~~]  
5198 the person's license, tag, certificate of registration, or permit, relating to the activity engaged in  
5199 at the time of the violation, revoked by a hearing officer.

5200 (b) A hearing officer may construe any subsequent conviction which occurs within a  
5201 five-year period as a flagrant violation and may prohibit the person from obtaining a new  
5202 license, tag, certificate of registration, or permit for a period of up to five years.

5203 (4) Subsection (2)(a) does not apply to peace or conservation officers in the  
5204 performance of their duties.

5205 (5) (a) The division shall provide information regarding owners' rights and sportsmen's  
5206 duties:

5207 (i) to anyone holding licenses, certificates of registration, tags, or permits to take  
5208 wildlife; and

5209 (ii) by using the public media and other sources.

5210 (b) The restrictions in this section relating to trespassing shall be stated in all hunting  
5211 and fishing proclamations issued by the Wildlife Board.

5212 (6) Any person who violates any provision of Subsection (2) is guilty of a class B  
5213 misdemeanor.

5214 Section 122. Section **23-20-20** is amended to read:

5215 **23-20-20. Children accompanied by adults while hunting with weapon.**

5216 (1) As used in this section:

5217 (a) "Accompanied" means at a distance within which visual and verbal communication  
5218 is maintained for the purposes of advising and assisting.

5219 (b) (i) "Electronic device" means a mechanism powered by electricity that allows  
5220 communication between two or more people.

5221 (ii) "Electronic device" includes a mobile telephone or two-way radio.

5222 (c) "Verbal communication" means the conveyance of information through speech that  
5223 does not involve an electronic device.

5224 (2) A person younger than 14 years old who is hunting with any weapon [~~must~~] shall  
5225 be accompanied by:

5226 (a) the person's parent or legal guardian; or

5227 (b) a responsible person who is at least 21 years old and who is approved by the  
5228 person's parent or guardian.

5229 (3) A person younger than 16 years old who is hunting big game with any weapon  
5230 [~~must~~] shall be accompanied by:

5231 (a) the person's parent or legal guardian; or

5232 (b) a responsible person who is at least 21 years old and who is approved by the  
5233 person's parent or guardian.

5234 (4) A person who is at least 14 years old but younger than 16 years old [~~must~~] shall be  
5235 accompanied by a person who is at least 21 years old while hunting wildlife, other than big

5236 game, with any weapon.

5237 Section 123. Section **23-20-28** is amended to read:

5238 **23-20-28. Search warrants.**

5239 (1) A search warrant may be issued by a magistrate to search for any property which  
5240 may constitute evidence of any violation of the provisions of this code, rules, regulations, or  
5241 proclamations of the Wildlife Board upon an affidavit of any person.

5242 (2) The search warrant shall be directed to a conservation officer or a peace officer,  
5243 directing [~~him~~] the officer to search for evidence and to bring it before the magistrate.

5244 (3) A search warrant [~~shall not~~] may not be issued except upon probable cause  
5245 supported by oath or affirmation, particularly describing the place, person, or thing to be  
5246 searched for and the person or thing to be seized.

5247 (4) The warrant shall be served in the daytime, unless there is reason to believe that the  
5248 service of the search warrant is required immediately because a person may:

5249 (a) flee the jurisdiction to avoid prosecution or discovery of a violation noted above;

5250 (b) destroy or conceal evidence of the commission of any violation; or

5251 (c) injure another person or damage property.

5252 (5) The search warrant may be served at night if:

5253 (a) there is reason to believe that a violation may occur at night; or

5254 (b) the evidence of the violation may not be available to the officers serving the  
5255 warrant during the day.

5256 Section 124. Section **23-20-29** is amended to read:

5257 **23-20-29. Interference with hunting prohibited -- Action to recover damages --**

5258 **Exceptions.**

5259 (1) A person is guilty of a class B misdemeanor who intentionally interferes with the  
5260 right of a person licensed and legally hunting under [~~Title 23,~~] Chapter 19, Licenses, Permits,  
5261 and Tags to take wildlife by driving, harassing, or intentionally disturbing any species of  
5262 wildlife for the purpose of disrupting a legal hunt, trapping, or predator control.

5263 (2) Any directly affected person or the state may bring an action to recover civil  
5264 damages resulting from a violation of Subsection (1) or a restraining order to prevent a  
5265 potential violation of Subsection (1).

5266 (3) This section does not apply to incidental interference with a hunt caused by lawful

5267 activities including[~~, but not limited to,~~] ranching, mining, and recreation.

5268 Section 125. Section **23-20-30** is amended to read:

5269 **23-20-30. Tagging requirements.**

5270 (1) The Wildlife Board may make rules that require the carcass of certain species of  
5271 protected wildlife to be tagged.

5272 (2) The carcass of any species of protected wildlife required to be tagged [~~must~~] shall  
5273 be tagged before the carcass is moved from or the hunter leaves the site of kill.

5274 (3) To tag a carcass, a person shall:

5275 (a) completely detach the tag from the license or permit;

5276 (b) completely remove the appropriate notches to correspond with:

5277 (i) the date the animal was taken; and

5278 (ii) the sex of the animal; and

5279 (c) attach the tag to the carcass so that the tag remains securely fastened and visible.

5280 (4) A person may not:

5281 (a) remove more than one notch indicating date or sex; or

5282 (b) tag more than one carcass using the same tag.

5283 Section 126. Section **23-20-31** is amended to read:

5284 **23-20-31. Requirement to wear hunter orange -- Exceptions.**

5285 (1) As used in this section:

5286 (a) (i) "Centerfire rifle hunt" means a hunt for which a hunter may use a centerfire rifle,  
5287 except as provided in Subsection (1)(a)(ii).

5288 (ii) "Centerfire rifle hunt" does not include:

5289 (A) a bighorn sheep hunt;

5290 (B) a mountain goat hunt;

5291 (C) a bison hunt;

5292 (D) a moose hunt;

5293 (E) a hunt requiring the hunter to possess a statewide conservation permit; or

5294 (F) a hunt requiring the hunter to possess a statewide sportsman permit.

5295 (b) "Statewide conservation permit" means a permit:

5296 (i) issued by the division;

5297 (ii) distributed through a nonprofit organization founded for the purpose of promoting

5298 wildlife conservation; and  
5299 (iii) valid:  
5300 (A) on open hunting units statewide; and  
5301 (B) for the species of big game and time period designated by the Wildlife Board.  
5302 (c) "Statewide sportsman permit" means a permit:  
5303 (i) issued by the division through a public draw; and  
5304 (ii) valid:  
5305 (A) on open hunting units statewide; and  
5306 (B) for the species of big game and time period designated by the Wildlife Board.  
5307 (2) (a) A person shall wear a minimum of 400 square inches of hunter orange material  
5308 while hunting any species of big game, except as provided in Subsection (3).  
5309 (b) Hunter orange material [~~must~~] shall be worn on the head, chest, and back.  
5310 (3) A person is not required to wear the hunter orange material described in Subsection  
5311 (2):  
5312 (a) during the following types of hunts, unless a centerfire rifle hunt is in progress in  
5313 the same area:  
5314 (i) archery;  
5315 (ii) muzzle-loader;  
5316 (iii) mountain goat;  
5317 (iv) bighorn sheep;  
5318 (v) bison; or  
5319 (vi) moose; or  
5320 (b) as provided by a rule of the Wildlife Board.  
5321 Section 127. Section **23-21-2** is amended to read:  
5322 **23-21-2. Payments in lieu of property taxes on property purchased by division.**  
5323 Prior to the purchase of any real property held in private ownership, the Division of  
5324 Wildlife Resources shall first submit the proposition to the county legislative body in a regular  
5325 open public meeting in the county where the property is located and shall by contractual  
5326 agreement with the county legislative body, approved by the executive director of the  
5327 Department of Natural Resources, agree to pay an amount of money in lieu of property taxes to  
5328 the county. The division shall, by contractual agreement with the county legislative body in

5329 which any property previously acquired from private ownership and now owned by the division  
5330 is located, agree to pay annually an amount of money in lieu of wildlife resource fine money,  
5331 previously paid to the county. Payments provided for in this section will not exceed what the  
5332 regularly assessed real property taxes would be if the land had remained in private ownership;  
5333 and these payments [~~shall not~~] may not include any amount for buildings, installations,  
5334 fixtures, improvements or personal property located upon the land or for those acquired,  
5335 constructed or placed by the division after it acquires the land.

5336 Section 128. Section **23-22-1** is amended to read:

5337 **23-22-1. Cooperative agreements and programs authorized.**

5338 (1) The Division of Wildlife Resources may enter into cooperative agreements and  
5339 programs with other state agencies, federal agencies, states, educational institutions,  
5340 municipalities, counties, corporations, organized clubs, landowners, associations, and  
5341 individuals for purposes of wildlife conservation.

5342 (2) Cooperative agreements that are policy in nature [~~must~~] shall be:

- 5343 (a) approved by the executive director of the Department of Natural Resources; and  
5344 (b) reviewed by the Wildlife Board.

5345 Section 129. Section **23-22-3** is amended to read:

5346 **23-22-3. Reciprocal agreements with other states.**

5347 (1) The Wildlife Board is authorized to enter into reciprocal agreements with other  
5348 states to:

- 5349 (a) license and regulate fishing, hunting, and related activities; and  
5350 (b) promote and implement wildlife management programs.

5351 (2) Reciprocal agreements [~~must~~] shall be approved by the executive director of the  
5352 Department of Natural Resources.

5353 Section 130. Section **23-23-11** is amended to read:

5354 **23-23-11. Failure to comply with rules and requirements.**

5355 A person [~~must~~] shall leave private property within a cooperative wildlife management  
5356 unit immediately, upon request of a landowner, landowner association operator, or cooperative  
5357 wildlife management unit agent, if that person:

- 5358 (1) does not have in [~~his or her~~] that person's possession a cooperative wildlife  
5359 management unit authorization or permit;

5360 (2) endangers or has endangered human safety;  
5361 (3) damages or has damaged private property within a cooperative wildlife  
5362 management unit; or  
5363 (4) fails or has failed to comply with reasonable rules of a landowner association.  
5364 Section 131. Section **23-24-1** is amended to read:  
5365 **23-24-1. Procedure to obtain compensation for livestock damage done by bear,**  
5366 **mountain lion, wolf, or eagle.**  
5367 (1) As used in this section:  
5368 (a) "Damage" means injury to or loss of livestock.  
5369 (b) "Division" means the Division of Wildlife Resources.  
5370 (c) "Livestock" means cattle, sheep, goats, or turkeys.  
5371 (d) (i) "Wolf" means the gray wolf *Canis lupus*.  
5372 (ii) "Wolf" does not mean a wolf hybrid with a domestic dog.  
5373 (2) (a) (i) Except as provided by Subsection (2)(a)(ii), if livestock are damaged by a  
5374 bear, mountain lion, wolf, or an eagle, the owner may receive compensation for the fair market  
5375 value of the damage.  
5376 (ii) The owner may not receive compensation if the livestock is damaged by a wolf  
5377 within an area where a wolf is endangered or threatened under the Endangered Species Act of  
5378 1973, 16 U.S.C. Sec. 1531, et seq.  
5379 (b) To obtain this compensation, the owner of the damaged livestock shall notify the  
5380 division of the damage as soon as possible, but no later than four days after the damage is  
5381 discovered.  
5382 (c) The owner [~~must~~] shall notify the division each time any damage is discovered.  
5383 (3) The livestock owner shall file a proof of loss form, provided by the division, no  
5384 later than 30 days after the original notification of damage was given to the division by the  
5385 owner.  
5386 (4) (a) (i) The division, with the assistance of the Department of Agriculture and Food  
5387 shall:  
5388 (A) within 30 days after the owner files the proof of loss form, either accept or deny the  
5389 claim for damages; and  
5390 (B) subject to Subsections (4)(a)(ii) through (4)(a)(iv), pay all accepted claims to the

5391 extent money appropriated by the Legislature is available for this purpose.

5392 (ii) Money appropriated from the Wildlife Resources Account may be used to provide  
5393 compensation for only up to 50% of the fair market value of any damaged livestock.

5394 (iii) Money appropriated from the Wildlife Resources Account may not be used to  
5395 provide compensation for livestock damaged by an eagle or a wolf.

5396 (iv) The division may not pay any eagle damage claim until the division has paid all  
5397 accepted mountain lion and bear damage claims for the fiscal year.

5398 (b) The division may not pay mountain lion, bear, wolf, or eagle damage claims to a  
5399 livestock owner unless the owner has filed a completed livestock form and the appropriate fee  
5400 as outlined in Section 4-23-7 for the immediately preceding and current year.

5401 (c) (i) Unless the division denies a claim for the reason identified in Subsection (4)(b),  
5402 the owner may appeal the decision to a panel consisting of one person selected by the owner,  
5403 one person selected by the division, and a third person selected by the first two panel members.

5404 (ii) The panel shall decide whether the division should pay all of the claim, a portion of  
5405 the claim, or none of the claim.

5406 (5) By following the procedures and requirements of Title 63G, Chapter 3, Utah  
5407 Administrative Rulemaking Act, the Wildlife Board may make and enforce rules to administer  
5408 and enforce this section.

5409 Section 132. Section **24-1-8** is amended to read:

5410 **24-1-8. Criminal procedures.**

5411 (1) In cases where an owner is criminally prosecuted for conduct giving rise to  
5412 forfeiture, the prosecuting attorney may elect to forfeit the owner's interest in the property  
5413 civilly or criminally, provided that no civil forfeiture judgment may be entered with respect to  
5414 the property of a defendant who is acquitted of the offense on which the forfeiture claim is  
5415 based.

5416 (2) If the prosecuting attorney elects to criminally forfeit the owner's interest in the  
5417 property, the information or indictment [~~must~~] shall state that the owner's interest in the  
5418 specifically described property is subject to criminal forfeiture and the basis for the forfeiture.

5419 (3) (a) Upon application of the prosecuting attorney, the court may enter restraining  
5420 orders or injunctions, or take other reasonable action to preserve for forfeiture under this  
5421 section any forfeitable property if, after notice to persons known, or discoverable after due

5422 diligence, to have an interest in the property and after affording them an opportunity for a  
5423 hearing, the court determines that:

5424 (i) there is a substantial probability that the state will prevail on the issue of forfeiture  
5425 and that failure to enter the order will result in the property being sold, transferred, destroyed,  
5426 or removed from the jurisdiction of the court or otherwise made unavailable for forfeiture; and

5427 (ii) the need to preserve the availability of the property or prevent its sale, transfer,  
5428 destruction, or removal through the entry of the requested order outweighs the hardship against  
5429 any party against whom the order is to be entered.

5430 (b) A temporary restraining order may be entered ex parte upon application of the  
5431 prosecuting attorney before or after an information or indictment has been filed with respect to  
5432 the property, if the prosecuting attorney demonstrates that:

5433 (i) there is probable cause to believe that the property with respect to which the order is  
5434 sought would, in the event of a conviction, be subject to forfeiture under this section; and

5435 (ii) provision of notice would jeopardize the availability of the property for forfeiture  
5436 or would jeopardize an ongoing criminal investigation.

5437 (c) The temporary order expires not more than 10 days after entry unless extended for  
5438 good cause shown or unless the party against whom it is entered consents to an extension. An  
5439 adversarial hearing concerning an order entered under this section shall be held as soon as  
5440 practicable and prior to the expiration of the temporary order.

5441 (d) The court is not bound by the Utah Rules of Evidence regarding evidence it may  
5442 receive and consider at any hearing under this section.

5443 (4) (a) Upon conviction by a jury of an owner for conduct giving rise to criminal  
5444 forfeiture, the jury shall be instructed and asked to return a special verdict as to the extent of  
5445 the property identified in the information or indictment, if any, that is forfeitable.

5446 (b) Whether property is forfeitable shall be proven beyond a reasonable doubt.

5447 (5) (a) Upon conviction of a person for violating any provision of state law subjecting  
5448 an owner's property to forfeiture and upon the jury's special verdict that the property is  
5449 forfeitable, the court shall enter a judgment and order the property forfeited to the state upon  
5450 the terms stated by the court in its order.

5451 (b) Following the entry of an order declaring property forfeited, the court may, upon  
5452 application of the prosecuting attorney, enter appropriate restraining orders or injunctions,

5453 require the execution of satisfactory performance bonds, appoint receivers, conservators,  
5454 appraisers, accountants, or trustees, or take any other action to protect the interest of the state in  
5455 property ordered forfeited.

5456 (6) (a) After property is ordered forfeited under this section, the seizing agency shall  
5457 direct the disposition of the property under Section 24-1-17. Any property right or interest not  
5458 exercisable by or transferable for value to the state expires and does not revert to the defendant.  
5459 The defendant or any person acting in concert with or on behalf of the defendant is not eligible  
5460 to purchase forfeited property at any sale held by the seizing agency unless approved by the  
5461 judge.

5462 (b) The court may stay the sale or disposition of the property pending the conclusion of  
5463 any appeal of the criminal case giving rise to the forfeiture if the defendant demonstrates that  
5464 proceeding with the sale or disposition of the property may result in irreparable injury, harm or  
5465 loss to [~~him~~] the defendant.

5466 (7) Except under Subsection (3) or (10), a party claiming an interest in property subject  
5467 to criminal forfeiture under this section:

5468 (a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of  
5469 property under this section; and

5470 (b) may not commence an action at law or equity against the state or the county  
5471 concerning the validity of [~~his~~] the party's alleged interests in the property subsequent to the  
5472 filing of an indictment or an information alleging that the property is subject to forfeiture under  
5473 this section.

5474 (8) The district court of the state which has jurisdiction of a case under this part may  
5475 enter orders under this section without regard to the location of any property which may be  
5476 subject to forfeiture under this section, or which has been ordered forfeited under this section.

5477 (9) To facilitate the identification or location of property declared forfeited and to  
5478 facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of  
5479 an order declaring property forfeited to the state, the court may upon application of the  
5480 prosecuting attorney order that the testimony of any witness relating to the property forfeited be  
5481 taken by deposition, and that any book, paper, document, record, recording, or other material  
5482 not privileged shall be produced as provided for depositions and discovery under the Utah  
5483 Rules of Civil Procedure.

5484 (10) (a) Following the entry of an order of forfeiture under this section, the prosecuting  
5485 attorney shall publish notice of the order's intent to dispose of the property as the court may  
5486 direct. The prosecuting attorney shall also provide direct written notice to any person known to  
5487 have an alleged interest in the property subject to the order of forfeiture.

5488 (b) Any person, other than the defendant, asserting a legal interest in property which  
5489 has been ordered forfeited to the state under this section may, within 30 days of the final  
5490 publication of notice or [~~his~~] the person's receipt of written notice under Subsection (10)(a),  
5491 whichever is earlier, petition the court for a hearing to adjudicate the validity of [~~his~~] the  
5492 person's alleged interest in the property. Any genuine issue of material fact, including issues of  
5493 standing, is triable to a jury upon demand of any party.

5494 (c) The petition shall be in writing and signed by the petitioner under penalty of  
5495 perjury. It shall set forth the nature and extent of the petitioner's right, title, or interest in the  
5496 property, the time and circumstances of the petitioner's acquisition of the right, title, or interest  
5497 in the property, and any additional facts supporting the petitioner's claim and the relief sought.

5498 (d) The trial or hearing on the petition shall be expedited to the extent practicable. The  
5499 court may consolidate a trial or hearing on the petition and any petition filed by any other  
5500 person under this section other than the defendant. The court shall permit the parties to  
5501 conduct pretrial discovery pursuant to the Utah Rules of Civil Procedure.

5502 (e) At the trial or hearing, the petitioner may testify and present evidence and witnesses  
5503 on [~~his~~] the petitioner's own behalf and cross-examine witnesses who appear at the hearing.  
5504 The prosecuting attorney may present evidence and witnesses in rebuttal and in defense of the  
5505 claim to the property and cross-examine witnesses who appear. In addition to testimony and  
5506 evidence presented at the trial or hearing, the court may consider the relevant portion of the  
5507 record of the criminal case which resulted in the order of forfeiture. Any trial or hearing shall  
5508 be conducted pursuant to the Utah Rules of Evidence.

5509 (f) The court shall amend the order of forfeiture in accordance with its determination, if  
5510 after the trial or hearing, the court or jury determines that the petitioner has established by a  
5511 preponderance of the evidence that:

5512 (i) the petitioner has a legal right, title, or interest in the property, and the right, title, or  
5513 interest renders the order of forfeiture invalid in whole or in part because the right, title, or  
5514 interest was vested in the petitioner rather than the defendant or was superior to any right, title,

5515 or interest of the defendant at the time of the commission of the acts or conduct which gave rise  
5516 to the forfeiture of the property under this section; or

5517 (ii) the petitioner acquired the right, title or interest in the property in a bona fide  
5518 transaction for value and, at the time of such acquisition, the petitioner did not know that the  
5519 property was subject to forfeiture.

5520 (g) Following the court's disposition of all petitions filed under this Subsection (10), or  
5521 if no petitions are filed following the expiration of the period provided in Subsection (10)(b)  
5522 for the filing of petitions, the state has clear title to property subject to the order of forfeiture  
5523 and may warrant good title to any subsequent purchaser or transferee.

5524 Section 133. Section **25-5-2** is amended to read:

5525 **25-5-2. Wills and implied trusts excepted.**

5526 Section 25-5-1 [~~shall not~~] may not be construed to affect the power of a testator in the  
5527 disposition of [~~his~~] the testator's real estate by last will and testament; nor to prevent any trust  
5528 from arising or being extinguished by implication or operation of law.

5529 Section 134. Section **25-6-9** is amended to read:

5530 **25-6-9. Good faith transfer.**

5531 (1) A transfer or obligation is not voidable under Subsection 25-6-5(1)(a) against a  
5532 person who took in good faith and for a reasonably equivalent value or against any subsequent  
5533 transferee or obligee.

5534 (2) Except as otherwise provided in this section, to the extent a transfer is voidable in  
5535 an action by a creditor under Subsection 25-6-8(1)(a), the creditor may recover judgment for  
5536 the value of the asset transferred, as adjusted under Subsection (3), or the amount necessary to  
5537 satisfy the creditor's claim, whichever is less. The judgment may be entered against:

5538 (a) the first transferee of the asset or the person for whose benefit the transfer was  
5539 made; or

5540 (b) any subsequent transferee other than a good faith transferee who took for value or  
5541 from any subsequent transferee.

5542 (3) If the judgment under Subsection (2) is based upon the value of the asset  
5543 transferred, the judgment [~~must~~] shall be for an amount equal to the value of the asset at the  
5544 time of the transfer, subject to an adjustment as equities may require.

5545 (4) Notwithstanding voidability of a transfer or an obligation under this chapter, a

5546 good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the  
5547 transfer or obligation, to:

5548 (a) a lien on or a right to retain any interest in the asset transferred;

5549 (b) enforcement of any obligation incurred; or

5550 (c) a reduction in the amount of the liability on the judgment.

5551 (5) A transfer is not voidable under Subsection 25-6-5(1)(b) or Section 25-6-6 if the  
5552 transfer results from:

5553 (a) termination of a lease upon default by the debtor when the termination is pursuant  
5554 to the lease and applicable law; or

5555 (b) enforcement of a security interest in compliance with Title 70A, Chapter 9a,  
5556 Uniform Commercial Code - Secured Transactions.

5557 (6) A transfer is not voidable under Subsection 25-6-6(2):

5558 (a) to the extent the insider gave new value to or for the benefit of the debtor after the  
5559 transfer was made unless the new value was secured by a valid lien;

5560 (b) if made in the ordinary course of business or financial affairs of the debtor and the  
5561 insider; or

5562 (c) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer  
5563 secured present value given for that purpose as well as an antecedent debt of the debtor.

5564 Section 135. Section **26-1-5** is amended to read:

5565 **26-1-5. Rules of department.**

5566 (1) Except in areas regulated by statutory committees created by this title, the  
5567 department shall have the power to adopt, amend, or rescind rules necessary to carry out the  
5568 provisions of this title.

5569 (2) Rules shall have the force and effect of law and may deal with matters which  
5570 materially affect the security of health or the preservation and improvement of public health in  
5571 the state, and any matters as to which jurisdiction is conferred upon the department by this title.

5572 (3) Every rule adopted by the department pursuant to this section, or a committee  
5573 established under Section 26-1-7 or 26-1-7.5, shall be subject to Title 63G, Chapter 3, Utah  
5574 Administrative Rulemaking Act and shall become effective at the time and in the manner  
5575 provided in that act.

5576 (4) If, at the next general session of the Legislature following the filing of a rule with

5577 the legislative research director, the Legislature passes a bill disapproving such rule, the rule  
5578 shall be null and void.

5579 (5) The department or a committee created under Section 26-1-7 or 26-1-7.5, [~~shall~~  
5580 ~~not~~] may not adopt a rule identical to a rule disapproved under Subsection (4) of this section,  
5581 before the beginning of the next general session of the Legislature following the general  
5582 session at which the rule was disapproved.

5583 Section 136. Section **26-1-7.5** is amended to read:

5584 **26-1-7.5. Health advisory council.**

5585 (1) (a) There is created the Utah Health Advisory Council, comprised of nine persons  
5586 appointed by the governor.

5587 (b) The governor shall ensure that:

5588 (i) members of the council:

5589 (A) broadly represent the public interest;

5590 (B) have an interest in or knowledge of public health, environmental health, health  
5591 planning, health care financing, or health care delivery systems; and

5592 (C) include health professionals;

5593 (ii) the majority of the membership are nonhealth professionals;

5594 (iii) no more than five persons are from the same political party; and

5595 (iv) geography, sex, and ethnicity balance are considered when selecting the members.

5596 (2) (a) Except as required by Subsection (2)(b), members of the council shall be  
5597 appointed to four-year terms.

5598 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the  
5599 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
5600 council members are staggered so that approximately half of the council is appointed every two  
5601 years.

5602 (c) Terms of office for subsequent appointments shall commence on July 1 of the year  
5603 in which the appointment occurs.

5604 (3) (a) When a vacancy occurs in the membership for any reason, the replacement shall  
5605 be appointed for the unexpired term.

5606 (b) No person shall be appointed to the council for more than two consecutive terms.

5607 (c) The chair of the council shall be appointed by the governor from the membership of

5608 the council.

5609 (4) The council shall meet at least quarterly or more frequently as determined necessary  
5610 by the chair. A quorum for conducting business shall consist of four members of the council.

5611 (5) A member may not receive compensation or benefits for the member's service, but,  
5612 at the executive director's discretion, may receive per diem and travel expenses in accordance  
5613 with:

5614 (a) Section 63A-3-106;

5615 (b) Section 63A-3-107; and

5616 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
5617 63A-3-107.

5618 (6) The council shall be empowered to advise the department on any subject deemed to  
5619 be appropriate by the council except that the council [~~shall not~~] may not become involved in  
5620 administrative matters. The council shall also advise the department as requested by the  
5621 executive director.

5622 (7) The executive director shall ensure that the council has adequate staff support and  
5623 shall provide any available information requested by the council necessary for their  
5624 deliberations. The council shall observe confidential requirements placed on the department in  
5625 the use of such information.

5626 Section 137. Section **26-1-11** is amended to read:

5627 **26-1-11. Executive director -- Power to amend, modify, or rescind committee**  
5628 **rules.**

5629 The executive director pursuant to the requirements of the Administrative Rulemaking  
5630 Act may amend, modify, or rescind any rule of any committee created pursuant to Section  
5631 26-1-7 if the rule creates a clear present hazard or clear potential hazard to the public health  
5632 except that the executive director [~~shall not~~] may not act until after discussion with the  
5633 appropriate committee.

5634 Section 138. Section **26-1-25** is amended to read:

5635 **26-1-25. Principal and branch offices of department.**

5636 The principal office of the department shall be in Salt Lake County. The department  
5637 may establish branch offices at other places in the state to furnish comprehensive and effective  
5638 health programs and to render additional assistance to local health officials. This section [~~shall~~

5639 ~~not~~ does not limit the powers of local health agencies.

5640 Section 139. Section **26-1-32** is amended to read:

5641 **26-1-32. Severability of code provisions.**

5642 If any provision of this code or the application of any such provision to any person or  
5643 circumstance is held invalid, the invalidity [~~shall not~~] does not affect other provisions or  
5644 applications of this code which can be given effect without the invalid provision or application,  
5645 and to this end the provisions of this code are declared to be severable.

5646 Section 140. Section **26-3-8** is amended to read:

5647 **26-3-8. Disclosure of health data -- Discretion of department.**

5648 Any disclosure provided for in Section 26-3-7 shall be made at the discretion of the  
5649 department, except that the disclosure provided for in Subsection 26-3-7(4) [~~must~~] shall be  
5650 made when the requirements of that paragraph [~~have been~~] are met.

5651 Section 141. Section **26-4-2** is amended to read:

5652 **26-4-2. Definitions.**

5653 As used in this chapter:

5654 (1) "Dead body" is as defined in Section 26-2-2.

5655 (2) "Death by violence" means death that resulted by the decedent's exposure to  
5656 physical, mechanical, or chemical forces, and includes death which appears to have been due to  
5657 homicide, death which occurred during or in an attempt to commit rape, mayhem, kidnapping,  
5658 robbery, burglary, housebreaking, extortion, or blackmail accompanied by threats of violence,  
5659 assault with a dangerous weapon, assault with intent to commit any offense punishable by  
5660 imprisonment for more than one year, arson punishable by imprisonment for more than one  
5661 year, or any attempt to commit any of the foregoing offenses.

5662 (3) "Medical examiner" means the state medical examiner appointed pursuant to  
5663 Section 26-4-4 or a deputy appointed by the medical examiner.

5664 (4) "Regional pathologist" means a trained pathologist licensed to practice medicine  
5665 and surgery in the state, appointed by the medical examiner pursuant to Subsection 26-4-4(3).

5666 (5) "Sudden death while in apparent good health" means apparently instantaneous  
5667 death without obvious natural cause, death during or following an unexplained syncope or  
5668 coma, or death during an acute or unexplained rapidly fatal illness.

5669 (6) "Sudden infant death syndrome" means the death of a child who was thought to be

5670 in good health or whose terminal illness appeared to be so mild that the possibility of a fatal  
5671 outcome was not anticipated.

5672 (7) "Suicide" means death caused by an intentional and voluntary act of a person who  
5673 understands the physical nature of the act and intends by such act to accomplish  
5674 self-destruction.

5675 (8) "Unattended death" means the death of a person who has not been seen by a  
5676 physician within the scope of the physician's professional capacity within 30 days immediately  
5677 prior to the date of death. This definition [~~shall not~~] does not require an investigation, autopsy,  
5678 or inquest in any case where death occurred without medical attendance solely because the  
5679 deceased was under treatment by prayer or spiritual means alone in accordance with the tenets  
5680 and practices of a well-recognized church or religious denomination.

5681 (9) (a) "Unavailable for postmortem investigation" means that a dead body is:

5682 (i) transported out of state;

5683 (ii) buried at sea;

5684 (iii) cremated; or

5685 (iv) otherwise made unavailable to the medical examiner for postmortem investigation  
5686 or autopsy.

5687 (b) "Unavailable for postmortem investigation" does not include embalming or burial  
5688 of a dead body pursuant to the requirements of law.

5689 (10) "Within the scope of the decedent's employment" means all acts reasonably  
5690 necessary or incident to the performance of work, including matters of personal convenience  
5691 and comfort not in conflict with specific instructions.

5692 Section 142. Section **26-4-9** is amended to read:

5693 **26-4-9. Custody of dead body and personal effects -- Examination of scene of**  
5694 **death -- Preservation of body -- Autopsies.**

5695 (1) Upon notification of a death under Section 26-4-8, the medical examiner shall  
5696 assume custody of the deceased body, clothing on the body, biological samples taken, and any  
5697 article on or near the body which may aid [~~him~~] the medical examiner in determining the cause  
5698 of death except those articles which will assist the investigative agency to proceed without  
5699 delay with the investigation. In all cases the scene of the event [~~shall not~~] may not be disturbed  
5700 until authorization is given by the senior ranking peace officer from the law enforcement

5701 agency having jurisdiction of the case and conducting the investigation. Where death appears to  
5702 have occurred under circumstances listed in Section 26-4-7, the person or persons finding or  
5703 having custody of the body, or jurisdiction over the investigation of the death, shall take  
5704 reasonable precautions to preserve the body and body fluids so that minimum deterioration  
5705 takes place. The body [~~shall not~~] may not be moved without permission of the medical  
5706 examiner, district attorney, or county attorney having criminal jurisdiction, or his authorized  
5707 deputy except in cases of affront to public decency or circumstances where it is not practical to  
5708 leave the body where found, or in such cases where the cause of death is clearly due to natural  
5709 causes. The body can under direction of a licensed physician or the medical examiner or his  
5710 designated representative be moved to a place specified by a funeral director, the attending  
5711 physician, the medical examiner, or his representative.

5712 (2) In the event the body, where referred to the medical examiner, is moved, no  
5713 cleansing or embalming of the body shall occur without the permission of the medical  
5714 examiner. An intentional or knowing violation of this Subsection (2) is a class B misdemeanor.

5715 (3) When the medical examiner assumes lawful custody of a body under Subsection  
5716 26-4-7(3) solely because the death was unattended, an autopsy [~~shall not~~] may not be  
5717 performed unless requested by the district attorney, county attorney having criminal  
5718 jurisdiction, or law enforcement agency having jurisdiction of the place where the body is  
5719 found, or a licensed physician, or a spouse, child, parent or guardian of the deceased, and a  
5720 licensed physician. The county attorney or district attorney and law enforcement agency having  
5721 jurisdiction shall consult with the medical examiner to determine the need for an autopsy. In  
5722 any such case concerning unattended deaths qualifying as exempt from autopsy, a death  
5723 certificate may be certified by a licensed physician. In this case the physician may be  
5724 established as the medical examiner's designated representative. Requested autopsies [~~shall~~  
5725 ~~not~~] may not be performed when the medical examiner or [~~his~~] the medical examiner's  
5726 designated representative determines the autopsy to be unnecessary, provided that an autopsy  
5727 requested by a district or county attorney or law enforcement agency may only be determined to  
5728 be unnecessary if the cause of death can be ascertained without an autopsy being performed.

5729 Section 143. Section **26-4-12** is amended to read:

5730 **26-4-12. Order to exhume body -- Procedure.**

5731 (1) In case of any death described in Section 26-4-7, when a body is buried without an

5732 investigation by the medical examiner as to the cause and manner of death, it shall be the duty  
5733 of the medical examiner, upon being advised of the fact, to notify the district attorney or county  
5734 attorney having criminal jurisdiction where the body is buried or death occurred. Upon  
5735 notification, the district attorney or county attorney having criminal jurisdiction may file an  
5736 action in the district court to obtain an order to exhume the body. A district judge may order the  
5737 body exhumed upon an ex parte hearing.

5738 (2) (a) A body [~~shall not~~] may not be exhumed until notice of the order has been served  
5739 upon the executor or administrator of the deceased's estate, or if no executor or administrator  
5740 has been appointed, upon the nearest heir of the deceased, determined as if the deceased had  
5741 died intestate. If the nearest heir of the deceased cannot be located within the jurisdiction, then  
5742 the next heir in succession within the jurisdiction may be served.

5743 (b) The executor, administrator, or heir shall have 24 hours to notify the issuing court  
5744 of any objection to the order prior to the time the body is exhumed. If no heirs can be located  
5745 within the jurisdiction within 24 hours, the facts shall be reported to the issuing court which  
5746 may order that the body be exhumed forthwith.

5747 (c) Notification to the executor, administrator, or heir shall specifically state the nature  
5748 of the action and the fact that any objection [~~must~~] shall be filed with the issuing court within  
5749 24 hours of the time of service.

5750 (d) In the event an heir files an objection, the court shall set hearing on the matter at the  
5751 earliest possible time and issue an order on the matter immediately at the conclusion of the  
5752 hearing. Upon the receipt of notice of objection, the court shall immediately notify the county  
5753 attorney who requested the order, so that the interest of the state may be represented at the  
5754 hearing.

5755 (e) When there is reason to believe that death occurred in a manner described in  
5756 Section 26-4-7, the district attorney or county attorney having criminal jurisdiction may make a  
5757 motion that the court, upon ex parte hearing, order the body exhumed forthwith and without  
5758 notice. Upon a showing of exigent circumstances the court may order the body exhumed  
5759 forthwith and without notice. In any event, upon motion of the district attorney or county  
5760 attorney having criminal jurisdiction and upon the personal appearance of the medical  
5761 examiner, the court for good cause may order the body exhumed forthwith and without notice.

5762 (3) An order to exhume a body shall be directed to the medical examiner, commanding

5763 [~~him~~] the medical examiner to cause the body to be exhumed, perform the required autopsy,  
5764 and properly cause the body to be reburied upon completion of the examination.

5765 (4) The examination shall be completed and the complete autopsy report shall be made  
5766 to the district attorney or county attorney having criminal jurisdiction for any action the  
5767 attorney considers appropriate. The district attorney or county attorney shall submit the return  
5768 of the order to exhume within 10 days in the manner prescribed by the issuing court.

5769 Section 144. Section **26-4-20** is amended to read:

5770 **26-4-20. Officials not liable for authorized acts.**

5771 Except as provided in this chapter, a criminal or civil action [~~shall not~~] may not arise  
5772 against the county attorney, district attorney, or his deputies, the medical examiner or his  
5773 deputies, or regional pathologists for authorizing or performing autopsies authorized by this  
5774 chapter or for any other act authorized by this chapter.

5775 Section 145. Section **26-6-3** is amended to read:

5776 **26-6-3. Authority to investigate and control epidemic infections and**  
5777 **communicable disease.**

5778 (1) The department has authority to investigate and control the causes of epidemic  
5779 infections and communicable disease, and shall provide for the detection, reporting,  
5780 prevention, and control of communicable diseases and epidemic infections or any other health  
5781 hazard which may affect the public health.

5782 (2) (a) As part of the requirements of Subsection (1), the department shall distribute to  
5783 the public and to health care professionals:

5784 (i) medically accurate information about sexually transmitted diseases that may cause  
5785 infertility and sterility if left untreated, including descriptions of:

5786 (A) the probable side effects resulting from an untreated sexually transmitted disease,  
5787 including infertility and sterility;

5788 (B) medically accepted treatment for sexually transmitted diseases;

5789 (C) the medical risks commonly associated with the medical treatment of sexually  
5790 transmitted diseases; and

5791 (D) suggest screening by a private physician; and

5792 (ii) information about:

5793 (A) public services and agencies available to assist individuals with obtaining

5794 treatment for the sexually transmitted disease;

5795 (B) medical assistance benefits that may be available to the individual with the  
5796 sexually transmitted disease; and

5797 (C) abstinence before marriage and fidelity after marriage being the surest prevention  
5798 of sexually transmitted disease.

5799 (b) The information required by Subsection (2)(a):

5800 (i) shall be distributed by the department and by local health departments free of  
5801 charge;

5802 (ii) shall be relevant to the geographic location in which the information is distributed  
5803 by:

5804 (A) listing addresses and telephone numbers for public clinics and agencies providing  
5805 services in the geographic area in which the information is distributed; and

5806 (B) providing the information in English as well as other languages that may be  
5807 appropriate for the geographic area.

5808 (c) (i) Except as provided in Subsection (2)(c)(ii), the department shall develop written  
5809 material that includes the information required by this Subsection (2).

5810 (ii) In addition to the written materials required by Subsection (2)(c)(i), the department  
5811 may distribute the information required by this Subsection (2) by any other methods the  
5812 department determines is appropriate to educate the public, excluding public schools, including  
5813 websites, toll free telephone numbers, and the media.

5814 (iii) If the information required by Subsection (2)(b)(ii)(A) is not included in the  
5815 written pamphlet developed by the department, the written material [~~must~~] shall include either  
5816 a website, or a 24-hour toll free telephone number that the public may use to obtain that  
5817 information.

5818 Section 146. Section **26-6-18** is amended to read:

5819 **26-6-18. Venereal disease -- Consent of minor to treatment.**

5820 (1) A consent to medical care or services by a hospital or public clinic or the  
5821 performance of medical care or services by a licensed physician executed by a minor who is or  
5822 professes to be afflicted with a sexually transmitted disease, shall have the same legal effect  
5823 upon the minor and the same legal obligations with regard to the giving of consent as a consent  
5824 given by a person of full legal age and capacity, the infancy of the minor and any contrary

5825 provision of law notwithstanding.

5826 (2) The consent of the minor [~~shall not be~~] is not subject to later disaffirmance by  
5827 reason of minority at the time it was given and the consent of no other person or persons shall  
5828 be necessary to authorize hospital or clinical care or services to be provided to the minor by a  
5829 licensed physician.

5830 (3) The provisions of this section shall apply also to minors who profess to be in need  
5831 of hospital or clinical care and services or medical care or services provided by a physician for  
5832 suspected sexually transmitted disease, regardless of whether such professed suspicions are  
5833 subsequently substantiated on a medical basis.

5834 Section 147. Section **26-6-20** is amended to read:

5835 **26-6-20. Serological testing of pregnant or recently delivered women.**

5836 (1) Every licensed physician and surgeon attending a pregnant or recently delivered  
5837 woman for conditions relating to her pregnancy shall take or cause to be taken a sample of  
5838 blood of the woman at the time of first examination or within 10 days thereafter. The blood  
5839 sample shall be submitted to an approved laboratory for a standard serological test for syphilis.  
5840 The provisions of this section [~~shall not~~] do not apply to any female who objects thereto on the  
5841 grounds that she is a bona fide member of a specified, well recognized religious organization  
5842 whose teachings are contrary to the tests.

5843 (2) Every other person attending a pregnant or recently delivered woman, who is not  
5844 permitted by law to take blood samples, shall within 10 days from the time of first attendance  
5845 cause a sample of blood to be taken by a licensed physician. The blood sample shall be  
5846 submitted to an approved laboratory for a standard serological test for syphilis.

5847 (3) An approved laboratory is a laboratory approved by the department according to its  
5848 rules governing the approval of laboratories for the purpose of this title. In submitting the  
5849 sample to the laboratory the physician shall designate whether it is a prenatal test or a test  
5850 following recent delivery.

5851 (4) For the purpose of this chapter, a "standard serological test" means a test for  
5852 syphilis approved by the department and made at an approved laboratory.

5853 (5) The laboratory shall transmit a detailed report of the standard serological test,  
5854 showing the result thereof to the physician.

5855 Section 148. Section **26-6b-3** is amended to read:

5856 **26-6b-3. Order of restriction.**

5857 (1) The department having jurisdiction over the location where an individual or a group  
5858 of individuals who are subject to restriction are found may:

5859 (a) issue a written order of restriction for the individual or group of individuals  
5860 pursuant to Subsection 26-1-30(2) or 26A-1-114(1)(b) upon compliance with the requirements  
5861 of this chapter; and

5862 (b) issue a verbal order of restriction for an individual or group of individuals pursuant  
5863 to Subsection (2)(c).

5864 (2) (a) A department's determination to issue an order of restriction shall be based upon  
5865 the totality of circumstances reported to and known by the department, including:

5866 (i) observation;

5867 (ii) information that the department determines is credible and reliable information;

5868 and

5869 (iii) knowledge of current public health risks based on medically accepted guidelines as  
5870 may be established by the Department of Health by administrative rule.

5871 (b) An order of restriction issued by a department [~~must~~] shall:

5872 (i) in the opinion of the public health official, be for the shortest reasonable period of  
5873 time necessary to protect the public health;

5874 (ii) use the least intrusive method of restriction that, in the opinion of the department,  
5875 is reasonable based on the totality of circumstances known to the health department issuing the  
5876 order of restriction;

5877 (iii) be in writing unless the provisions of Subsection (2)(c) apply; and

5878 (iv) contain notice of an individual's rights as required in Section 26-6b-3.3.

5879 (c) (i) A department may issue a verbal order of restriction, without prior notice to the  
5880 individual or group of individuals if the delay in imposing a written order of restriction would  
5881 significantly jeopardize the department's ability to prevent or limit:

5882 (A) the transmission of a communicable or possibly communicable disease that poses a  
5883 threat to public health;

5884 (B) the transmission of an infectious agent or possibly infectious agent that poses a  
5885 threat to public health;

5886 (C) the exposure or possible exposure of a chemical or biological agent that poses a

5887 threat to public health; or

5888 (D) the exposure or transmission of a condition that poses a threat to public health.

5889 (ii) A verbal order of restriction issued under the provisions of Subsection (2)(c)(i):

5890 (A) is valid for 24 hours from the time the order of restriction is issued;

5891 (B) may be verbally communicated to the individuals or group of individuals subject to  
5892 restriction by a first responder;

5893 (C) may be enforced by the first responder until the department is able to establish and  
5894 maintain the place of restriction; and

5895 (D) may only be continued beyond the initial 24 hours if a written order of restriction is  
5896 issued pursuant to the provisions of Section 26-6b-3.3.

5897 (3) Pending issuance of a written order of restriction under Section 26-6b-3.3, or  
5898 judicial review of an order of restriction by the district court pursuant to Section 26-6b-6, an  
5899 individual who is subject to the order of restriction may be required to submit to involuntary  
5900 examination, quarantine, isolation, or treatment in [his] the individual's home, a hospital, or  
5901 any other suitable facility under reasonable conditions prescribed by the department.

5902 (4) The department that issued the order of restriction shall take reasonable measures,  
5903 including the provision of medical care, as may be necessary to assure proper care related to the  
5904 reason for the involuntary examination, treatment, isolation, or quarantine of an individual  
5905 ordered to submit to an order of restriction.

5906 Section 149. Section **26-6b-3.1** is amended to read:

5907 **26-6b-3.1. Consent to order of restriction -- Periodic review.**

5908 (1) (a) The department shall either seek judicial review of an order of restriction under  
5909 Sections 26-6b-4 through 26-6b-6, or obtain the consent of an individual subject to an order of  
5910 restriction.

5911 (b) If the department obtains consent, the consent [~~must~~] shall be in writing and [~~must~~]  
5912 shall inform the individual or group of individuals:

5913 (i) of the terms and duration of the order of restriction;

5914 (ii) of the importance of complying with the order of restriction to protect the public's  
5915 health;

5916 (iii) that each individual has the right to agree to the order of restriction, or refuse to  
5917 agree to the order of restriction and seek a judicial review of the order of restriction;

5918 (iv) that for any individual who consents to the order of restriction:  
5919 (A) the order of restriction will not be reviewed by the district court unless the  
5920 individual withdraws consent to the order of restriction in accordance with Subsection  
5921 (1)(b)(iv)(B); and  
5922 (B) the individual [~~must~~] shall notify the department in writing, with at least five  
5923 business day's notice, if the individual intends to withdraw consent to the order of restriction;  
5924 and  
5925 (v) that a breach of a consent agreement prior to the end of the order of restriction may  
5926 subject the individual to an involuntary order of restriction under Section 26-6b-3.2.  
5927 (2) (a) The department responsible for the care of an individual who has consented to  
5928 the order of restriction shall periodically reexamine the reasons upon which the order of  
5929 restriction was based. This reexamination [~~must~~] shall occur at least once every six months.  
5930 (b) (i) If at any time, the department determines that the conditions justifying the order  
5931 of restriction for either a group or an individual no longer exist, the department shall  
5932 immediately discharge the individual or group from the order of restriction.  
5933 (ii) If the department determines that the conditions justifying the order of restriction  
5934 continue to exist, the department shall send to the individual a written notice of:  
5935 (A) the department's findings, the expected duration of the order of restriction, and the  
5936 reason for the decision; and  
5937 (B) the individual's right to a judicial review of the order of restriction by the district  
5938 court if requested by the individual.  
5939 (iii) Upon request for judicial review by an individual, the department shall:  
5940 (A) file a petition in district court within five business days after the individual's  
5941 request for a judicial review; and  
5942 (B) proceed under Sections 26-6b-4 through 26-6b-6.  
5943 Section 150. Section **26-7-1** is amended to read:  
5944 **26-7-1. Identification of major risk factors by department -- Education of public**  
5945 **-- Establishment of programs.**  
5946 The department shall identify the major risk factors contributing to injury, sickness,  
5947 death, and disability within the state and where it determines that a need exists, educate the  
5948 public regarding these risk factors, and the department may establish programs to reduce or

5949 eliminate these factors except that such programs [~~shall not~~] may not be established if adequate  
5950 programs exist in the private sector.

5951 Section 151. Section **26-8a-103** is amended to read:

5952 **26-8a-103. State Emergency Medical Services Committee -- Membership --**  
5953 **Report -- Expenses.**

5954 (1) The State Emergency Medical Services Committee created by Section 26-1-7 shall  
5955 be composed of the following 16 members appointed by the governor, at least five of whom  
5956 [~~must~~] shall reside in a county of the third, fourth, fifth, or sixth class:

5957 (a) five physicians licensed under Title 58, Chapter 67, Utah Medical Practice Act, or  
5958 Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, as follows:

5959 (i) one surgeon who actively provides trauma care at a hospital;

5960 (ii) one rural physician involved in emergency medical care;

5961 (iii) two physicians who practice in the emergency department of a general acute  
5962 hospital; and

5963 (iv) one pediatrician who practices in the emergency department or critical care unit of  
5964 a general acute hospital or a children's specialty hospital;

5965 (b) one representative from a private ambulance provider;

5966 (c) one representative from an ambulance provider that is neither privately owned nor  
5967 operated by a fire department;

5968 (d) two chief officers from fire agencies operated by the following classes of licensed  
5969 or designated emergency medical services providers: municipality, county, and fire district,  
5970 provided that no class of medical services providers may have more than one representative  
5971 under this Subsection (1)(d);

5972 (e) one director of a law enforcement agency that provides emergency medical  
5973 services;

5974 (f) one hospital administrator;

5975 (g) one emergency care nurse;

5976 (h) one paramedic in active field practice;

5977 (i) one emergency medical technician in active field practice;

5978 (j) one certified emergency medical dispatcher affiliated with an emergency medical  
5979 dispatch center; and

5980 (k) one consumer.

5981 (2) (a) Except as provided in Subsection (2)(b), members shall be appointed to a  
5982 four-year term beginning July 1.

5983 (b) Notwithstanding Subsection (2)(a), the governor shall, at the time of appointment  
5984 or reappointment, adjust the length of terms to ensure that the terms of committee members are  
5985 staggered so that approximately half of the committee is appointed every two years.

5986 (c) When a vacancy occurs in the membership for any reason, the replacement shall be  
5987 appointed by the governor for the unexpired term.

5988 (3) (a) Each January, the committee shall organize and select one of its members as  
5989 chair and one member as vice chair. The committee may organize standing or ad hoc  
5990 subcommittees, which shall operate in accordance with guidelines established by the  
5991 committee.

5992 (b) The chair shall convene a minimum of four meetings per year. The chair may call  
5993 special meetings. The chair shall call a meeting upon request of five or more members of the  
5994 committee.

5995 (c) Nine members of the committee constitute a quorum for the transaction of business  
5996 and the action of a majority of the members present is the action of the committee.

5997 (4) The committee shall submit a report in a form acceptable to the committee each  
5998 November at the Law Enforcement and Criminal Justice Interim Committee meeting  
5999 concerning its:

6000 (a) funding priorities and recommended sources;

6001 (b) closest responder recommendations;

6002 (c) centralized dispatch;

6003 (d) duplication of services and any taxing consequences;

6004 (e) appropriate providers for emergency medical services; and

6005 (f) recommendations and suggested legislation.

6006 (5) A member may not receive compensation or benefits for the member's service, but  
6007 may receive per diem and travel expenses in accordance with:

6008 (a) Section 63A-3-106;

6009 (b) Section 63A-3-107; and

6010 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

6011 63A-3-107.

6012 (6) Administrative services for the committee shall be provided by the department.

6013 Section 152. Section **26-8a-203** is amended to read:

6014 **26-8a-203. Data collection.**

6015 (1) The committee shall specify the information that [~~must~~] shall be collected for the  
6016 emergency medical services data system established pursuant to Subsection (2).

6017 (2) The department shall establish an emergency medical services data system which  
6018 shall provide for the collection of information, as defined by the committee, relating to the  
6019 treatment and care of patients who use or have used the emergency medical services system.

6020 (3) Persons providing emergency medical services shall provide information to the  
6021 department for the emergency medical services data system established pursuant to Subsection  
6022 (2).

6023 Section 153. Section **26-8a-207** is amended to read:

6024 **26-8a-207. Emergency medical services grant program.**

6025 (1) (a) The department shall receive as dedicated credits the amount established in  
6026 Section 51-9-403. That amount shall be transferred to the department by the Division of  
6027 Finance from funds generated by the surcharge imposed under Title 51, Chapter 9, Part 4,  
6028 Criminal Conviction Surcharge Allocation.

6029 (b) Funds transferred to the department under this section shall be used for  
6030 improvement of delivery of emergency medical services and administrative costs as described  
6031 in Subsection (2)(a). Appropriations to the department for the purposes enumerated in this  
6032 section shall be made from those dedicated credits.

6033 (c) All funding for the program created by this section shall be nonlapsing.

6034 (2) (a) The department may use the funds transferred to it under Subsection (1):

6035 (i) to provide staff support; and

6036 (ii) for other expenses incurred in:

6037 (A) administration of grant funds; and

6038 (B) other department administrative costs under this chapter.

6039 (b) After funding staff support, administrative expenses, and trauma system  
6040 development, the department and the committee shall make emergency medical services grants  
6041 from the remaining funds received as dedicated credits under Subsection (1). A recipient of a

6042 grant under this Subsection (2)(b) [~~must~~] shall actively provide emergency medical services  
6043 within the state.

6044 (c) The department shall distribute not less than 25% of the funds, with the percentage  
6045 being authorized by a majority vote of the committee, as per capita block grants for use  
6046 specifically related to the provision of emergency medical services to nonprofit prehospital  
6047 emergency medical services providers that are either licensed or designated and to emergency  
6048 medical services that are the primary emergency medical services for a service area. The  
6049 department shall determine the grant amounts by prorating available funds on a per capita basis  
6050 by county as described in department rule.

6051 (d) The committee shall award the remaining funds as competitive grants for use  
6052 specifically related to the provision of emergency medical services based upon rules  
6053 established by the committee.

6054 Section 154. Section **26-8a-253** is amended to read:

6055 **26-8a-253. Statewide trauma registry and quality assurance program.**

6056 (1) The department shall:

6057 (a) establish and fund a statewide trauma registry to collect and analyze information on  
6058 the incidence, severity, causes, and outcomes of trauma;

6059 (b) establish, by rule, the data elements, the medical care providers that [~~must~~] shall  
6060 report, and the time frame and format for reporting;

6061 (c) use the data collected to:

6062 (i) improve the availability and delivery of prehospital and hospital trauma care;

6063 (ii) assess trauma care delivery, patient care outcomes, and compliance with the  
6064 requirements of this chapter and applicable department rules; and

6065 (iii) regularly produce and disseminate reports to data providers, state government, and  
6066 the public; and

6067 (d) support data collection and abstraction by providing:

6068 (i) a data collection system and technical assistance to each hospital that submits data;  
6069 and

6070 (ii) funding or, at the discretion of the department, personnel for collection and  
6071 abstraction for each hospital not designated as a trauma center under the standards established  
6072 pursuant to Section 26-8a-254.

6073 (2) (a) Each hospital shall submit trauma data in accordance with rules established  
6074 under Subsection (1).

6075 (b) A hospital designated as a trauma center shall submit data as part of the ongoing  
6076 quality assurance program established in Section 26-8a-252.

6077 (3) The department shall assess:

6078 (a) the effectiveness of the data collected pursuant to Subsection (1); and

6079 (b) the impact of the statewide trauma system on the provision of trauma care.

6080 (4) Data collected under this section shall be subject to [~~Title 26;~~] Chapter 3, Health  
6081 Statistics.

6082 (5) No person may be held civilly liable for having provided data to the department in  
6083 accordance with this section.

6084 Section 155. Section ~~26-8a-405.2~~ is amended to read:

6085 **26-8a-405.2. Selection of provider -- Request for competitive sealed proposal --**  
6086 **Public convenience and necessity.**

6087 (1) (a) A political subdivision may contract with an applicant approved under Section  
6088 26-8a-404 to provide services for the geographic service area that is approved by the  
6089 department in accordance with Subsection (2), if:

6090 (i) the political subdivision complies with the provisions of this section and Section  
6091 26-8a-405.3 if the contract is for 911 ambulance or paramedic services; or

6092 (ii) the political subdivision complies with Sections 26-8a-405.3 and 26-8a-405.4, if  
6093 the contract is for non-911 services.

6094 (b) (i) The provisions of this section and Sections 26-8a-405.1, 26-8a-405.3, and  
6095 26-8a-405.4 do not require a political subdivision to issue a request for proposal for ambulance  
6096 or paramedic services or non-911 services.

6097 (ii) If a political subdivision does not contract with an applicant in accordance with this  
6098 section and Section 26-8a-405.3, the provisions of Sections 26-8a-406 through 26-8a-409 apply  
6099 to the issuance of a license for ambulance or paramedic services in the geographic service area  
6100 that is within the boundaries of the political subdivision.

6101 (iii) If a political subdivision does not contract with an applicant in accordance with  
6102 this section, Section 26-8a-405.3 and Section 26-8a-405.4, a license for the non-911 services in  
6103 the geographic service area that is within the boundaries of the political subdivision may be

6104 issued:

6105 (A) under the public convenience and necessity provisions of Sections 26-8a-406  
6106 through 26-8a-409; or

6107 (B) by a request for proposal issued by the department under Section 26-8a-405.5.

6108 (c) (i) For purposes of this Subsection (1)(c):

6109 (A) "Fire district" means a local district under Title 17B, Limited Purpose Local  
6110 Government Entities - Local Districts, that:

6111 (I) is located in a county of the first or second class; and

6112 (II) provides fire protection, paramedic, and emergency services.

6113 (B) "Participating municipality" means a city or town whose area is partly or entirely  
6114 included within a county service area or fire district.

6115 (C) "Participating county" means a county whose unincorporated area is partly or  
6116 entirely included within a fire district.

6117 (ii) A participating municipality or participating county may as provided in this section  
6118 and Section 26-8a-405.3, contract with a provider for 911 ambulance or paramedic service.

6119 (iii) If the participating municipality or participating county contracts with a provider  
6120 for services under this section and Section 26-8a-405.3:

6121 (A) the fire district is not obligated to provide the services that are included in the  
6122 contract between the participating municipality or the participating county and the provider;

6123 (B) the fire district may impose taxes and obligations within the fire district in the same  
6124 manner as if the participating municipality or participating county were receiving all services  
6125 offered by the fire district; and

6126 (C) the participating municipality's and participating county's obligations to the fire  
6127 district are not diminished.

6128 (2) (a) The political subdivision shall submit the request for proposal and the exclusive  
6129 geographic service area to be included in a request for proposal issued under Subsections  
6130 (1)(a)(i) or (ii) to the department for approval prior to issuing the request for proposal. The  
6131 department shall approve the request for proposal and the exclusive geographic service area:

6132 (i) unless the geographic service area creates an orphaned area; and

6133 (ii) in accordance with Subsections (2)(b) and (c).

6134 (b) The exclusive geographic service area may:

6135 (i) include the entire geographic service area that is within the political subdivision's  
6136 boundaries;

6137 (ii) include islands within or adjacent to other peripheral areas not included in the  
6138 political subdivision that governs the geographic service area; or

6139 (iii) exclude portions of the geographic service area within the political subdivision's  
6140 boundaries if another political subdivision or licensed provider agrees to include the excluded  
6141 area within their license.

6142 (c) The proposed geographic service area for 911 ambulance or paramedic service  
6143 [must] shall demonstrate that non-911 ambulance or paramedic service will be provided in the  
6144 geographic service area, either by the current provider, the applicant, or some other method  
6145 acceptable to the department. The department may consider the effect of the proposed  
6146 geographic service area on the costs to the non-911 provider and that provider's ability to  
6147 provide only non-911 services in the proposed area.

6148 Section 156. Section **26-8a-405.3** is amended to read:

6149 **26-8a-405.3. Use of competitive sealed proposals -- Procedure -- Appeal rights.**

6150 (1) (a) Competitive sealed proposals for paramedic or 911 ambulance services under  
6151 Section 26-8a-405.2, or for non-911 services under Section 26-8a-405.4, shall be solicited  
6152 through a request for proposal and the provisions of this section.

6153 (b) The governing body of the political subdivision shall approve the request for  
6154 proposal prior to the notice of the request for proposals under Subsection (1)(c).

6155 (c) (i) Notice of the request for proposals shall be published:

6156 (A) at least once a week for three consecutive weeks in a newspaper of general  
6157 circulation published in the county; or

6158 (B) if there is no such newspaper, then notice [must] shall be posted for at least 20 days  
6159 in at least five public places in the county; and

6160 (ii) in accordance with Section 45-1-101 for at least 20 days.

6161 (2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing  
6162 offerors during the process of negotiations.

6163 (b) (i) Subsequent to the published notice, and prior to selecting an applicant, the  
6164 political subdivision [must] shall hold a presubmission conference with interested applicants  
6165 for the purpose of assuring full understanding of, and responsiveness to, solicitation

6166 requirements.

6167 (ii) A political subdivision shall allow at least 90 days from the presubmission  
6168 conference for the proposers to submit proposals.

6169 (c) Subsequent to the presubmission conference, the political subdivision may issue  
6170 addenda to the request for proposals. An addenda to a request for proposal [~~must~~] shall be  
6171 finalized and posted by the political subdivision at least 45 days [~~prior to the date~~] before the  
6172 day on which the proposal must be submitted.

6173 (d) Offerors to the request for proposals shall be accorded fair and equal treatment with  
6174 respect to any opportunity for discussion and revisions of proposals, and revisions may be  
6175 permitted after submission and before a contract is awarded for the purpose of obtaining best  
6176 and final offers.

6177 (e) In conducting discussions, there shall be no disclosures of any information derived  
6178 from proposals submitted by competing offerors.

6179 (3) (a) (i) A political subdivision may select an applicant approved by the department  
6180 under Section 26-8a-404 to provide 911 ambulance or paramedic services by contract to the  
6181 most responsible offeror as defined in Subsection 63G-6-103(24).

6182 (ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose  
6183 proposal is determined in writing to be the most advantageous to the political subdivision,  
6184 taking into consideration price and the evaluation factors set forth in the request for proposal.

6185 (b) The applicants who are approved under Section 26-8a-405 and who are selected  
6186 under this section may be the political subdivision issuing the request for competitive sealed  
6187 proposals, or any other public entity or entities, any private person or entity, or any  
6188 combination thereof.

6189 (c) A political subdivision may reject all of the competitive proposals.

6190 (4) In seeking competitive sealed proposals and awarding contracts under this section,  
6191 a political subdivision:

6192 (a) shall apply the public convenience and necessity factors listed in Subsections  
6193 26-8a-408(2) through (6);

6194 (b) shall require the applicant responding to the proposal to disclose how the applicant  
6195 will meet performance standards in the request for proposal;

6196 (c) may not require or restrict an applicant to a certain method of meeting the

6197 performance standards, including:

6198 (i) requiring ambulance medical personnel to also be a firefighter; or

6199 (ii) mandating that offerors use fire stations or dispatch services of the political

6200 subdivision;

6201 (d) shall require an applicant to submit the proposal:

6202 (i) based on full cost accounting in accordance with generally accepted accounting

6203 principals; and

6204 (ii) if the applicant is a governmental entity, in addition to the requirements of

6205 Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and

6206 in compliance with the State of Utah Legal Compliance Audit Guide; and

6207 (e) shall set forth in the request for proposal:

6208 (i) the method for determining full cost accounting in accordance with generally

6209 accepted accounting principles, and require an applicant to submit the proposal based on such

6210 full cost accounting principles;

6211 (ii) guidelines established to further competition and provider accountability; and

6212 (iii) a list of the factors that will be considered by the political subdivision in the award

6213 of the contract, including by percentage, the relative weight of the factors established under this

6214 Subsection (4)(e), which may include such things as:

6215 (A) response times;

6216 (B) staging locations;

6217 (C) experience;

6218 (D) quality of care; and

6219 (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).

6220 (5) (a) Notwithstanding the provisions of Subsection 63G-6-104(3), the provisions of

6221 Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies, apply to the procurement

6222 process required by this section, except as provided in Subsection (5)(c).

6223 (b) The Procurement Appeals Board created in Section 63G-6-807 shall have

6224 jurisdiction to review and determine an appeal of an offeror under this section in the same

6225 manner as provided in Section 63G-6-810.

6226 (c) (i) An offeror may appeal the solicitation or award as provided by the political

6227 subdivision's procedures. After all political subdivision appeal rights are exhausted, the offeror

6228 may appeal under the provisions of Subsections (5)(a) and (b).

6229 (ii) The factual determination required by Subsection 63G-6-813(1) shall be based on  
6230 whether the solicitation or award was made in accordance with the procedures set forth in this  
6231 section and Section 26-8a-405.2.

6232 (d) The determination of an issue of fact by the appeals board shall be final and  
6233 conclusive unless arbitrary and capricious or clearly erroneous as provided in Section  
6234 63G-6-813.

6235 Section 157. Section **26-8a-405.5** is amended to read:

6236 **26-8a-405.5. Use of competitive sealed proposals -- Procedure -- Appeal rights.**

6237 (1) (a) The department shall issue a request for proposal for non-911 services in a  
6238 geographic service area if the department receives a request from a political subdivision under  
6239 Subsection 26-8a-405.4(3)(a)(ii)(B) to issue a request for proposal for non-911 services.

6240 (b) Competitive sealed proposals for non-911 services under Subsection (1)(a) shall be  
6241 solicited through a request for proposal and the provisions of this section.

6242 (c) (i) Notice of the request for proposals shall be published:

6243 (A) at least once a week for three consecutive weeks in a newspaper of general  
6244 circulation published in the county; or

6245 (B) if there is no such newspaper, then notice [~~must~~] shall be posted for at least 20 days  
6246 in at least five public places in the county; and

6247 (ii) in accordance with Section 45-1-101 for at least 20 days.

6248 (2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing  
6249 offerors during the process of negotiations.

6250 (b) (i) Subsequent to the published notice, and prior to selecting an applicant, the  
6251 department [~~must~~] shall hold a presubmission conference with interested applicants for the  
6252 purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

6253 (ii) The department shall allow at least 90 days from the presubmission conference for  
6254 the proposers to submit proposals.

6255 (c) Subsequent to the presubmission conference, the department may issue addenda to  
6256 the request for proposals. An addenda to a request for proposal [~~must~~] shall be finalized and  
6257 posted by the department at least 45 days [~~prior to the date~~] before the day on which the  
6258 proposal must be submitted.

6259 (d) Offerors to the request for proposals shall be accorded fair and equal treatment with  
6260 respect to any opportunity for discussion and revisions of proposals, and revisions may be  
6261 permitted after submission and before a contract is awarded for the purpose of obtaining best  
6262 and final offers.

6263 (e) In conducting discussions, there shall be no disclosures of any information derived  
6264 from proposals submitted by competing offerors.

6265 (3) (a) (i) The department may select an applicant approved by the department under  
6266 Section 26-8a-404 to provide non-911 services by contract to the most responsible offeror as  
6267 defined in Subsection 63G-6-103(24).

6268 (ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose  
6269 proposal is determined in writing to be the most advantageous to the public, taking into  
6270 consideration price and the evaluation factors set forth in the request for proposal.

6271 (b) The applicants who are approved under Section 26-8a-405 and who are selected  
6272 under this section may be the political subdivision responding to the request for competitive  
6273 sealed proposals, or any other public entity or entities, any private person or entity, or any  
6274 combination thereof.

6275 (c) The department may reject all of the competitive proposals.

6276 (4) In seeking competitive sealed proposals and awarding contracts under this section,  
6277 the department:

6278 (a) shall consider the public convenience and necessity factors listed in Subsections  
6279 26-8a-408(2) through (6);

6280 (b) shall require the applicant responding to the proposal to disclose how the applicant  
6281 will meet performance standards in the request for proposal;

6282 (c) may not require or restrict an applicant to a certain method of meeting the  
6283 performance standards, including:

6284 (i) requiring ambulance medical personnel to also be a firefighter; or

6285 (ii) mandating that offerors use fire stations or dispatch services of the political  
6286 subdivision;

6287 (d) shall require an applicant to submit the proposal:

6288 (i) based on full cost accounting in accordance with generally accepted accounting  
6289 principals; and

6290 (ii) if the applicant is a governmental entity, in addition to the requirements of  
6291 Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and  
6292 in compliance with the State of Utah Legal Compliance Audit Guide; and

6293 (e) shall set forth in the request for proposal:

6294 (i) the method for determining full cost accounting in accordance with generally  
6295 accepted accounting principles, and require an applicant to submit the proposal based on such  
6296 full cost accounting principles;

6297 (ii) guidelines established to further competition and provider accountability; and

6298 (iii) a list of the factors that will be considered by the department in the award of the  
6299 contract, including by percentage, the relative weight of the factors established under this  
6300 Subsection (4)(e), which may include such things as:

6301 (A) response times;

6302 (B) staging locations;

6303 (C) experience;

6304 (D) quality of care; and

6305 (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).

6306 (5) A license issued under this section:

6307 (a) is for the exclusive geographic service area approved by the department;

6308 (b) is valid for four years;

6309 (c) is not subject to a request for license from another applicant under the provisions of  
6310 Sections 26-8a-406 through 26-8a-409 during the four-year term, unless the applicant's license  
6311 is revoked under Section 26-8a-504;

6312 (d) is subject to supervision by the department under Sections 26-8a-503 and  
6313 26-8a-504; and

6314 (e) except as provided in Subsection (4)(a), is not subject to the provisions of Sections  
6315 26-8a-406 through 26-8a-409.

6316 Section 158. Section **26-8a-406** is amended to read:

6317 **26-8a-406. Ground ambulance and paramedic licenses -- Parties.**

6318 (1) When an applicant approved under Section 26-8a-404 seeks licensure under the  
6319 provisions of Sections 26-8a-406 through 26-8a-409, the department shall:

6320 (a) issue a notice of agency action to the applicant to commence an informal

6321 administrative proceeding;

6322 (b) provide notice of the application to all interested parties; and

6323 (c) publish notice of the application, at the applicant's expense:

6324 (i) once a week for four consecutive weeks, in a newspaper of general circulation in the

6325 geographic service area that is the subject of the application; and

6326 (ii) in accordance with Section 45-1-101 for four weeks.

6327 (2) An interested party has 30 days to object to an application.

6328 (3) If an interested party objects, the presiding officer [~~must~~] shall join the interested

6329 party as an indispensable party to the proceeding.

6330 (4) The department may join the proceeding as a party to represent the public interest.

6331 (5) Others who may be affected by the grant of a license to the applicant may join the  
6332 proceeding, if the presiding officer determines that they meet the requirement of legal standing.

6333 Section 159. Section **26-8a-408** is amended to read:

6334 **26-8a-408. Criteria for determining public convenience and necessity.**

6335 (1) The criteria for determining public convenience and necessity is set forth in

6336 Subsections (2) through (6).

6337 (2) Access to emergency medical services [~~must~~] shall be maintained or improved.

6338 The officer shall consider the impact on existing services, including the impact on response

6339 times, call volumes, populations and exclusive geographic service areas served, and the ability

6340 of surrounding licensed providers to service their exclusive geographic service areas. The

6341 issuance or amendment of a license may not create an orphaned area.

6342 (3) The quality of service in the area [~~must~~] shall be maintained or improved. The

6343 officer shall consider the:

6344 (a) staffing and equipment standards of the current licensed provider and the applicant;

6345 (b) training and certification levels of the current licensed provider's staff and the  
6346 applicant's staff;

6347 (c) continuing medical education provided by the current licensed provider and the  
6348 applicant;

6349 (d) levels of care as defined by department rule;

6350 (e) plan of medical control; and

6351 (f) the negative or beneficial impact on the regional emergency medical service system

6352 to provide service to the public.

6353 (4) The cost to the public [~~must~~] shall be justified. The officer [~~must~~] shall consider:

6354 (a) the financial solvency of the applicant;

6355 (b) the applicant's ability to provide services within the rates established under Section  
6356 26-8a-403;

6357 (c) the applicant's ability to comply with cost reporting requirements;

6358 (d) the cost efficiency of the applicant; and

6359 (e) the cost effect of the application on the public, interested parties, and the emergency  
6360 medical services system.

6361 (5) Local desires concerning cost, quality, and access [~~must~~] shall be considered. The  
6362 officer shall assess and consider:

6363 (a) the existing provider's record of providing services and the applicant's record and  
6364 ability to provide similar or improved services;

6365 (b) locally established emergency medical services goals, including those established in  
6366 Subsection (7);

6367 (c) comment by local governments on the applicant's business and operations plans;

6368 (d) comment by interested parties that are providers on the impact of the application on  
6369 the parties' ability to provide emergency medical services;

6370 (e) comment by interested parties that are local governments on the impact of the  
6371 application on the citizens it represents; and

6372 (f) public comment on any aspect of the application or proposed license.

6373 (6) Other related criteria:

6374 (a) the officer considers necessary; or

6375 (b) established by department rule.

6376 (7) The role of local governments in the licensing of ground ambulance and paramedic  
6377 providers that serve areas also served by the local governments is important. The Legislature  
6378 strongly encourages local governments to establish cost, quality, and access goals for the  
6379 ground ambulance and paramedic services that serve their areas.

6380 (8) In a formal adjudicative proceeding, the applicant bears the burden of establishing  
6381 that public convenience and necessity require the approval of the application for all or part of  
6382 the exclusive geographic service area requested.

6383 Section 160. Section **26-8a-410** is amended to read:

6384 **26-8a-410. Local approvals.**

6385 (1) Licensed ambulance providers and paramedic providers ~~[must]~~ shall meet all local  
6386 zoning and business licensing standards generally applicable to businesses operating within the  
6387 jurisdiction.

6388 (2) Publicly subsidized providers ~~[must]~~ shall demonstrate approval of the taxing  
6389 authority that will provide the subsidy.

6390 (3) A publicly operated service ~~[must]~~ shall demonstrate that the governing body has  
6391 approved the provision of services to the entire exclusive geographic service area that is the  
6392 subject of the license, including those areas that may lie outside the territorial or jurisdictional  
6393 boundaries of the governing body.

6394 Section 161. Section **26-8a-413** is amended to read:

6395 **26-8a-413. License renewals.**

6396 (1) A licensed provider desiring to renew its license ~~[must]~~ shall meet the renewal  
6397 requirements established by department rule.

6398 (2) The department shall issue a renewal license for a ground ambulance provider or a  
6399 paramedic provider upon the licensee's application for a renewal and without a public hearing  
6400 if there has been:

6401 (a) no change in controlling interest in the ownership of the licensee as defined in  
6402 Section 26-8a-415;

6403 (b) no serious, substantiated public complaints filed with the department against the  
6404 licensee during the term of the previous license;

6405 (c) no material or substantial change in the basis upon which the license was originally  
6406 granted;

6407 (d) no reasoned objection from the committee or the department; and

6408 (e) if the applicant was licensed under the provisions of Sections 26-8a-406 through  
6409 26-8a-409, no conflicting license application.

6410 (3) (a) (i) The provisions of this Subsection (3) apply to a provider licensed under the  
6411 provisions of Sections 26-8a-405.1 and 26-8a-405.2.

6412 (ii) A provider may renew its license if the provisions of Subsections (1), (2)(a)  
6413 through (d), and this Subsection (3) are met.

6414 (b) (i) The department shall issue a renewal license to a provider upon the provider's  
6415 application for renewal for one additional four-year term if the political subdivision certifies to  
6416 the department that the provider has met all of the specifications of the original bid.

6417 (ii) If the political subdivision does not certify to the department that the provider has  
6418 met all of the specifications of the original bid, the department may not issue a renewal license  
6419 and the political subdivision [~~must~~] shall enter into a public bid process under Sections  
6420 26-8a-405.1 and 26-8a-405.2.

6421 (c) (i) The department shall issue an additional renewal license to a provider who has  
6422 already been issued a one-time renewal license under the provisions of Subsection (3)(b)(i) if  
6423 the department and the political subdivision do not receive, prior to the expiration of the  
6424 provider's license, written notice from an approved applicant informing the political  
6425 subdivision of the approved applicant's desire to submit a bid for ambulance or paramedic  
6426 service.

6427 (ii) If the department and the political subdivision receive the notice in accordance with  
6428 Subsection (3)(c)(i), the department may not issue a renewal license and the political  
6429 subdivision [~~must~~] shall enter into a public bid process under Sections 26-8a-405.1 and  
6430 26-8a-405.2.

6431 (4) The department shall issue a renewal license for an air ambulance provider upon  
6432 the licensee's application for renewal and completion of the renewal requirements established  
6433 by department rule.

6434 Section 162. Section **26-10b-102** is amended to read:

6435 **26-10b-102. Department to award grants and contracts -- Applications.**

6436 (1) (a) Within appropriations specified by the Legislature for this purpose, the  
6437 department may make grants to public and nonprofit entities for the cost of operation of  
6438 providing primary health care services to medically underserved populations.

6439 (b) The department may, as funding permits, contract with community based  
6440 organizations for the purpose of developing culturally and linguistically appropriate programs  
6441 and services for low income and medically underserved populations through a pilot program to  
6442 accomplish one or more of the following:

6443 (i) to educate individuals:

6444 (A) to use private and public health care coverage programs, products, services, and

- 6445 resources in a timely, effective, and responsible manner;
- 6446 (B) to make prudent use of private and public health care resources;
- 6447 (C) to pursue preventive health care, health screenings, and disease management; and
- 6448 (D) to locate health care programs and services;
- 6449 (ii) to assist individuals to develop:
- 6450 (A) personal health management;
- 6451 (B) self-sufficiency in daily care; and
- 6452 (C) life and disease management skills;
- 6453 (iii) to support translation of health materials and information;
- 6454 (iv) to facilitate an individual's access to primary care services and providers, including
- 6455 mental health services; and
- 6456 (v) to measure and report empirical results of the pilot project.
- 6457 (2) (a) Grants by the department shall be awarded based on:
- 6458 (i) applications submitted to the department in the manner and form prescribed by the
- 6459 department; and
- 6460 (ii) the criteria established in Section 26-10b-103.
- 6461 (b) The application for a grant under Subsection (2)(a) shall contain:
- 6462 (i) a requested award amount;
- 6463 (ii) a budget; and
- 6464 (iii) a narrative plan of the manner in which the applicant intends to provide the
- 6465 primary health care services described in Subsection 26-10b-101(7).
- 6466 (c) A contract bid for a service under Subsection (1)(b):
- 6467 (i) shall be awarded in accordance with Title 63G, Chapter 6, Utah Procurement Code;
- 6468 (ii) ~~must~~ shall include the information described in Section 26-10b-103; and
- 6469 (iii) is subject to Subsection (3) of this section.
- 6470 (3) (a) An applicant under this chapter ~~must~~ shall demonstrate to the department that
- 6471 the applicant will not deny services to a person because of the person's inability to pay for the
- 6472 services.
- 6473 (b) Subsection (3)(a) does not preclude an applicant from seeking payment from the
- 6474 person receiving services, a third party, or a government agency if:
- 6475 (i) the applicant is authorized to charge for the services; and

6476 (ii) the person, third party, or government agency is under legal obligation to pay the  
6477 charges.

6478 (4) The department shall maximize the use of federal matching funds received for  
6479 services under Subsection (1)(b) to fund additional contracts under Subsection (1)(b).

6480 Section 163. Section **26-15-8** is amended to read:

6481 **26-15-8. Periodic evaluation of local health sanitation programs -- Minimum**  
6482 **statewide enforcement standards -- Technical assistance.**

6483 (1) The department shall periodically evaluate the sanitation programs of local health  
6484 departments to determine the levels of sanitation being maintained throughout the state.

6485 (2) (a) The department shall ensure that each local health department's enforcement of  
6486 the minimum rules of sanitation adopted under Section 26-15-2 for restaurants and other places  
6487 where food or drink is handled meets or exceeds minimum statewide enforcement standards  
6488 established by the department by administrative rule.

6489 (b) Administrative rules adopted under Subsection (2)(a) shall include at least:

6490 (i) the minimum number of periodic on-site inspections that [~~must~~] shall be conducted  
6491 by each local health department;

6492 (ii) criteria for conducting additional inspections; and

6493 (iii) standardized methods to be used by local health departments to assess compliance  
6494 with the minimum rules of sanitation adopted under Section 26-15-2.

6495 (c) The department shall help local health departments comply with the minimum  
6496 statewide enforcement standards adopted under this Subsection (2) by providing technical  
6497 assistance.

6498 Section 164. Section **26-18-3** is amended to read:

6499 **26-18-3. Administration of Medicaid program by department -- Reporting to the**  
6500 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**  
6501 **standards -- Internal audits -- Studies -- Health opportunity accounts.**

6502 (1) The department shall be the single state agency responsible for the administration  
6503 of the Medicaid program in connection with the United States Department of Health and  
6504 Human Services pursuant to Title XIX of the Social Security Act.

6505 (2) (a) The department shall implement the Medicaid program through administrative  
6506 rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking

6507 Act, the requirements of Title XIX, and applicable federal regulations.

6508 (b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules  
6509 necessary to implement the program:

6510 (i) the standards used by the department for determining eligibility for Medicaid  
6511 services;

6512 (ii) the services and benefits to be covered by the Medicaid program; and

6513 (iii) reimbursement methodologies for providers under the Medicaid program.

6514 (3) (a) The department shall, in accordance with Subsection (3)(b), report to the Health  
6515 and Human Services Appropriations Subcommittee when the department:

6516 (i) implements a change in the Medicaid State Plan;

6517 (ii) initiates a new Medicaid waiver;

6518 (iii) initiates an amendment to an existing Medicaid waiver;

6519 (iv) applies for an extension of an application for a waiver or an existing Medicaid  
6520 waiver; or

6521 (v) initiates a rate change that requires public notice under state or federal law.

6522 (b) The report required by Subsection (3)(a) shall:

6523 (i) be submitted to the Health and Human Services Appropriations Subcommittee prior  
6524 to the department implementing the proposed change; and

6525 (ii) include:

6526 (A) a description of the department's current practice or policy that the department is  
6527 proposing to change;

6528 (B) an explanation of why the department is proposing the change;

6529 (C) the proposed change in services or reimbursement, including a description of the  
6530 effect of the change;

6531 (D) the effect of an increase or decrease in services or benefits on individuals and  
6532 families;

6533 (E) the degree to which any proposed cut may result in cost-shifting to more expensive  
6534 services in health or human service programs; and

6535 (F) the fiscal impact of the proposed change, including:

6536 (I) the effect of the proposed change on current or future appropriations from the  
6537 Legislature to the department;

6538 (II) the effect the proposed change may have on federal matching dollars received by  
6539 the state Medicaid program;

6540 (III) any cost shifting or cost savings within the department's budget that may result  
6541 from the proposed change; and

6542 (IV) identification of the funds that will be used for the proposed change, including any  
6543 transfer of funds within the department's budget.

6544 (4) (a) The Department of Human Services shall report to the Legislative Health and  
6545 Human Services Appropriations Subcommittee no later than December 31, 2010 in accordance  
6546 with Subsection (4)(b).

6547 (b) The report required by Subsection (4)(a) shall include:

6548 (i) changes made by the division or the department beginning July 1, 2010 that effect  
6549 the Medicaid program, a waiver under the Medicaid program, or an interpretation of Medicaid  
6550 services or funding, that relate to care for children and youth in the custody of the Division of  
6551 Child and Family Services or the Division of Juvenile Justice Services;

6552 (ii) the history and impact of the changes under Subsection (4)(b)(i);

6553 (iii) the Department of Human Service's plans for addressing the impact of the changes  
6554 under Subsection (4)(b)(i); and

6555 (iv) ways to consolidate administrative functions within the Department of Human  
6556 Services, the Department of Health, the Division of Child and Family Services, and the  
6557 Division of Juvenile Justice Services to more efficiently meet the needs of children and youth  
6558 with mental health and substance disorder treatment needs.

6559 (5) Any rules adopted by the department under Subsection (2) are subject to review and  
6560 reauthorization by the Legislature in accordance with Section 63G-3-502.

6561 (6) The department may, in its discretion, contract with the Department of Human  
6562 Services or other qualified agencies for services in connection with the administration of the  
6563 Medicaid program, including:

6564 (a) the determination of the eligibility of individuals for the program;

6565 (b) recovery of overpayments; and

6566 (c) consistent with Section 26-20-13, and to the extent permitted by law and quality  
6567 control services, enforcement of fraud and abuse laws.

6568 (7) The department shall provide, by rule, disciplinary measures and sanctions for

6569 Medicaid providers who fail to comply with the rules and procedures of the program, provided  
6570 that sanctions imposed administratively may not extend beyond:

6571 (a) termination from the program;

6572 (b) recovery of claim reimbursements incorrectly paid; and

6573 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

6574 (8) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX  
6575 of the federal Social Security Act shall be deposited in the General Fund as dedicated credits to  
6576 be used by the division in accordance with the requirements of Section 1919 of Title XIX of  
6577 the federal Social Security Act.

6578 (9) (a) In determining whether an applicant or recipient is eligible for a service or  
6579 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department  
6580 shall, if Subsection (9)(b) is satisfied, exclude from consideration one passenger vehicle  
6581 designated by the applicant or recipient.

6582 (b) Before Subsection (9)(a) may be applied:

6583 (i) the federal government [~~must~~] shall:

6584 (A) determine that Subsection (9)(a) may be implemented within the state's existing  
6585 public assistance-related waivers as of January 1, 1999;

6586 (B) extend a waiver to the state permitting the implementation of Subsection (9)(a); or

6587 (C) determine that the state's waivers that permit dual eligibility determinations for  
6588 cash assistance and Medicaid are no longer valid; and

6589 (ii) the department [~~must~~] shall determine that Subsection (9)(a) can be implemented  
6590 within existing funding.

6591 (10) (a) For purposes of this Subsection (10):

6592 (i) "aged, blind, or disabled" shall be defined by administrative rule; and

6593 (ii) "spend down" means an amount of income in excess of the allowable income  
6594 standard that [~~must~~] shall be paid in cash to the department or incurred through the medical  
6595 services not paid by Medicaid.

6596 (b) In determining whether an applicant or recipient who is aged, blind, or disabled is  
6597 eligible for a service or benefit under this chapter, the department shall use 100% of the federal  
6598 poverty level as:

6599 (i) the allowable income standard for eligibility for services or benefits; and

6600 (ii) the allowable income standard for eligibility as a result of spend down.

6601 (11) The department shall conduct internal audits of the Medicaid program, in  
6602 proportion to at least the level of funding it receives from Medicaid to conduct internal audits.

6603 (12) In order to determine the feasibility of contracting for direct Medicaid providers  
6604 for primary care services, the department shall:

6605 (a) issue a request for information for direct contracting for primary services that shall  
6606 provide that a provider shall exclusively serve all Medicaid clients:

6607 (i) in a geographic area;

6608 (ii) for a defined range of primary care services; and

6609 (iii) for a predetermined total contracted amount; and

6610 (b) by February 1, 2011, report to the Health and Human Services Appropriations  
6611 Subcommittee on the response to the request for information under Subsection (12)(a).

6612 (13) (a) By December 31, 2010, the department shall:

6613 (i) determine the feasibility of implementing a three year patient-centered medical  
6614 home demonstration project in an area of the state using existing budget funds; and

6615 (ii) report the department's findings and recommendations under Subsection (13)(a)(i)  
6616 to the Health and Human Services Appropriations Subcommittee.

6617 (b) If the department determines that the medical home demonstration project  
6618 described in Subsection (13)(a) is feasible, and the Health and Human Services Appropriations  
6619 Subcommittee recommends that the demonstration project be implemented, the department  
6620 shall:

6621 (i) implement the demonstration project; and

6622 (ii) by December 1, 2012, make recommendations to the Health and Human Services  
6623 Appropriations Subcommittee regarding the:

6624 (A) continuation of the demonstration project;

6625 (B) expansion of the demonstration project to other areas of the state; and

6626 (C) cost savings incurred by the implementation of the demonstration project.

6627 (14) (a) The department may apply for and, if approved, implement a demonstration  
6628 program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.

6629 (b) A health opportunity account established under Subsection (14)(a) shall be an  
6630 alternative to the existing benefits received by an individual eligible to receive Medicaid under

6631 this chapter.

6632 (c) Subsection (14)(a) is not intended to expand the coverage of the Medicaid program.

6633 Section 165. Section **26-18-4** is amended to read:

6634 **26-18-4. Department standards for eligibility under Medicaid -- Funds for**

6635 **abortions.**

6636 (1) The department may develop standards and administer policies relating to  
6637 eligibility under the Medicaid program as long as they are consistent with Subsection  
6638 26-18-3(8). An applicant receiving Medicaid assistance may be limited to particular types of  
6639 care or services or to payment of part or all costs of care determined to be medically necessary.

6640 (2) The department [~~shall not~~] may not provide any funds for medical, hospital, or  
6641 other medical expenditures or medical services to otherwise eligible persons where the purpose  
6642 of the assistance is to perform an abortion, unless the life of the mother would be endangered if  
6643 an abortion were not performed.

6644 (3) Any employee of the department who authorizes payment for an abortion contrary  
6645 to the provisions of this section is guilty of a class B misdemeanor and subject to forfeiture of  
6646 office.

6647 (4) Any person or organization that, under the guise of other medical treatment,  
6648 provides an abortion under auspices of the Medicaid program is guilty of a third degree felony  
6649 and subject to forfeiture of license to practice medicine or authority to provide medical services  
6650 and treatment.

6651 Section 166. Section **26-18-5** is amended to read:

6652 **26-18-5. Contracts for provision of medical services -- Federal provisions**

6653 **modifying department rules -- Compliance with Social Security Act.**

6654 (1) The department may contract with other public or private agencies to purchase or  
6655 provide medical services in connection with the programs of the division. Where these  
6656 programs are used by other state agencies, contracts shall provide that other state agencies  
6657 transfer the state matching funds to the department in amounts sufficient to satisfy needs of the  
6658 specified program.

6659 (2) All contracts for the provision or purchase of medical services shall be established  
6660 on the basis of the state's fiscal year and shall remain uniform during the fiscal year insofar as  
6661 possible. Contract terms shall include provisions for maintenance, administration, and service

6662 costs.

6663 (3) If a federal legislative or executive provision requires modifications or revisions in  
6664 an eligibility factor established under this chapter as a condition for participation in medical  
6665 assistance, the department may modify or change its rules as necessary to qualify for  
6666 participation; providing, the provisions of this section [~~shall not~~] do not apply to department  
6667 rules governing abortion.

6668 (4) The department shall comply with all pertinent requirements of the Social Security  
6669 Act and all orders, rules, and regulations adopted thereunder when required as a condition of  
6670 participation in benefits under the Social Security Act.

6671 Section 167. Section **26-18-10** is amended to read:

6672 **26-18-10. Utah Medical Assistance Program -- Policies and standards.**

6673 (1) The division shall develop a medical assistance program, which shall be known as  
6674 the Utah Medical Assistance Program, for low income persons who are not eligible under the  
6675 state plan for Medicaid under Title XIX of the Social Security Act or Medicare under Title  
6676 XVIII of that act.

6677 (2) Persons in the custody of prisons, jails, halfway houses, and other nonmedical  
6678 government institutions are not eligible for services provided under this section.

6679 (3) The department shall develop standards and administer policies relating to  
6680 eligibility requirements, consistent with Subsection 26-18-3(8), for participation in the  
6681 program, and for payment of medical claims for eligible persons.

6682 (4) The program shall be a payor of last resort. Before assistance is rendered the  
6683 division shall investigate the availability of the resources of the spouse, father, mother, and  
6684 adult children of the person making application.

6685 (5) The department shall determine what medically necessary care or services are  
6686 covered under the program, including duration of care, and method of payment, which may be  
6687 partial or in full.

6688 (6) The department [~~shall not~~] may not provide public assistance for medical, hospital,  
6689 or other medical expenditures or medical services to otherwise eligible persons where the  
6690 purpose of the assistance is for the performance of an abortion, unless the life of the mother  
6691 would be endangered if an abortion were not performed.

6692 (7) The department may establish rules to carry out the provisions of this section.

6693 Section 168. Section **26-18-11** is amended to read:

6694 **26-18-11. Rural hospitals.**

6695 (1) For purposes of this section "rural hospital" means a hospital located outside of a  
6696 standard metropolitan statistical area, as designated by the United States Bureau of the Census.

6697 (2) For purposes of the Medicaid program and the Utah Medical Assistance Program,  
6698 the Division of Health Care Financing [~~shall not~~] may not discriminate among rural hospitals  
6699 on the basis of size.

6700 Section 169. Section **26-18-501** is amended to read:

6701 **26-18-501. Definitions.**

6702 As used in this part:

6703 (1) "Certified program" means a nursing care facility program with Medicaid  
6704 certification.

6705 (2) "Director" means the director of the Division of Health Care Financing.

6706 (3) "Medicaid certification" means the right to Medicaid reimbursement as a provider  
6707 of a nursing care facility program as established by division rule.

6708 (4) (a) "Nursing care facility" means the following facilities licensed by the department  
6709 under Chapter 21, Health Care Facility Licensing and Inspection Act:

6710 (i) skilled nursing homes;

6711 (ii) intermediate care facilities; and

6712 (iii) intermediate care facilities for the mentally retarded.

6713 (b) "Nursing care facility" does not mean a critical access hospital that meets the  
6714 criteria of 42 U.S.C. 1395i-4(c)(2) (1998).

6715 (5) "Nursing care facility program" means the personnel, licenses, services, contracts  
6716 and all other requirements that [~~must~~] shall be met for a nursing care facility to be eligible for  
6717 Medicaid certification under this part and division rule.

6718 (6) "Physical facility" means the buildings or other physical structures where a nursing  
6719 care facility program is operated.

6720 (7) "Service area" means the boundaries of the distinct geographic area served by a  
6721 certified program as determined by the division in accordance with this part and division rule.

6722 Section 170. Section **26-18-502** is amended to read:

6723 **26-18-502. Purpose -- Medicaid certification of nursing care facilities.**

- 6724 (1) The Legislature finds:  
6725 (a) that an oversupply of nursing care facility programs in the state adversely affects the  
6726 state Medicaid program and the health of the people in the state; and  
6727 (b) it is in the best interest of the state to prohibit Medicaid certification of nursing care  
6728 facility programs, except as authorized by this part.
- 6729 (2) Medicaid reimbursement of nursing care facility programs is limited to:  
6730 (a) the number of nursing care facility programs with Medicaid certification as of May  
6731 4, 2004; and  
6732 (b) additional nursing care facility programs approved for Medicaid certification under  
6733 the provisions of Subsection 26-18-503(5).
- 6734 (3) The division [~~shall not~~] may not:  
6735 (a) except as authorized by Section 26-18-503:  
6736 (i) process initial applications for Medicaid certification or execute provider  
6737 agreements with nursing care facility programs; or  
6738 (ii) reinstate Medicaid certification for a nursing care facility whose certification  
6739 expired or was terminated by action of the federal or state government; or  
6740 (b) execute a Medicaid provider agreement with a certified program that moves its  
6741 nursing care facility program to a different physical facility, except as authorized by Subsection  
6742 26-18-503(3).
- 6743 Section 171. Section **26-18-503** is amended to read:  
6744 **26-18-503. Authorization to renew, transfer, or increase Medicaid certified**  
6745 **programs -- Reimbursement methodology.**
- 6746 (1) The division may renew Medicaid certification of a certified program if the  
6747 program, without lapse in service to Medicaid recipients, has its nursing care facility program  
6748 certified by the division at the same physical facility as long as the licensed and certified bed  
6749 capacity at the facility has not been expanded, unless the director has approved additional beds  
6750 in accordance with Subsection (5).
- 6751 (2) (a) The division may issue a Medicaid certification for a new nursing care facility  
6752 program if a current owner of the Medicaid certified program transfers its ownership of the  
6753 Medicaid certification to the new nursing care facility program and the new nursing care  
6754 facility program meets all of the following conditions:

6755 (i) the new nursing care facility program operates at the same physical facility as the  
6756 previous Medicaid certified program;

6757 (ii) the new nursing care facility program gives a written assurance to the director in  
6758 accordance with Subsection (4);

6759 (iii) the new nursing care facility program receives the Medicaid certification within  
6760 one year of the date the previously certified program ceased to provide medical assistance to a  
6761 Medicaid recipient; and

6762 (iv) the licensed and certified bed capacity at the facility has not been expanded, unless  
6763 the director has approved additional beds in accordance with Subsection (5).

6764 (b) A nursing care facility program that receives Medicaid certification under the  
6765 provisions of Subsection (2)(a) does not assume the Medicaid liabilities of the previous nursing  
6766 care facility program if the new nursing care facility program:

6767 (i) is not owned in whole or in part by the previous nursing care facility program; or

6768 (ii) is not a successor in interest of the previous nursing care facility program.

6769 (3) The division may issue a Medicaid certification to a nursing care facility program  
6770 that was previously a certified program but now resides in a new or renovated physical facility  
6771 if the nursing care facility program meets all of the following:

6772 (a) the nursing care facility program met all applicable requirements for Medicaid  
6773 certification at the time of closure;

6774 (b) the new or renovated physical facility is in the same county or within a five-mile  
6775 radius of the original physical facility;

6776 (c) the time between which the certified program ceased to operate in the original  
6777 facility and will begin to operate in the new physical facility is not more than three years;

6778 (d) if Subsection (3)(c) applies, the certified program notifies the department within 90  
6779 days after ceasing operations in its original facility, of its intent to retain its Medicaid  
6780 certification;

6781 (e) the provider gives written assurance to the director in accordance with Subsection  
6782 (4) that no third party has a legitimate claim to operate a certified program at the previous  
6783 physical facility; and

6784 (f) the bed capacity in the physical facility has not been expanded unless the director  
6785 has approved additional beds in accordance with Subsection (5).

6786 (4) (a) The entity requesting Medicaid certification under Subsections (2) and (3)  
6787 [~~must~~] shall give written assurances satisfactory to the director or [~~his~~] the director's designee  
6788 that:

6789 (i) no third party has a legitimate claim to operate the certified program;  
6790 (ii) the requesting entity agrees to defend and indemnify the department against any  
6791 claims by a third party who may assert a right to operate the certified program; and

6792 (iii) if a third party is found, by final agency action of the department after exhaustion  
6793 of all administrative and judicial appeal rights, to be entitled to operate a certified program at  
6794 the physical facility the certified program shall voluntarily comply with Subsection (4)(b).

6795 (b) If a finding is made under the provisions of Subsection (4)(a)(iii):

6796 (i) the certified program shall immediately surrender its Medicaid certification and  
6797 comply with division rules regarding billing for Medicaid and the provision of services to  
6798 Medicaid patients; and

6799 (ii) the department shall transfer the surrendered Medicaid certification to the third  
6800 party who prevailed under Subsection (4)(a)(iii).

6801 (5) (a) As provided in Subsection 26-18-502(2)(b), the director shall issue additional  
6802 Medicaid certification when requested by a nursing care facility or other interested party if  
6803 there is insufficient bed capacity with current certified programs in a service area. A  
6804 determination of insufficient bed capacity shall be based on the nursing care facility or other  
6805 interested party providing reasonable evidence of an inadequate number of beds in the county  
6806 or group of counties impacted by the requested Medicaid certification based on:

6807 (i) current demographics which demonstrate nursing care facility occupancy levels of at  
6808 least 90% for all existing and proposed facilities within a prospective three-year period;

6809 (ii) current nursing care facility occupancy levels of 90%; or

6810 (iii) no other nursing care facility within a 35-mile radius of the nursing care facility  
6811 requesting the additional certification.

6812 (b) In addition to the requirements of Subsection (5)(a), a nursing care facility program  
6813 [~~must~~] shall demonstrate by an independent analysis that the nursing care facility can  
6814 financially support itself at an after tax break-even net income level based on projected  
6815 occupancy levels.

6816 (c) When making a determination to certify additional beds or an additional nursing

6817 care facility program under Subsection (5)(a):

6818 (i) the director shall consider whether the nursing care facility will offer specialized or  
6819 unique services that are underserved in a service area;

6820 (ii) the director shall consider whether any Medicaid certified beds are subject to a  
6821 claim by a previous certified program that may reopen under the provisions of Subsections (2)  
6822 and (3); and

6823 (iii) the director may consider how to add additional capacity to the long-term care  
6824 delivery system to best meet the needs of Medicaid recipients.

6825 (6) The department shall adopt administrative rules in accordance with Title 63G,  
6826 Chapter 3, Utah Administrative Rulemaking Act, to adjust the Medicaid nursing care facility  
6827 property reimbursement methodology to:

6828 (a) beginning July 1, 2008, only pay that portion of the property component of rates,  
6829 representing actual bed usage by Medicaid clients as a percentage of the greater of:

6830 (i) actual occupancy; or

6831 (ii) (A) for a nursing care facility other than a facility described in Subsection  
6832 (6)(a)(ii)(B), 85% of total bed capacity; or

6833 (B) for a rural nursing care facility, 65% of total bed capacity; and

6834 (b) beginning July 1, 2008, not allow for increases in reimbursement for property  
6835 values without major renovation or replacement projects as defined by the department by rule.

6836 Section 172. Section **26-18-505** is amended to read:

6837 **26-18-505. Authorization to sell or transfer licensed Medicaid beds -- Duties of**  
6838 **transferor -- Duties of transferee -- Duties of division.**

6839 (1) This section provides a method to transfer the license for a Medicaid bed from one  
6840 nursing care facility program to another entity that is in addition to the authorization to transfer  
6841 under Section 26-18-503.

6842 (2) (a) A nursing care facility program may transfer or sell one or more of its licenses  
6843 for Medicaid beds in accordance with Subsection (2)(b) if:

6844 (i) at the time of the transfer, and with respect to the license for the Medicaid bed that  
6845 will be transferred, the nursing care facility program that will transfer the Medicaid license  
6846 meets all applicable regulations for Medicaid certification;

6847 (ii) 30 days prior to the transfer, the nursing care facility program gives a written

6848 assurance to the director and to the transferee in accordance with Subsection 26-18-503(4); and

6849 (iii) 30 days prior to the transfer, the nursing care facility program that will transfer the  
6850 license for a Medicaid bed notifies the division in writing of:

6851 (A) the number of bed licenses that will be transferred;

6852 (B) the date of the transfer; and

6853 (C) the identity and location of the entity receiving the transferred licenses.

6854 (b) A nursing care facility program may transfer or sell one or more of its licenses for  
6855 Medicaid beds to:

6856 (i) a nursing care facility program that has the same owner or successor in interest of  
6857 the same owner;

6858 (ii) a nursing care facility program that has a different owner; or

6859 (iii) an entity that intends to establish a nursing care facility program.

6860 (3) An entity that receives or purchases a license for a Medicaid bed:

6861 (a) may receive a license for a Medicaid bed from more than one nursing care facility  
6862 program;

6863 (b) within 14 days of seeking Medicaid certification of beds in the nursing care facility  
6864 program, give the division notice of the total number of licenses for Medicaid beds that the  
6865 entity received and who it received the licenses from;

6866 (c) may only seek Medicaid certification for the number of licensed beds in the nursing  
6867 care facility program equal to the total number of licenses for Medicaid beds received by the  
6868 entity, multiplied by a conversion factor of .7, and rounded down to the lowest integer;

6869 (d) does not have to demonstrate need for the Medicaid licensed beds under Subsection  
6870 26-18-503(5);

6871 (e) [~~must~~] shall meet the standards for Medicaid certification other than those in  
6872 Subsection 26-18-503(5), including personnel, services, contracts, and licensing of facilities  
6873 under Chapter 21, Health Care Facility Licensing and Inspection Act; and

6874 (f) [~~must~~] shall obtain Medicaid certification for the licensed Medicaid beds within  
6875 three years of the date of transfer as documented under Subsection (2)(a)(iii)(B).

6876 (4) The conversion formula required by Subsection (3)(c) shall be calculated:

6877 (a) when the nursing care facility program applies to the Department for Medicaid  
6878 certification of the licensed beds; and

6879 (b) based on the total number of licenses for Medicaid beds transferred to the nursing  
6880 care facility at the time of the request for Medicaid certification.

6881 (5) (a) When the division receives notice of a transfer of a license for a Medicaid bed  
6882 under Subsection (2)(a)(iii)(A), the division shall reduce the number of licenses for Medicaid  
6883 beds at the transferring nursing care facility:

6884 (i) equal to the number of licenses transferred; and

6885 (ii) effective on the date of the transfer as reported under Subsection (2)(a)(iii)(B).

6886 (b) For purposes of Section 26-18-502, the division shall approve Medicaid  
6887 certification for the receiving entity:

6888 (i) in accordance with the formula established in Subsection (3)(c); and

6889 (ii) if:

6890 (A) the nursing care facility seeks Medicaid certification for the transferred licenses  
6891 within the time limit required by Subsection (3)(f); and

6892 (B) the nursing care facility program meets other requirements for Medicaid  
6893 certification under Subsection (3)(e).

6894 (c) A license for a Medicaid bed may not be approved for Medicaid certification  
6895 without meeting the requirements of Sections 26-18-502 and 26-18-503 if:

6896 (i) the license for a Medicaid bed is transferred under this section but the receiving  
6897 entity does not obtain Medicaid certification for the licensed bed within the time required by  
6898 Subsection (3)(f); or

6899 (ii) the license for a Medicaid bed is transferred under this section but the license is no  
6900 longer eligible for Medicaid certification as a result of the conversion factor established in  
6901 Subsection (3)(c).

6902 Section 173. Section **26-19-7** is amended to read:

6903 **26-19-7. Notice of claim by recipient -- Department response -- Conditions for**  
6904 **proceeding -- Collection agreements -- Department's right to intervene -- Department's**  
6905 **interests protected -- Remitting funds -- Disbursements -- Liability and penalty for**  
6906 **noncompliance.**

6907 (1) (a) A recipient may not file a claim, commence an action, or settle, compromise,  
6908 release, or waive a claim against a third party for recovery of medical costs for an injury,  
6909 disease, or disability for which the department has provided or has become obligated to provide

6910 medical assistance, without the department's written consent as provided in Subsection (2)(b)  
6911 or (4).

6912 (b) For purposes of Subsection (1)(a), consent may be obtained if:

6913 (i) a recipient who files a claim, or commences an action against a third party notifies  
6914 the department in accordance with Subsection (1)(d) within 10 days of making [~~his~~] the claim  
6915 or commencing an action; or

6916 (ii) an attorney, who has been retained by the recipient to file a claim, or commence an  
6917 action against a third party, notifies the department in accordance with Subsection (1)(d) of the  
6918 recipient's claim:

6919 (A) within 30 days after being retained by the recipient for that purpose; or

6920 (B) within 30 days from the date the attorney either knew or should have known that  
6921 the recipient received medical assistance from the department.

6922 (c) Service of the notice of claim to the department shall be made by certified mail,  
6923 personal service, or by e-mail in accordance with Rule 5 of the Utah Rules of Civil Procedure,  
6924 to the director of the Office of Recovery Services.

6925 (d) The notice of claim shall include the following information:

6926 (i) the name of the recipient;

6927 (ii) the recipient's Social Security number;

6928 (iii) the recipient's date of birth;

6929 (iv) the name of the recipient's attorney if applicable;

6930 (v) the name or names of individuals or entities against whom the recipient is making  
6931 the claim, if known;

6932 (vi) the name of the third party's insurance carrier, if known;

6933 (vii) the date of the incident giving rise to the claim; and

6934 (viii) a short statement identifying the nature of the recipient's claim.

6935 (2) (a) Within 30 days of receipt of the notice of the claim required in Subsection (1),  
6936 the department shall acknowledge receipt of the notice of the claim to the recipient or the  
6937 recipient's attorney and shall notify the recipient or the recipient's attorney in writing of the  
6938 following:

6939 (i) if the department has a claim or lien pursuant to Section 26-19-5 or has become  
6940 obligated to provide medical assistance; and

6941 (ii) whether the department is denying or granting written consent in accordance with  
6942 Subsection (1)(a).

6943 (b) The department shall provide the recipient's attorney the opportunity to enter into a  
6944 collection agreement with the department, with the recipient's consent, unless:

6945 (i) the department, prior to the receipt of the notice of the recipient's claim pursuant to  
6946 Subsection (1), filed a written claim with the third party, the third party agreed to make  
6947 payment to the department before the date the department received notice of the recipient's  
6948 claim, and the agreement is documented in the department's record; or

6949 (ii) there has been a failure by the recipient's attorney to comply with any provision of  
6950 this section by:

6951 (A) failing to comply with the notice provisions of this section;

6952 (B) failing or refusing to enter into a collection agreement;

6953 (C) failing to comply with the terms of a collection agreement with the department; or

6954 (D) failing to disburse funds owed to the state in accordance with this section.

6955 (c) (i) The collection agreement shall be:

6956 (A) consistent with this section and the attorney's obligation to represent the recipient  
6957 and represent the state's claim; and

6958 (B) state the terms under which the interests of the department may be represented in  
6959 an action commenced by the recipient.

6960 (ii) If the recipient's attorney enters into a written collection agreement with the  
6961 department, or includes the department's claim in the recipient's claim or action pursuant to  
6962 Subsection (4), the department shall pay attorney's fees at the rate of 33.3% of the department's  
6963 total recovery and shall pay a proportionate share of the litigation expenses directly related to  
6964 the action.

6965 (d) The department is not required to enter into a collection agreement with the  
6966 recipient's attorney for collection of personal injury protection under Subsection  
6967 31A-22-302(2).

6968 (3) (a) If the department receives notice pursuant to Subsection (1), and notifies the  
6969 recipient and the recipient's attorney that the department will not enter into a collection  
6970 agreement with the recipient's attorney, the recipient may proceed with the recipient's claim or  
6971 action against the third party if the recipient excludes from the claim:

6972 (i) any medical expenses paid by the department; or  
6973 (ii) any medical costs for which the department is obligated to provide medical  
6974 assistance.

6975 (b) When a recipient proceeds with a claim under Subsection (3)(a), the recipient shall  
6976 provide written notice to the third party of the exclusion of the department's claim for expenses  
6977 under Subsection (3)(a)(i) or (ii).

6978 (4) If the department receives notice pursuant to Subsection (1), and does not respond  
6979 within 30 days to the recipient or the recipient's attorney, the recipient or the recipient's  
6980 attorney:

- 6981 (a) may proceed with the recipient's claim or action against the third party;
- 6982 (b) may include the state's claim in the recipient's claim or action; and
- 6983 (c) may not negotiate, compromise, settle, or waive the department's claim without the  
6984 department's consent.

6985 (5) The department has an unconditional right to intervene in an action commenced by  
6986 a recipient against a third party for the purpose of recovering medical costs for which the  
6987 department has provided or has become obligated to provide medical assistance.

6988 (6) (a) If the recipient proceeds without complying with the provisions of this section,  
6989 the department is not bound by any decision, judgment, agreement, settlement, or compromise  
6990 rendered or made on the claim or in the action.

6991 (b) The department may recover in full from the recipient or any party to which the  
6992 proceeds were made payable all medical assistance which it has provided and retains its right to  
6993 commence an independent action against the third party, subject to Subsection 26-19-5(3).

6994 (7) Any amounts assigned to and recoverable by the department pursuant to Sections  
6995 26-19-4.5 and 26-19-5 collected directly by the recipient shall be remitted to the Bureau of  
6996 Medical Collections within the Office of Recovery Services no later than five business days  
6997 after receipt.

6998 (8) (a) Any amounts assigned to and recoverable by the department pursuant to  
6999 Sections 26-19-4.5 and 26-19-5 collected directly by the recipient's attorney [~~must~~] shall be  
7000 remitted to the Bureau of Medical Collections within the Office of Recovery Services no later  
7001 than 30 days after the funds are placed in the attorney's trust account.

7002 (b) The date by which the funds [~~must~~] shall be remitted to the department may be

7003 modified based on agreement between the department and the recipient's attorney.

7004 (c) The department's consent to another date for remittance may not be unreasonably  
7005 withheld.

7006 (d) If the funds are received by the recipient's attorney, no disbursements shall be made  
7007 to the recipient or the recipient's attorney until the department's claim has been paid.

7008 (9) A recipient or recipient's attorney who knowingly and intentionally fails to comply  
7009 with this section is liable to the department for:

7010 (a) the amount of the department's claim or lien pursuant to Subsection (5);

7011 (b) a penalty equal to 10% of the amount of the department's claim; and

7012 (c) ~~attorney's~~ attorney fees and litigation expenses related to recovering the  
7013 department's claim.

7014 Section 174. Section **26-19-8** is amended to read:

7015 **26-19-8. Statute of limitations -- Survival of right of action -- Insurance policy not**  
7016 **to limit time allowed for recovery.**

7017 (1) (a) Subject to Subsection (6), action commenced by the department under this  
7018 chapter against a health insurance entity ~~[must]~~ shall be commenced within:

7019 (i) subject to Subsection (7), six years after the day on which the department submits  
7020 the claim for recovery or payment for the health care item or service upon which the action is  
7021 based; or

7022 (ii) six months after the date of the last payment for medical assistance, whichever is  
7023 later.

7024 (b) An action against any other third party, the recipient, or anyone to whom the  
7025 proceeds are payable ~~[must]~~ shall be commenced within:

7026 (i) four years after the date of the injury or onset of the illness; or

7027 (ii) six months after the date of the last payment for medical assistance, whichever is  
7028 later.

7029 (2) The death of the recipient does not abate any right of action established by this  
7030 chapter.

7031 (3) (a) No insurance policy issued or renewed after June 1, 1981, may contain any  
7032 provision that limits the time in which the department may submit its claim to recover medical  
7033 assistance benefits to a period of less than 24 months from the date the provider furnishes

7034 services or goods to the recipient.

7035 (b) No insurance policy issued or renewed after April 30, 2007, may contain any  
7036 provision that limits the time in which the department may submit its claim to recover medical  
7037 assistance benefits to a period of less than that described in Subsection (1)(a).

7038 (4) The provisions of this section do not apply to Section 26-19-13.5.

7039 (5) The provisions of this section supercede any other sections regarding the time limit  
7040 in which an action [~~must~~] shall be commenced, including Section 75-7-509.

7041 (6) (a) Subsection (1)(a) extends the statute of limitations on a cause of action  
7042 described in Subsection (1)(a) that was not time-barred on or before April 30, 2007.

7043 (b) Subsection (1)(a) does not revive a cause of action that was time-barred on or  
7044 before April 30, 2007.

7045 (7) An action described in Subsection (1)(a) may not be commenced if the claim for  
7046 recovery or payment described in Subsection (1)(a)(i) is submitted later than three years after  
7047 the day on which the health care item or service upon which the claim is based was provided.

7048 Section 175. Section **26-20-3** is amended to read:

7049 **26-20-3. False statement or representation relating to medical benefits.**

7050 (1) A person [~~shall not~~] may not make or cause to be made a false statement or false  
7051 representation of a material fact in an application for medical benefits.

7052 (2) A person [~~shall not~~] may not make or cause to be made a false statement or false  
7053 representation of a material fact for use in determining rights to a medical benefit.

7054 (3) A person, who having knowledge of the occurrence of an event affecting [~~his~~] the  
7055 person's initial or continued right to receive a medical benefit or the initial or continued right of  
7056 any other person on whose behalf [~~he~~] the person has applied for or is receiving a medical  
7057 benefit, [~~shall not~~] may not conceal or fail to disclose that event with intent to obtain a medical  
7058 benefit to which the person or any other person is not entitled or in an amount greater than that  
7059 to which the person or any other person is entitled.

7060 Section 176. Section **26-20-6** is amended to read:

7061 **26-20-6. Conspiracy to defraud prohibited.**

7062 A person [~~shall not~~] may not enter into an agreement, combination, or conspiracy to  
7063 defraud the state by obtaining or aiding another to obtain the payment or allowance of a false,  
7064 fictitious, or fraudulent claim for a medical benefit.

7065 Section 177. Section **26-20-8** is amended to read:

7066 **26-20-8. Knowledge of past acts not necessary to establish fact that false**  
7067 **statement or representation knowingly made.**

7068 In prosecution under this chapter, it [~~shall not be~~] is not necessary to show that the  
7069 person had knowledge of similar acts having been performed in the past on the part of persons  
7070 acting on his behalf nor to show that the person had actual notice that the acts by the persons  
7071 acting on his behalf occurred to establish the fact that a false statement or representation was  
7072 knowingly made.

7073 Section 178. Section **26-20-9.5** is amended to read:

7074 **26-20-9.5. Civil penalties.**

7075 (1) The culpable mental state required for a civil violation of this chapter is "knowing"  
7076 or "knowingly" which:

7077 (a) means that person, with respect to information:

7078 (i) has actual knowledge of the information;

7079 (ii) acts in deliberate ignorance of the truth or falsity of the information; or

7080 (iii) acts in reckless disregard of the truth or falsity of the information; and

7081 (b) does not require a specific intent to defraud.

7082 (2) Any person who violates this chapter shall, in all cases, in addition to other  
7083 penalties provided by law, be required to:

7084 (a) make full and complete restitution to the state of all damages that the state sustains  
7085 because of the person's violation of this chapter;

7086 (b) pay to the state its costs of enforcement of this chapter in that case, including [~~but~~  
7087 ~~not limited to~~] the cost of investigators, attorneys, and other public employees, as determined  
7088 by the state; and

7089 (c) pay to the state a civil penalty equal to:

7090 (i) three times the amount of damages that the state sustains because of the person's  
7091 violation of this chapter; and

7092 (ii) not less than \$5,000 or more than \$10,000 for each claim filed or act done in  
7093 violation of this chapter.

7094 (3) Any civil penalties assessed under Subsection (2) shall be awarded by the court as  
7095 part of its judgment in both criminal and civil actions.

7096 (4) A criminal action need not be brought against a person in order for that person to be  
7097 civilly liable under this section.

7098 Section 179. Section **26-20-12** is amended to read:

7099 **26-20-12. Violation of other laws.**

7100 (1) The provisions of this chapter are:

7101 (a) not exclusive, and the remedies provided for in this chapter are in addition to any  
7102 other remedies provided for under:

7103 (i) any other applicable law; or

7104 (ii) common law; and

7105 (b) to be liberally construed and applied to:

7106 (i) effectuate the chapter's remedial and deterrent purposes; and

7107 (ii) serve the public interest.

7108 (2) If any provision of this chapter or the application of this chapter to any person or  
7109 circumstance is held unconstitutional:

7110 (a) the remaining provisions of this chapter [~~shall not be~~] are not affected; and

7111 (b) the application of this chapter to other persons or circumstances [~~shall not be~~] are  
7112 not affected.

7113 Section 180. Section **26-20-14** is amended to read:

7114 **26-20-14. Investigations -- Civil investigative demands.**

7115 (1) The attorney general may take investigative action under Subsection (2) if the  
7116 attorney general has reason to believe that:

7117 (a) a person has information or custody or control of documentary material relevant to  
7118 the subject matter of an investigation of an alleged violation of this chapter;

7119 (b) a person is committing, has committed, or is about to commit a violation of this  
7120 chapter; or

7121 (c) it is in the public interest to conduct an investigation to ascertain whether or not a  
7122 person is committing, has committed, or is about to commit a violation of this chapter.

7123 (2) In taking investigative action, the attorney general may:

7124 (a) require the person to file on a prescribed form a statement in writing, under oath or  
7125 affirmation describing:

7126 (i) the facts and circumstances concerning the alleged violation of this chapter; and

7127 (ii) other information considered necessary by the attorney general;  
7128 (b) examine under oath a person in connection with the alleged violation of this  
7129 chapter; and  
7130 (c) in accordance with Subsections (7) through (18), execute in writing, and serve on  
7131 the person, a civil investigative demand requiring the person to produce the documentary  
7132 material and permit inspection and copying of the material.  
7133 (3) The attorney general may not release or disclose information that is obtained under  
7134 Subsection (2)(a) or (b), or any documentary material or other record derived from the  
7135 information obtained under Subsection (2)(a) or (b), except:  
7136 (a) by court order for good cause shown;  
7137 (b) with the consent of the person who provided the information;  
7138 (c) to an employee of the attorney general or the department;  
7139 (d) to an agency of this state, the United States, or another state;  
7140 (e) to a special assistant attorney general representing the state in a civil action;  
7141 (f) to a political subdivision of this state; or  
7142 (g) to a person authorized by the attorney general to receive the information.  
7143 (4) The attorney general may use documentary material derived from information  
7144 obtained under Subsection (2)(a) or (b), or copies of that material, as the attorney general  
7145 determines necessary in the enforcement of this chapter, including presentation before a court.  
7146 (5) (a) If a person fails to file a statement as required by Subsection (2)(a) or fails to  
7147 submit to an examination as required by Subsection (2)(b), the attorney general may file in  
7148 district court a complaint for an order to compel the person to within a period stated by court  
7149 order:  
7150 (i) file the statement required by Subsection (2)(a); or  
7151 (ii) submit to the examination required by Subsection (2)(b).  
7152 (b) Failure to comply with an order entered under Subsection (5)(a) is punishable as  
7153 contempt.  
7154 (6) A civil investigative demand [~~must~~] shall:  
7155 (a) state the rule or statute under which the alleged violation of this chapter is being  
7156 investigated;  
7157 (b) describe the:

7158 (i) general subject matter of the investigation; and  
7159 (ii) class or classes of documentary material to be produced with reasonable specificity  
7160 to fairly indicate the documentary material demanded;

7161 (c) designate a date within which the documentary material is to be produced; and

7162 (d) identify an authorized employee of the attorney general to whom the documentary  
7163 material is to be made available for inspection and copying.

7164 (7) A civil investigative demand may require disclosure of any documentary material  
7165 that is discoverable under the Utah Rules of Civil Procedure.

7166 (8) Service of a civil investigative demand may be made by:

7167 (a) delivering an executed copy of the demand to the person to be served or to a  
7168 partner, an officer, or an agent authorized by appointment or by law to receive service of  
7169 process on behalf of that person;

7170 (b) delivering an executed copy of the demand to the principal place of business in this  
7171 state of the person to be served; or

7172 (c) mailing by registered or certified mail an executed copy of the demand addressed to  
7173 the person to be served:

7174 (i) at the person's principal place of business in this state; or

7175 (ii) if the person has no place of business in this state, to the person's principal office or  
7176 place of business.

7177 (9) Documentary material demanded in a civil investigative demand shall be produced  
7178 for inspection and copying during normal business hours at the office of the attorney general or  
7179 as agreed by the person served and the attorney general.

7180 (10) The attorney general may not produce for inspection or copying or otherwise  
7181 disclose the contents of documentary material obtained pursuant to a civil investigative demand  
7182 except:

7183 (a) by court order for good cause shown;

7184 (b) with the consent of the person who produced the information;

7185 (c) to an employee of the attorney general or the department;

7186 (d) to an agency of this state, the United States, or another state;

7187 (e) to a special assistant attorney general representing the state in a civil action;

7188 (f) to a political subdivision of this state; or

7189 (g) to a person authorized by the attorney general to receive the information.

7190 (11) (a) With respect to documentary material obtained pursuant to a civil investigative  
7191 demand, the attorney general shall prescribe reasonable terms and conditions allowing such  
7192 documentary material to be available for inspection and copying by the person who produced  
7193 the material or by an authorized representative of that person.

7194 (b) The attorney general may use such documentary material or copies of it as the  
7195 attorney general determines necessary in the enforcement of this chapter, including presentation  
7196 before a court.

7197 (12) A person may file a complaint, stating good cause, to extend the return date for the  
7198 demand or to modify or set aside the demand. A complaint under this Subsection (12) shall be  
7199 filed in district court [~~and must be filed~~] before the earlier of:

7200 (a) the return date specified in the demand; or

7201 (b) the 20th day after the date the demand is served.

7202 (13) Except as provided by court order, a person who has been served with a civil  
7203 investigative demand shall comply with the terms of the demand.

7204 (14) (a) A person who has committed a violation of this chapter in relation to the  
7205 Medicaid program in this state or to any other medical benefit program administered by the  
7206 state has submitted to the jurisdiction of this state.

7207 (b) Personal service of a civil investigative demand under this section may be made on  
7208 the person described in Subsection (14)(a) outside of this state.

7209 (15) This section does not limit the authority of the attorney general to conduct  
7210 investigations or to access a person's documentary materials or other information under another  
7211 state or federal law, the Utah Rules of Civil Procedure, or the Federal Rules of Civil Procedure.

7212 (16) The attorney general may file a complaint in district court for an order to enforce  
7213 the civil investigative demand if:

7214 (a) a person fails to comply with a civil investigative demand; or

7215 (b) copying and reproduction of the documentary material demanded:

7216 (i) cannot be satisfactorily accomplished; and

7217 (ii) the person refuses to surrender the documentary material.

7218 (17) If a complaint is filed under Subsection (16), the court may determine the matter  
7219 presented and may enter an order to enforce the civil investigative demand.

7220 (18) Failure to comply with a final order entered under Subsection (17) is punishable  
7221 by contempt.

7222 Section 181. Section **26-21-9** is amended to read:

7223 **26-21-9. Application for license -- Information required -- Public records.**

7224 (1) An application for license shall be made to the department in a form prescribed by  
7225 the department. The application and other documentation requested by the department as part  
7226 of the application process shall require such information as the committee determines  
7227 necessary to ensure compliance with established rules.

7228 (2) Information received by the department in reports and inspections shall be public  
7229 records, except the information [~~shall not~~] may not be disclosed if it directly or indirectly  
7230 identifies any individual other than the owner or operator of a health facility (unless disclosure  
7231 is required by law) or if its disclosure would otherwise constitute an unwarranted invasion of  
7232 personal privacy.

7233 (3) Information received by the department from a health care facility, pertaining to  
7234 that facility's accreditation by a voluntary accrediting organization, shall be private data except  
7235 for a summary prepared by the department related to licensure standards.

7236 Section 182. Section **26-21-9.5** is amended to read:

7237 **26-21-9.5. Criminal background check and Licensing Information System check.**

7238 (1) For purposes of this section:

7239 (a) "Covered employer" means an individual who:

7240 (i) is not a covered health care facility;

7241 (ii) is not a licensed business within the state; and

7242 (iii) is hiring an individual to provide services to an elderly or disabled person in the  
7243 home of the elderly or disabled person.

7244 (b) "Covered health care facility" means:

7245 (i) home health care agencies;

7246 (ii) hospices;

7247 (iii) nursing care facilities;

7248 (iv) assisted-living facilities;

7249 (v) small health care facilities; and

7250 (vi) end stage renal disease facilities.

- 7251 (c) "Covered person" includes:
- 7252 (i) the following people who provide direct patient care:
- 7253 (A) employees;
- 7254 (B) volunteers; and
- 7255 (C) people under contract with the covered health care facility; and
- 7256 (ii) for residential settings, any individual residing in the home where the assisted
- 7257 living or small health care program is to be licensed who:
- 7258 (A) is 18 years of age or older; or
- 7259 (B) is a child between the age of 12 and 17 years of age; however, the identifying
- 7260 information required for a child between the age of 12 and 17 does not include fingerprints.
- 7261 (2) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a
- 7262 covered health care facility at the time of initial application for a license and license renewal
- 7263 shall:
- 7264 (a) submit the name and other identifying information of each covered person at the
- 7265 covered facility who:
- 7266 (i) provides direct care to a patient; and
- 7267 (ii) has been the subject of a criminal background check within the preceding
- 7268 three-year period by a public or private entity recognized by the department; and
- 7269 (b) submit the name and other identifying information, which may include fingerprints,
- 7270 of each covered person at the covered facility who has not been the subject of a criminal
- 7271 background check in accordance with Subsection (2)(a)(ii).
- 7272 (3) (a) The department shall forward the information received under Subsection (2)(b)
- 7273 or (6)(b) to the Criminal Investigations and Technical Services Division of the Department of
- 7274 Public Safety for processing to determine whether the individual has been convicted of any
- 7275 crime.
- 7276 (b) Except for individuals described in Subsection (1)(c)(ii)(B), if an individual has not
- 7277 had residency in Utah for the last five years, the individual shall submit fingerprints for an FBI
- 7278 national criminal history record check. The fingerprints shall be submitted to the FBI through
- 7279 the Criminal Investigations and Technical Services Division. The individual or licensee is
- 7280 responsible for the cost of the fingerprinting and national criminal history check.
- 7281 (4) The department may determine whether:

7282 (a) an individual whose name and other identifying information has been submitted  
7283 pursuant to Subsection (2) and who provides direct care to children is listed in the Licensing  
7284 Information System described in Section 62A-4a-1006 or has a substantiated finding by a court  
7285 of a severe type of child abuse or neglect under Section 78A-6-323, if identification as a  
7286 possible perpetrator of child abuse or neglect is relevant to the employment activities of that  
7287 individual;

7288 (b) an individual whose name and other identifying information has been submitted  
7289 pursuant to Subsection (2) or (6)(b) and who provides direct care to disabled or elder adults, or  
7290 who is residing in a residential home that is a facility licensed to provide direct care to disabled  
7291 or elder adults has a substantiated finding of abuse, neglect, or exploitation of a disabled or  
7292 elder adult by accessing in accordance with Subsection (5) the database created in Section  
7293 62A-3-311.1 if identification as a possible perpetrator of disabled or elder adult abuse, neglect,  
7294 or exploitation is relevant to the employment activities or residence of that person; or

7295 (c) an individual whose name or other identifying information has been submitted  
7296 pursuant to Subsection (2) or (6)(b) has been adjudicated in a juvenile court of committing an  
7297 act which if committed by an adult would be a felony or a misdemeanor if:

7298 (i) the individual is under the age of 28 years; or

7299 (ii) the individual is over the age of 28 and has been convicted, has pleaded no contest,  
7300 or is currently subject to a plea in abeyance or diversion agreement for any felony or  
7301 misdemeanor.

7302 (5) (a) The department shall:

7303 (i) designate persons within the department to access:

7304 (A) the Licensing Information System described in Section 62A-4a-1006;

7305 (B) court records under Subsection 78A-6-323(6);

7306 (C) the database described in Subsection (4)(b); and

7307 (D) juvenile court records as permitted by Subsection (4)(c); and

7308 (ii) adopt measures to:

7309 (A) protect the security of the Licensing Information System, the court records, and the  
7310 database; and

7311 (B) strictly limit access to the Licensing Information System, the court records, and the  
7312 database to those designated under Subsection (5)(a)(i).

- 7313 (b) Those designated under Subsection (5)(a)(i) shall receive training from the  
7314 Department of Human Services with respect to:
- 7315 (i) accessing the Licensing Information System, the court records, and the database;  
7316 (ii) maintaining strict security; and  
7317 (iii) the criminal provisions in Section 62A-4a-412 for the improper release of  
7318 information.
- 7319 (c) Those designated under Subsection (5)(a)(i):
- 7320 (i) are the only ones in the department with the authority to access the Licensing  
7321 Information System, the court records, and database; and  
7322 (ii) may only access the Licensing Information System, the court records, and the  
7323 database for the purpose of licensing and in accordance with the provisions of Subsection (4).
- 7324 (6) (a) Within 10 days of initially hiring a covered individual, a covered health care  
7325 facility shall submit the covered individual's information to the department in accordance with  
7326 Subsection (2).
- 7327 (b) (i) Prior to, or within 10 days of initially hiring an individual to provide care to an  
7328 elderly adult or a disabled person in the home of the elderly adult or disabled person, a covered  
7329 employer may submit the employed individual's information to the department.
- 7330 (ii) The department shall:
- 7331 (A) in accordance with Subsections (4) and (6)(c) of this section, and Subsection  
7332 62A-3-311.1(4)(b), determine whether the individual has a substantiated finding of abuse,  
7333 neglect, or exploitation of a minor or an elderly adult; and
- 7334 (B) in accordance with Subsection (9), inform the covered employer of the  
7335 department's findings.
- 7336 (c) A covered employer:
- 7337 (i) [~~must~~] shall certify to the department that the covered employer intends to hire, or  
7338 has hired, the individual whose information the covered employer has submitted to the  
7339 department for the purpose of providing care to an elderly adult or a disabled person in the  
7340 home of the elderly adult or disabled person;
- 7341 (ii) [~~must~~] shall pay the reasonable fees established by the department under  
7342 Subsection (8); and
- 7343 (iii) commits an infraction if the covered employer intentionally misrepresents any fact

7344 certified under Subsection (6)(c)(i).

7345 (7) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative  
7346 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person  
7347 who has been convicted of a criminal offense, or a person described in Subsection (4), may  
7348 provide direct care to a patient in a covered health care facility, taking into account the nature  
7349 of the criminal conviction or substantiated finding and its relation to patient care.

7350 (8) The department may, in accordance with Section 26-1-6, assess reasonable fees for  
7351 a criminal background check processed pursuant to this section.

7352 (9) The department may inform the covered health care facility or a covered employer  
7353 of information discovered under Subsection (4) with respect to a covered individual, or an  
7354 individual whose name is submitted by a covered employer.

7355 (10) (a) A covered health care facility is not civilly liable for submitting information to  
7356 the department as required by this section.

7357 (b) A covered employer is not civilly liable for submitting information to the  
7358 department as permitted by this section if the covered employer:

7359 (i) complies with Subsection (6)(c)(i); and

7360 (ii) does not use the information obtained about an individual under this section for any  
7361 purpose other than hiring decisions directly related to the care of the elderly adult or disabled  
7362 person.

7363 Section 183. Section **26-23-7** is amended to read:

7364 **26-23-7. Application of enforcement procedures and penalties.**

7365 Enforcement procedures and penalties provided in this chapter [~~shall not~~] do not apply  
7366 to other chapters in this title which provide for specific enforcement procedures and penalties.

7367 Section 184. Section **26-23-10** is amended to read:

7368 **26-23-10. Religious exemptions from code -- Regulation of state-licensed healing**  
7369 **system practice unaffected by code.**

7370 (1) [~~Nothing~~] (a) Except as provided in Subsection (1)(b), nothing in this code shall be  
7371 construed to compel any person to submit to any medical or dental examination or treatment  
7372 under the authority of this code when such person, or the parent or guardian of any such person  
7373 objects to such examination or treatment on religious grounds, or to permit any discrimination  
7374 against such person on account of such objection[~~; provided, that~~].

7375           (b) An exemption from medical or dental examination [shall not], described in  
7376 Subsection (1)(a), may not be granted if the executive director has reasonable cause to suspect  
7377 a substantial menace to the health of other persons exposed to contact with the unexamined  
7378 person.

7379           (2) Nothing in this code shall be construed as authorizing the supervision, regulation,  
7380 or control of the remedial care or treatment of residents in any home or institution conducted  
7381 for those who rely upon treatment by prayer or spiritual means in accordance with the creed or  
7382 tenets of any well recognized church or religious denomination, provided the statutes and  
7383 regulations on sanitation are complied with.

7384           (3) Nothing in this code shall be construed or used to amend any statute now in force  
7385 pertaining to the scope of practice of any state-licensed healing system.

7386           Section 185. Section **26-23b-104** is amended to read:

7387           **26-23b-104. Authorization to report.**

7388           (1) A health care provider is authorized to report to the department any case of a  
7389 reportable emergency illness or health condition in any person when:

7390           (a) the health care provider knows of a confirmed case; or

7391           (b) the health care provider believes, based on [his] the health care provider's  
7392 professional judgment that a person likely harbors a reportable emergency illness or health  
7393 condition.

7394           (2) A report pursuant to this section shall include, if known:

7395           (a) the name of the facility submitting the report;

7396           (b) a patient identifier that allows linkage with the patient's record for follow-up  
7397 investigation if needed;

7398           (c) the date and time of visit;

7399           (d) the patient's age and sex;

7400           (e) the zip code of the patient's residence;

7401           (f) the reportable illness or condition detected or suspected;

7402           (g) diagnostic information and, if available, diagnostic codes assigned to the visit; and

7403           (h) whether the patient was admitted to the hospital.

7404           (3) (a) If the department determines that a public health emergency exists, the  
7405 department may, with the concurrence of the governor and the executive director or in the

7406 absence of the executive director, [~~his~~] the executive director's designee, issue a public health  
7407 emergency order and mandate reporting under this section for a limited reasonable period of  
7408 time, as necessary to respond to the public health emergency.

7409 (b) The department may not mandate reporting under this subsection for more than 90  
7410 days. If more than 90 days is needed to abate the public health emergency declared under  
7411 Subsection (3)(a), the department [~~must~~] shall obtain the concurrence of the governor to extend  
7412 the period of time beyond 90 days.

7413 (4) (a) Unless the provisions of Subsection (3) apply, a health care provider is not  
7414 subject to penalties for failing to submit a report under this section.

7415 (b) If the provisions of Subsection (3) apply, a health care provider is subject to the  
7416 penalties of Subsection 26-23b-103(3) for failure to make a report under this section.

7417 Section 186. Section **26-25-5** is amended to read:

7418 **26-25-5. Violation of chapter a misdemeanor -- Civil liability.**

7419 (1) Any use, release or publication, negligent or otherwise, contrary to the provisions of  
7420 this chapter [~~shall be~~] is a class B misdemeanor.

7421 (2) Subsection (1) [~~shall not~~] does not relieve the person or organization responsible  
7422 for such use, release, or publication from civil liability.

7423 Section 187. Section **26-28-105** is amended to read:

7424 **26-28-105. Manner of making anatomical gift before donor's death.**

7425 (1) A donor may make an anatomical gift:

7426 (a) by authorizing a statement or symbol indicating that the donor has made an  
7427 anatomical gift to be imprinted on the donor's driver license or identification card;

7428 (b) in a will;

7429 (c) during a terminal illness or injury of the donor, by any form of communication  
7430 addressed to at least two adults, at least one of whom is a disinterested witness; or

7431 (d) as provided in Subsection (2).

7432 (2) A donor or other person authorized to make an anatomical gift under Section  
7433 26-28-104 may make a gift by a donor card or other record signed by the donor or other person  
7434 making the gift or by authorizing that a statement or symbol indicating that the donor has made  
7435 an anatomical gift be included on a donor registry. If the donor or other person is physically  
7436 unable to sign a record, the record may be signed by another individual at the direction of the

7437 donor or other person and [~~must~~] shall:

7438 (a) be witnessed by at least two adults, at least one of whom is a disinterested witness,  
7439 who have signed at the request of the donor or the other person; and

7440 (b) state that it has been signed and witnessed as provided in Subsection (2)(a).

7441 (3) Revocation, suspension, expiration, or cancellation of a driver license or  
7442 identification card upon which an anatomical gift is indicated does not invalidate the gift.

7443 (4) An anatomical gift made by will takes effect upon the donor's death whether or not  
7444 the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

7445 Section 188. Section **26-28-106** is amended to read:

7446 **26-28-106. Amending or revoking anatomical gift before donor's death.**

7447 (1) Subject to Section 26-28-108, a donor or other person authorized to make an  
7448 anatomical gift under Section 26-28-104 may amend or revoke an anatomical gift by:

7449 (a) a record signed by:

7450 (i) the donor;

7451 (ii) the other person; or

7452 (iii) subject to Subsection (2), another individual acting at the direction of the donor or  
7453 the other person if the donor or other person is physically unable to sign; or

7454 (b) a later-executed document of gift that amends or revokes a previous anatomical gift  
7455 or portion of an anatomical gift, either expressly or by inconsistency.

7456 (2) A record signed pursuant to Subsection (1)(a)(iii) [~~must~~] shall:

7457 (a) be witnessed by at least two adults, at least one of whom is a disinterested witness,  
7458 who have signed at the request of the donor or the other person; and

7459 (b) state that it has been signed and witnessed as provided in Subsection (1)(a).

7460 (3) Subject to Section 26-28-108, a donor or other person authorized to make an  
7461 anatomical gift under Section 26-28-104 may revoke an anatomical gift by the destruction or  
7462 cancellation of the document of gift, or the portion of the document of gift used to make the  
7463 gift, with the intent to revoke the gift.

7464 (4) A donor may amend or revoke an anatomical gift that was not made in a will by any  
7465 form of communication during a terminal illness or injury addressed to at least two adults, at  
7466 least one of whom is a disinterested witness.

7467 (5) A donor who makes an anatomical gift in a will may amend or revoke the gift in the

7468 manner provided for amendment or revocation of wills or as provided in Subsection (1).

7469 Section 189. Section **26-28-107** is amended to read:

7470 **26-28-107. Refusal to make anatomical gift -- Effect of refusal.**

7471 (1) An individual may refuse to make an anatomical gift of the individual's body or part  
7472 by:

7473 (a) a record signed by:

7474 (i) the individual; or

7475 (ii) subject to Subsection (2), another individual acting at the direction of the individual  
7476 if the individual is physically unable to sign;

7477 (b) the individual's will, whether or not the will is admitted to probate or invalidated  
7478 after the individual's death; or

7479 (c) any form of communication made by the individual during the individual's terminal  
7480 illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

7481 (2) A record signed pursuant to Subsection (1)(a)(ii) [~~must~~] shall:

7482 (a) be witnessed by at least two adults, at least one of whom is a disinterested witness,  
7483 who have signed at the request of the individual; and

7484 (b) state that it has been signed and witnessed as provided in Subsection (1)(a).

7485 (3) An individual who has made a refusal may amend or revoke the refusal:

7486 (a) in the manner provided in Subsection (1) for making a refusal;

7487 (b) by subsequently making an anatomical gift pursuant to Section 26-28-105 that is  
7488 inconsistent with the refusal; or

7489 (c) by destroying or canceling the record evidencing the refusal, or the portion of the  
7490 record used to make the refusal, with the intent to revoke the refusal.

7491 (4) Except as otherwise provided in Subsection 26-28-108(8), in the absence of an  
7492 express, contrary indication by the individual set forth in the refusal, an individual's unrevoked  
7493 refusal to make an anatomical gift of the individual's body or part bars all other persons from  
7494 making an anatomical gift of the individual's body or part.

7495 Section 190. Section **26-28-111** is amended to read:

7496 **26-28-111. Persons that may receive anatomical gift -- Purpose of anatomical gift.**

7497 (1) An anatomical gift may be made to the following persons named in the document  
7498 of gift:

7499 (a) a hospital, accredited medical school, dental school, college, university, organ  
7500 procurement organization, or other appropriate person, for research or education;

7501 (b) subject to Subsection (2), an individual designated by the person making the  
7502 anatomical gift if the individual is the recipient of the part; or

7503 (c) an eye bank or tissue bank.

7504 (2) If an anatomical gift to an individual under Subsection (1)(b) cannot be  
7505 transplanted into the individual, the part passes in accordance with Subsection (7) in the  
7506 absence of an express, contrary indication by the person making the anatomical gift.

7507 (3) If an anatomical gift of one or more specific parts or of all parts is made in a  
7508 document of gift that does not name a person described in Subsection (1) but identifies the  
7509 purpose for which an anatomical gift may be used, the following rules apply:

7510 (a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the  
7511 gift passes to the appropriate eye bank.

7512 (b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the  
7513 gift passes to the appropriate tissue bank.

7514 (c) If the part is an organ and the gift is for the purpose of transplantation or therapy,  
7515 the gift passes to the appropriate organ procurement organization as custodian of the organ.

7516 (d) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or  
7517 education, the gift passes to the appropriate procurement organization.

7518 (4) For the purpose of Subsection (3), if there is more than one purpose of an  
7519 anatomical gift set forth in the document of gift but the purposes are not set forth in any  
7520 priority, the gift [~~must~~] shall be used for transplantation or therapy, if suitable. If the gift  
7521 cannot be used for transplantation or therapy, the gift may be used for research or education.

7522 (5) If an anatomical gift of one or more specific parts is made in a document of gift that  
7523 does not name a person described in Subsection (1) and does not identify the purpose of the  
7524 gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance  
7525 with Subsection (7).

7526 (6) If a document of gift specifies only a general intent to make an anatomical gift by  
7527 words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar  
7528 import, the gift may be used only for transplantation or therapy, and the gift passes in  
7529 accordance with Subsection (7).

7530 (7) For purposes of Subsections (2), (5), and (7) the following rules apply:

7531 (a) If the part is an eye, the gift passes to the appropriate eye bank.

7532 (b) If the part is tissue, the gift passes to the appropriate tissue bank.

7533 (c) If the part is an organ, the gift passes to the appropriate organ procurement

7534 organization as custodian of the organ.

7535 (8) An anatomical gift of an organ for transplantation or therapy, other than an

7536 anatomical gift under Subsection (1)(b), passes to the organ procurement organization as

7537 custodian of the organ.

7538 (9) If an anatomical gift does not pass pursuant to Subsections (2) through (8) or the

7539 decedent's body or part is not used for transplantation, therapy, research, or education, custody

7540 of the body or part passes to the person under obligation to dispose of the body or part.

7541 (10) A person may not accept an anatomical gift if the person knows that the gift was

7542 not effectively made under Section 26-28-105 or 26-28-110 or if the person knows that the

7543 decedent made a refusal under Section 26-28-107 that was not revoked. For purposes of this

7544 Subsection (10), if a person knows that an anatomical gift was made on a document of gift, the

7545 person is considered to know of any amendment or revocation of the gift or any refusal to make

7546 an anatomical gift on the same document of gift.

7547 (11) Except as otherwise provided in Subsection (1)(b), nothing in this chapter affects

7548 the allocation of organs for transplantation or therapy.

7549 Section 191. Section **26-28-114** is amended to read:

7550 **26-28-114. Rights and duties of procurement organization and others.**

7551 (1) When a hospital refers an individual at or near death to a procurement organization,

7552 the organization shall make a reasonable search of the records of the Department of Public

7553 Safety and any donor registry that it knows exists for the geographical area in which the

7554 individual resides to ascertain whether the individual has made an anatomical gift.

7555 (2) A procurement organization [~~must~~] shall be allowed reasonable access to

7556 information in the records of the Department of Public Safety to ascertain whether an

7557 individual at or near death is a donor.

7558 (3) When a hospital refers an individual at or near death to a procurement organization,

7559 the organization may conduct any reasonable examination necessary to ensure the medical

7560 suitability of a part that is or could be the subject of an anatomical gift for transplantation,

7561 therapy, research, or education from a donor or a prospective donor. During the examination  
7562 period, measures necessary to ensure the medical suitability of the part may not be withdrawn  
7563 unless the hospital or procurement organization knows that the individual expressed a contrary  
7564 intent.

7565 (4) Unless prohibited by law other than this chapter, at any time after a donor's death,  
7566 the person to which a part passes under Section 26-28-111 may conduct any reasonable  
7567 examination necessary to ensure the medical suitability of the body or part for its intended  
7568 purpose.

7569 (5) Unless prohibited by law other than this chapter, an examination under Subsection  
7570 (3) or (4) may include an examination of all medical and dental records of the donor or  
7571 prospective donor.

7572 (6) Upon the death of a minor who was a donor or had signed a refusal, unless a  
7573 procurement organization knows the minor is emancipated, the procurement organization shall  
7574 conduct a reasonable search for the parents of the minor and provide the parents with an  
7575 opportunity to revoke or amend the anatomical gift or revoke the refusal.

7576 (7) Upon referral by a hospital under Subsection (1), a procurement organization shall  
7577 make a reasonable search for any person listed in Section 26-28-109 having priority to make an  
7578 anatomical gift on behalf of a prospective donor. If a procurement organization receives  
7579 information that an anatomical gift to any other person was made, amended, or revoked, it shall  
7580 promptly advise the other person of all relevant information.

7581 (8) Subject to Subsection 26-28-111(9) and Section 26-28-123, the rights of the person  
7582 to which a part passes under Section 26-28-111 are superior to the rights of all others with  
7583 respect to the part. The person may accept or reject an anatomical gift in whole or in part.  
7584 Subject to the terms of the document of gift and this chapter, a person that accepts an  
7585 anatomical gift of an entire body may allow embalming, burial or cremation, and use of  
7586 remains in a funeral service. If the gift is of a part, the person to which the part passes under  
7587 Section 26-28-111, upon the death of the donor and before embalming, burial, or cremation,  
7588 shall cause the part to be removed without unnecessary mutilation.

7589 (9) Neither the physician who attends the decedent at death nor the physician who  
7590 determines the time of the decedent's death may participate in the procedures for removing or  
7591 transplanting a part from the decedent.

7592 (10) A physician or technician may remove a donated part from the body of a donor  
7593 that the physician or technician is qualified to remove.

7594 Section 192. Section **26-28-120** is amended to read:

7595 **26-28-120. Donor registry.**

7596 (1) The Department of Public Safety may establish or contract for the establishment of  
7597 a donor registry.

7598 (2) The Driver License Division of the Department of Public Safety shall cooperate  
7599 with a person that administers any donor registry that this state establishes, contracts for, or  
7600 recognizes for the purpose of transferring to the donor registry all relevant information  
7601 regarding a donor's making, amendment to, or revocation of an anatomical gift.

7602 (3) A donor registry [~~must~~] shall:

7603 (a) allow a donor or other person authorized under Section 26-28-104 to include on the  
7604 donor registry a statement or symbol that the donor has made, amended, or revoked an  
7605 anatomical gift;

7606 (b) be accessible to a procurement organization to allow it to obtain relevant  
7607 information on the donor registry to determine, at or near death of the donor or a prospective  
7608 donor, whether the donor or prospective donor has made, amended, or revoked an anatomical  
7609 gift; and

7610 (c) be accessible for purposes of Subsections (3)(a) and (b) seven days a week on a  
7611 24-hour basis.

7612 (4) Personally identifiable information on a donor registry about a donor or prospective  
7613 donor may not be used or disclosed without the express consent of the donor, prospective  
7614 donor, or person that made the anatomical gift for any purpose other than to determine, at or  
7615 near death of the donor or prospective donor, whether the donor or prospective donor has  
7616 made, amended, or revoked an anatomical gift.

7617 (5) This section does not prohibit any person from creating or maintaining a donor  
7618 registry that is not established by or under contract with the state. Any such registry [~~must~~]  
7619 shall comply with Subsections (3) and (4).

7620 Section 193. Section **26-28-121** is amended to read:

7621 **26-28-121. Effect of anatomical gift on advance health care directive.**

7622 (1) As used in this section:

7623 (a) "Advance health care directive" means a power of attorney for health care or a  
7624 record signed or authorized by a prospective donor containing the prospective donor's direction  
7625 concerning a health care decision for the prospective donor.

7626 (b) "Declaration" means a record signed by a prospective donor specifying the  
7627 circumstances under which a life support system may be withheld or withdrawn from the  
7628 prospective donor.

7629 (c) "Health care decision" means any decision regarding the health care of the  
7630 prospective donor.

7631 (2) If a prospective donor has a declaration or advance health care directive and the  
7632 terms of the declaration or directive and the express or implied terms of a potential anatomical  
7633 gift are in conflict with regard to the administration of measures necessary to ensure the  
7634 medical suitability of a part for transplantation or therapy, the prospective donor's attending  
7635 physician and prospective donor shall confer to resolve the conflict. If the prospective donor is  
7636 incapable of resolving the conflict, an agent acting under the prospective donor's declaration or  
7637 directive, or if no declaration or directive exists or the agent is not reasonably available,  
7638 another person authorized by a law other than this chapter to make a health care decision on  
7639 behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict  
7640 [~~must~~] shall be resolved as expeditiously as possible. Information relevant to the resolution of  
7641 the conflict may be obtained from the appropriate procurement organization and any other  
7642 person authorized to make an anatomical gift for the prospective donor under Section  
7643 26-28-109. Before resolution of the conflict, measures necessary to ensure the medical  
7644 suitability of the part may not be withheld or withdrawn from the prospective donor if  
7645 withholding or withdrawing the measures is not contraindicated by appropriate end of life care.

7646 Section 194. Section **26-28-124** is amended to read:

7647 **26-28-124. Uniformity of application and construction.**

7648 In applying and construing this uniform act, consideration [~~must~~] shall be given to the  
7649 need to promote uniformity of the law with respect to its subject matter among states that enact  
7650 it.

7651 Section 195. Section **26-31-1** is amended to read:

7652 **26-31-1. Procurement and use of blood, plasma, products, and derivatives a**  
7653 **service and not a sale.**

7654           The procurement, processing, distribution, or use of whole human blood, plasma, blood  
7655 products, and blood derivatives for the purpose of injecting or transfusing them into the human  
7656 body together with the process of injecting or transfusing the same shall be construed to be the  
7657 rendition of a service by every person participating therein and ~~[shall not]~~ may not be construed  
7658 to be a sale.

7659           Section 196. Section **26-33a-104** is amended to read:

7660           **26-33a-104. Purpose, powers, and duties of the committee.**

7661           (1) The purpose of the committee is to direct a statewide effort to collect, analyze, and  
7662 distribute health care data to facilitate the promotion and accessibility of quality and  
7663 cost-effective health care and also to facilitate interaction among those with concern for health  
7664 care issues.

7665           (2) The committee shall:

7666           (a) develop and adopt by rule, following public hearing and comment, a health data  
7667 plan that shall among its elements:

7668           (i) identify the key health care issues, questions, and problems amenable to resolution  
7669 or improvement through better data, more extensive or careful analysis, or improved  
7670 dissemination of health data;

7671           (ii) document existing health data activities in the state to collect, organize, or make  
7672 available types of data pertinent to the needs identified in Subsection (2)(a)(i);

7673           (iii) describe and prioritize the actions suitable for the committee to take in response to  
7674 the needs identified in Subsection (2)(a)(i) in order to obtain or to facilitate the obtaining of  
7675 needed data, and to encourage improvements in existing data collection, interpretation, and  
7676 reporting activities, and indicate how those actions relate to the activities identified under  
7677 Subsection (2)(a)(ii);

7678           (iv) detail the types of data needed for the committee's work, the intended data  
7679 suppliers, and the form in which such data are to be supplied, noting the consideration given to  
7680 the potential alternative sources and forms of such data and to the estimated cost to the  
7681 individual suppliers as well as to the department of acquiring these data in the proposed  
7682 manner; the plan shall reasonably demonstrate that the committee has attempted to maximize  
7683 cost-effectiveness in the data acquisition approaches selected;

7684           (v) describe the types and methods of validation to be performed to assure data validity

7685 and reliability;

7686 (vi) explain the intended uses of and expected benefits to be derived from the data  
7687 specified in Subsection (2)(a)(iv), including the contemplated tabulation formats and analysis  
7688 methods; the benefits described [~~must~~] shall demonstrably relate to one or more of the  
7689 following:

7690 (A) promoting quality health care[;];

7691 (B) managing health care costs[;]; or

7692 (C) improving access to health care services;

7693 (vii) describe the expected processes for interpretation and analysis of the data flowing  
7694 to the committee; noting specifically the types of expertise and participation to be sought in  
7695 those processes; and

7696 (viii) describe the types of reports to be made available by the committee and the  
7697 intended audiences and uses;

7698 (b) have the authority to collect, validate, analyze, and present health data in  
7699 accordance with the plan while protecting individual privacy through the use of a control  
7700 number as the health data identifier;

7701 (c) evaluate existing identification coding methods and, if necessary, require by rule  
7702 that health data suppliers use a uniform system for identification of patients, health care  
7703 facilities, and health care providers on health data they submit under this chapter;

7704 (d) report biennially to the governor and the Legislature on how the committee is  
7705 meeting its responsibilities under this chapter; and

7706 (e) advise, consult, contract, and cooperate with any corporation, association, or other  
7707 entity for the collection, analysis, processing, or reporting of health data identified by control  
7708 number only in accordance with the plan.

7709 (3) The committee may adopt rules to carry out the provisions of this chapter in  
7710 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

7711 (4) Except for data collection, analysis, and validation functions described in this  
7712 section, nothing in this chapter shall be construed to authorize or permit the committee to  
7713 perform regulatory functions which are delegated by law to other agencies of the state or  
7714 federal governments or to perform quality assurance or medical record audit functions that  
7715 health care facilities, health care providers, or third party payors are required to conduct to

7716 comply with federal or state law. The committee [~~shall not~~] may not recommend or determine  
7717 whether a health care provider, health care facility, third party payor, or self-funded employer is  
7718 in compliance with federal or state laws including [~~but not limited to~~] federal or state licensure,  
7719 insurance, reimbursement, tax, malpractice, or quality assurance statutes or common law.

7720 (5) Nothing in this chapter shall be construed to require a data supplier to supply health  
7721 data identifying a patient by name or describing detail on a patient beyond that needed to  
7722 achieve the approved purposes included in the plan.

7723 (6) No request for health data shall be made of health care providers and other data  
7724 suppliers until a plan for the use of such health data has been adopted.

7725 (7) If a proposed request for health data imposes unreasonable costs on a data supplier,  
7726 due consideration shall be given by the committee to altering the request. If the request is not  
7727 altered, the committee shall pay the costs incurred by the data supplier associated with  
7728 satisfying the request that are demonstrated by the data supplier to be unreasonable.

7729 (8) After a plan is adopted as provided in Section 26-33a-106.1, the committee may  
7730 require any data supplier to submit fee schedules, maximum allowable costs, area prevailing  
7731 costs, terms of contracts, discounts, fixed reimbursement arrangements, capitations, or other  
7732 specific arrangements for reimbursement to a health care provider.

7733 (9) The committee [~~shall not~~] may not publish any health data collected under  
7734 Subsection (8) [~~which~~] that would disclose specific terms of contracts, discounts, or fixed  
7735 reimbursement arrangements, or other specific reimbursement arrangements between an  
7736 individual provider and a specific payer.

7737 (10) Nothing in Subsection (8) shall prevent the committee from requiring the  
7738 submission of health data on the reimbursements actually made to health care providers from  
7739 any source of payment, including consumers.

7740 Section 197. Section **26-33a-106.5** is amended to read:

7741 **26-33a-106.5. Comparative analyses.**

7742 (1) The committee may publish compilations or reports that compare and identify  
7743 health care providers or data suppliers from the data it collects under this chapter or from any  
7744 other source.

7745 (2) (a) The committee shall publish compilations or reports from the data it collects  
7746 under this chapter or from any other source which:

7747 (i) contain the information described in Subsection (2)(b); and  
7748 (ii) compare and identify by name at least a majority of the health care facilities and  
7749 institutions in the state.

7750 (b) The report required by this Subsection (2) shall:

7751 (i) be published at least annually; and

7752 (ii) contain comparisons based on at least the following factors:

7753 (A) nationally recognized quality standards;

7754 (B) charges; and

7755 (C) nationally recognized patient safety standards.

7756 (3) The committee may contract with a private, independent analyst to evaluate the  
7757 standard comparative reports of the committee that identify, compare, or rank the performance  
7758 of data suppliers by name. The evaluation shall include a validation of statistical  
7759 methodologies, limitations, appropriateness of use, and comparisons using standard health  
7760 services research practice. The analyst ~~[must]~~ shall be experienced in analyzing large  
7761 databases from multiple data suppliers and in evaluating health care issues of cost, quality, and  
7762 access. The results of the analyst's evaluation ~~[must]~~ shall be released to the public before the  
7763 standard comparative analysis upon which it is based may be published by the committee.

7764 (4) The committee shall adopt by rule a timetable for the collection and analysis of data  
7765 from multiple types of data suppliers.

7766 (5) The comparative analysis required under Subsection (2) shall be available free of  
7767 charge and easily accessible to the public.

7768 Section 198. Section **26-33a-111** is amended to read:

7769 **26-33a-111. Health data not subject to subpoena or compulsory process --**

7770 **Exception.**

7771 Identifiable health data obtained in the course of activities undertaken or supported  
7772 under this chapter ~~[shall not be]~~ are not subject to subpoena or similar compulsory process in  
7773 any civil or criminal, judicial, administrative, or legislative proceeding, nor shall any individual  
7774 or organization with lawful access to identifiable health data under the provisions of this  
7775 chapter be compelled to testify with regard to such health data, except that data pertaining to a  
7776 party in litigation may be subject to subpoena or similar compulsory process in an action  
7777 brought by or on behalf of such individual to enforce any liability arising under this chapter.

7778 Section 199. Section **26-34-2** is amended to read:

7779 **26-34-2. Definition of death -- Determination of death.**

7780 (1) An individual is dead if the individual has sustained either:

7781 (a) irreversible cessation of circulatory and respiratory functions; or

7782 (b) irreversible cessation of all functions of the entire brain, including the brain stem.

7783 (2) A determination of death [~~must~~] shall be made in accordance with accepted medical  
7784 standards.

7785 Section 200. Section **26-35a-107** is amended to read:

7786 **26-35a-107. Adjustment to nursing care facility Medicaid reimbursement rates.**

7787 If federal law or regulation prohibits the money in the Nursing Care Facilities Account  
7788 from being used in the manner set forth in Subsection 26-35a-106(1)(b), the rates paid to  
7789 nursing care facilities for providing services pursuant to the Medicaid program [~~must~~] shall be  
7790 changed as follows:

7791 (1) except as otherwise provided in Subsection (2), to the rates paid to nursing care  
7792 facilities on June 30, 2004; or

7793 (2) if the Legislature or the department has on or after July 1, 2004, changed the rates  
7794 paid to facilities through a manner other than the use of expenditures from the Nursing Care  
7795 Facilities Account, to the rates provided for by the Legislature or the department.

7796 Section 201. Section **26-36a-102** is amended to read:

7797 **26-36a-102. Legislative findings.**

7798 (1) The Legislature finds that there is an important state purpose to improve the access  
7799 of Medicaid patients to quality care in Utah hospitals because of continuous decreases in state  
7800 revenues and increases in enrollment under the Utah Medicaid program.

7801 (2) The Legislature finds that in order to improve this access to those persons described  
7802 in Subsection (1):

7803 (a) the rates paid to Utah hospitals [~~must~~] shall be adequate to encourage and support  
7804 improved access; and

7805 (b) adequate funding [~~must~~] shall be provided to increase the rates paid to Utah  
7806 hospitals providing services pursuant to the Utah Medicaid program.

7807 Section 202. Section **26-36a-203** is amended to read:

7808 **26-36a-203. Calculation of assessment.**

7809 (1) The division shall calculate the inpatient upper payment limit gap for hospitals for  
7810 each state fiscal year.

7811 (2) (a) An annual assessment is payable on a quarterly basis for each hospital in an  
7812 amount calculated at a uniform assessment rate for each hospital discharge, in accordance with  
7813 this section.

7814 (b) The uniform assessment rate shall be determined using the total number of hospital  
7815 discharges for assessed hospitals divided into the total non-federal portion of the upper  
7816 payment limit gap.

7817 (c) Any quarterly changes to the uniform assessment rate [~~must~~] shall be applied  
7818 uniformly to all assessed hospitals.

7819 (d) (i) Except as provided in Subsection (2)(d)(ii), the annual uniform assessment rate  
7820 may not generate more than the non-federal share of the annual upper payment limit gap for the  
7821 fiscal year.

7822 (ii) (A) For fiscal year 2010 the assessment may not generate more than the non-federal  
7823 share of the annual upper payment limit gap for the fiscal year.

7824 (B) For fiscal year 2010-11 the department may generate an additional amount from  
7825 the assessment imposed under Subsection (2)(d)(i) in the amount of \$2,000,000 which shall be  
7826 used by the department and the division as follows:

7827 (I) \$1,000,000 to offset Medicaid mandatory expenditures; and

7828 (II) \$1,000,000 to offset the reduction in hospital outpatient fees in the state program.

7829 (C) For fiscal years 2011-12 and 2012-13 the department may generate an additional  
7830 amount from the assessment imposed under Subsection (2)(d)(i) in the amount of \$1,000,000  
7831 to offset Medicaid mandatory expenditures.

7832 (3) (a) For state fiscal years 2010 and 2011, discharges shall be determined using the  
7833 data from each hospital's Medicare Cost Report contained in the Centers for Medicare and  
7834 Medicaid Services' Healthcare Cost Report Information System file as of April 1, 2009 for  
7835 hospital fiscal years ending between October 1, 2007, and September 30, 2008.

7836 (b) If a hospital's fiscal year Medicare Cost Report is not contained in the Centers for  
7837 Medicare and Medicaid Services' Healthcare Cost Report Information System file dated March  
7838 31, 2009:

7839 (i) the hospital shall submit to the division a copy of the hospital's Medicare Cost

7840 Report with a fiscal year end between October 1, 2007, and September 30, 2008; and  
7841 (ii) the division shall determine the hospital's discharges from the information  
7842 submitted under Subsection (3)(b)(i).

7843 (c) If a hospital started operations after the due date for a 2007 Medicare Cost Report:  
7844 (i) the hospital shall submit to the division a copy of the hospital's most recent  
7845 complete year Medicare Cost Report; and  
7846 (ii) the division shall determine the hospital's discharges from the information  
7847 submitted under Subsection (3)(c)(i).

7848 (d) If a hospital is not certified by the Medicare program and is not required to file a  
7849 Medicare Cost Report:  
7850 (i) the hospital shall submit to the division its applicable fiscal year discharges with  
7851 supporting documentation;  
7852 (ii) the division shall determine the hospital's discharges from the information  
7853 submitted under Subsection (3)(d)(i); and  
7854 (iii) the failure to submit discharge information under Subsections (3)(d)(i) and (ii)  
7855 shall result in an audit of the hospital's records by the department and the imposition of a  
7856 penalty equal to 5% of the calculated assessment.

7857 (4) (a) For state fiscal year 2012 and 2013, discharges shall be determined using the  
7858 data from each hospital's Medicare Cost Report contained in the Centers for Medicare and  
7859 Medicaid Services' Healthcare Cost Report Information System file as of:  
7860 (i) for state fiscal year 2012, September 30, 2010, for hospital fiscal years ending  
7861 between October 1, 2008, and September 30, 2009; and  
7862 (ii) for state fiscal year 2013, September 30, 2011, for hospital fiscal years ending  
7863 between October 1, 2009, and September 30, 2010.

7864 (b) If a hospital's fiscal year Medicare Cost Report is not contained in the Centers for  
7865 Medicare and Medicaid Services' Healthcare Cost Report Information System file:  
7866 (i) the hospital shall submit to the division a copy of the hospital's Medicare Cost  
7867 Report applicable to the assessment year; and  
7868 (ii) the division shall determine the hospital's discharges.

7869 (c) If a hospital is not certified by the Medicare program and is not required to file a  
7870 Medicare Cost Report:

- 7871 (i) the hospital shall submit to the division its applicable fiscal year discharges with  
7872 supporting documentation;
- 7873 (ii) the division shall determine the hospital's discharges from the information  
7874 submitted under Subsection (4)(c)(i); and
- 7875 (iii) the failure to submit discharge information shall result in an audit of the hospital's  
7876 records and a penalty equal to 5% of the calculated assessment.
- 7877 (5) Except as provided in Subsection (6), if a hospital is owned by an organization that  
7878 owns more than one hospital in the state:
- 7879 (a) the assessment for each hospital shall be separately calculated by the department;  
7880 and
- 7881 (b) each separate hospital shall pay the assessment imposed by this chapter.
- 7882 (6) Notwithstanding the requirement of Subsection (5), if multiple hospitals use the  
7883 same Medicaid provider number:
- 7884 (a) the department shall calculate the assessment in the aggregate for the hospitals  
7885 using the same Medicaid provider number; and
- 7886 (b) the hospitals may pay the assessment in the aggregate.
- 7887 (7) (a) The assessment formula imposed by this section, and the inpatient access  
7888 payments under Section 26-36a-205, shall be adjusted in accordance with Subsection (7)(b) if a  
7889 hospital, for any reason, does not meet the definition of a hospital subject to the assessment  
7890 under Section 26-36a-103 for the entire fiscal year.
- 7891 (b) The department shall adjust the assessment payable to the department under this  
7892 chapter for a hospital that is not subject to the assessment for an entire fiscal year by  
7893 multiplying the annual assessment calculated under Subsection (3) or (4) by a fraction, the  
7894 numerator of which is the number of days during the year that the hospital operated, and the  
7895 denominator of which is 365.
- 7896 (c) A hospital described in Subsection (7)(a):
- 7897 (i) that is ceasing to operate in the state, shall pay any assessment owed to the  
7898 department immediately upon ceasing to operate in the state; and
- 7899 (ii) shall receive Medicaid inpatient hospital access payments under Section  
7900 26-36a-205 for the state fiscal year, adjusted using the same formula described in Subsection  
7901 (7)(b).

7902 (8) A hospital that is subject to payment of the assessment at the beginning of a state  
7903 fiscal year, but during the state fiscal year experiences a change in status so that it no longer  
7904 falls under the definition of a hospital subject to the assessment in Section 26-36a-204, shall:

7905 (a) not be required to pay the hospital assessment beginning on the date established by  
7906 the department by administrative rule; and

7907 (b) not be entitled to Medicaid inpatient hospital access payments under Section  
7908 26-36a-205 on the date established by the department by administrative rule.

7909 Section 203. Section **26-40-110** is amended to read:

7910 **26-40-110. Managed care -- Contracting for services.**

7911 (1) Program benefits provided to enrollees under the program, as described in Section  
7912 26-40-106, shall be delivered in a managed care system if the department determines that  
7913 adequate services are available where the enrollee lives or resides.

7914 (2) (a) The department shall use the following criteria to evaluate bids from health  
7915 plans:

7916 (i) ability to manage medical expenses, including mental health costs;

7917 (ii) proven ability to handle accident and health insurance;

7918 (iii) efficiency of claim paying procedures;

7919 (iv) proven ability for managed care and quality assurance;

7920 (v) provider contracting and discounts;

7921 (vi) pharmacy benefit management;

7922 (vii) an estimate of total charges for administering the pool;

7923 (viii) ability to administer the pool in a cost-efficient manner;

7924 (ix) the ability to provide adequate providers and services in the state; and

7925 (x) other criteria established by the department.

7926 (b) The dental benefits required by Section 26-40-106 may be bid out separately from  
7927 other program benefits.

7928 (c) Except for dental benefits, the department shall request bids for the program's  
7929 benefits in 2008. The department shall request bids for the program's dental benefits in 2009.  
7930 The department shall request bids for the program's benefits at least once every five years  
7931 thereafter.

7932 (d) The department's contract with health plans for the program's benefits shall include

7933 risk sharing provisions in which the health plan [~~must~~] shall accept at least 75% of the risk for  
7934 any difference between the department's premium payments per client and actual medical  
7935 expenditures.

7936 (3) The executive director shall report to and seek recommendations from the Health  
7937 Advisory Council created in Section 26-1-7.5:

7938 (a) if the division receives less than two bids or proposals under this section that are  
7939 acceptable to the division or responsive to the bid; and

7940 (b) before awarding a contract to a managed care system.

7941 (4) (a) The department shall award contracts to responsive bidders if the department  
7942 determines that a bid is acceptable and meets the criteria of Subsections (2)(a) and (d).

7943 (b) The department may contract with the Group Insurance Division within the Utah  
7944 State Retirement Office to provide services under Subsection (1) if:

7945 (i) the executive director seeks the recommendation of the Health Advisory Council  
7946 under Subsection (3); and

7947 (ii) the executive director determines that the bids were not acceptable to the  
7948 department.

7949 (c) In accordance with Section 49-20-201, a contract awarded under Subsection (4)(b)  
7950 is not subject to the risk sharing required by Subsection (2)(d).

7951 (5) Title 63G, Chapter 6, Utah Procurement Code, shall apply to this section.  
7952 Section 204. Section **26-41-104** is amended to read:

7953 **26-41-104. Training in use of epinephrine auto-injector.**

7954 (1) (a) Each primary and secondary school in the state, both public and private, shall  
7955 make initial and annual refresher training, regarding the storage and emergency use of an  
7956 epinephrine auto-injector, available to any teacher or other school employee who volunteers to  
7957 become a qualified adult.

7958 (b) The training described in Subsection (1)(a) may be provided by the school nurse, or  
7959 other person qualified to provide such training, designated by the school district physician, the  
7960 medical director of the local health department, or the local emergency medical services  
7961 director.

7962 (2) A person who provides training under Subsection (1) or (6) shall include in the  
7963 training:

- 7964 (a) techniques for recognizing symptoms of anaphylaxis;
- 7965 (b) standards and procedures for the storage and emergency use of epinephrine
- 7966 auto-injectors;
- 7967 (c) emergency follow-up procedures, including calling the emergency 911 number and
- 7968 contacting, if possible, the student's parent and physician; and
- 7969 (d) written materials covering the information required under this Subsection (2).
- 7970 (3) A qualified adult shall retain for reference the written materials prepared in
- 7971 accordance with Subsection (2)(d).
- 7972 (4) A public school shall permit a student to possess an epinephrine auto-injector or
- 7973 possess and self-administer an epinephrine auto-injector if:
- 7974 (a) the student's parent or guardian signs a statement:
- 7975 (i) authorizing the student to possess or possess and self-administer an epinephrine
- 7976 auto-injector; and
- 7977 (ii) acknowledging that the student is responsible for, and capable of, possessing or
- 7978 possessing and self-administering an epinephrine auto-injector; and
- 7979 (b) the student's health care provider provides a written statement that states that:
- 7980 (i) it is medically appropriate for the student to possess or possess and self-administer
- 7981 an epinephrine auto-injector; and
- 7982 (ii) the student should be in possession of the epinephrine auto-injector at all times.
- 7983 (5) The Utah Department of Health, in cooperation with the state superintendent of
- 7984 public instruction, shall design forms to be used by public schools for the parental and health
- 7985 care providers statements described in Subsection (6).
- 7986 (6) (a) The department:
- 7987 (i) shall approve educational programs conducted by other persons, to train people
- 7988 under Subsection (6)(b) of this section, regarding the use and storage of emergency epinephrine
- 7989 auto-injectors; and
- 7990 (ii) may, as funding is available, conduct educational programs to train people
- 7991 regarding the use of and storage of emergency epinephrine auto-injectors.
- 7992 (b) A person who volunteers to receive training to administer an epinephrine
- 7993 auto-injector under the provisions of this Subsection (6) [~~must~~] shall demonstrate a need for the
- 7994 training to the department, which may be based upon occupational, volunteer, or family

7995 circumstances, and shall include:

7996 (i) camp counselors;

7997 (ii) scout leaders;

7998 (iii) forest rangers;

7999 (iv) tour guides; and

8000 (v) other persons who have or reasonably expect to have responsibility for at least one

8001 other person as a result of the person's occupational or volunteer status.

8002 (7) The department shall adopt rules in accordance with Title 63G, Chapter 3, Utah

8003 Administrative Rulemaking Act, to:

8004 (a) establish and approve training programs in accordance with this section; and

8005 (b) establish a procedure for determining the need for training under Subsection

8006 (6)(b)(v).

8007 Section 205. Section **26-47-103** is amended to read:

8008 **26-47-103. Department to award grants for assistance to persons with bleeding**

8009 **disorders.**

8010 (1) For purposes of this section:

8011 (a) "Hemophilia services" means a program for medical care, including the costs of  
8012 blood transfusions, and the use of blood derivatives and blood clotting factors.

8013 (b) "Person with a bleeding disorder" means a person:

8014 (i) who is medically diagnosed with hemophilia or a bleeding disorder;

8015 (ii) who is not eligible for Medicaid or the Children's Health Insurance Program; and

8016 (iii) who has either:

8017 (A) insurance coverage that excludes coverage for hemophilia services;

8018 (B) exceeded the person's insurance plan's annual maximum benefits;

8019 (C) exceeded the person's annual or lifetime maximum benefits payable under Title  
8020 31A, Chapter 29, Comprehensive Health Insurance Pool Act; or

8021 (D) insurance coverage available under either private health insurance, Title 31A,

8022 Chapter 29, Comprehensive Health Insurance Pool Act, Utah mini COBRA coverage under

8023 Section 31A-22-722, or federal COBRA coverage, but the premiums for that coverage are

8024 greater than a percentage of the person's annual adjusted gross income as established by the

8025 department by administrative rule.

8026 (2) (a) Within appropriations specified by the Legislature for this purpose, the  
8027 department shall make grants to public and nonprofit entities who assist persons with bleeding  
8028 disorders with the cost of obtaining hemophilia services or the cost of insurance premiums for  
8029 coverage of hemophilia services.

8030 (b) Applicants for grants under this section:

8031 (i) [~~must~~] shall be submitted to the department in writing; and

8032 (ii) [~~must~~] shall comply with Subsection (3).

8033 (3) Applications for grants under this section shall include:

8034 (a) a statement of specific, measurable objectives, and the methods to be used to assess  
8035 the achievement of those objectives;

8036 (b) a description of the personnel responsible for carrying out the activities of the grant  
8037 along with a statement justifying the use of any grant funds for the personnel;

8038 (c) letters and other forms of evidence showing that efforts have been made to secure  
8039 financial and professional assistance and support for the services to be provided under the  
8040 grant;

8041 (d) a list of services to be provided by the applicant;

8042 (e) the schedule of fees to be charged by the applicant; and

8043 (f) other provisions as determined by the department.

8044 (4) The department may accept grants, gifts, and donations of money or property for  
8045 use by the grant program.

8046 (5) (a) The department shall establish rules in accordance with Title 63G, Chapter 3,  
8047 Utah Administrative Rulemaking Act, governing the application form, process, and criteria it  
8048 will use in awarding grants under this section.

8049 (b) The department shall submit an annual report on the implementation of the grant  
8050 program:

8051 (i) by no later than November 1; and

8052 (ii) to the Health and Human Services Interim Committee and the Health and Human  
8053 Services Appropriations Subcommittee.

8054 Section 206. Section **26-49-202** is amended to read:

8055 **26-49-202. Volunteer health practitioner registration systems.**

8056 (1) To qualify as a volunteer health practitioner registration system, the registration

8057 system [~~must~~] shall:

8058 (a) accept applications for the registration of volunteer health practitioners before or  
8059 during an emergency;

8060 (b) include information about the licensure and good standing of health practitioners  
8061 that is accessible by authorized persons;

8062 (c) be capable of confirming the accuracy of information concerning whether a health  
8063 practitioner is licensed and in good standing before health services or veterinary services are  
8064 provided under this chapter; and

8065 (d) meet one of the following conditions:

8066 (i) be an emergency system for advance registration of volunteer health practitioners  
8067 established by a state and funded through the United States Department of Health and Human  
8068 Services under Section 319I of the Public Health Services Act, 42 U.S.C. Sec. 247d-7b, as  
8069 amended;

8070 (ii) be a local unit consisting of trained and equipped emergency response, public  
8071 health, and medical personnel formed under Section 2801 of the Public Health Services Act, 42  
8072 U.S.C. Sec. 300hh as amended;

8073 (iii) be operated by a:

8074 (A) disaster relief organization;

8075 (B) licensing board;

8076 (C) national or regional association of licensing boards or health practitioners;

8077 (D) health facility that provides comprehensive inpatient and outpatient healthcare  
8078 services, including tertiary care; or

8079 (E) governmental entity; or

8080 (iv) be designated by the Department of Health as a registration system for purposes of  
8081 this chapter.

8082 (2) (a) Subject to Subsection (2)(b), while an emergency declaration is in effect, the  
8083 Department of Health, a person authorized to act on behalf of the Department of Health, or a  
8084 host entity shall confirm whether a volunteer health practitioner in Utah is registered with a  
8085 registration system that complies with Subsection (1).

8086 (b) The confirmation authorized under this Subsection (2) is limited to obtaining the  
8087 identity of the practitioner from the system and determining whether the system indicates that

8088 the practitioner is licensed and in good standing.

8089 (3) Upon request of a person authorized under Subsection (2), or a similarly authorized  
8090 person in another state, a registration system located in Utah shall notify the person of the  
8091 identity of a volunteer health practitioner and whether or not the volunteer health practitioner is  
8092 licensed and in good standing.

8093 (4) A host entity is not required to use the services of a volunteer health practitioner  
8094 even if the volunteer health practitioner is registered with a registration system that indicates  
8095 that the practitioner is licensed and in good standing.

8096 Section 207. Section **26-49-701** is amended to read:

8097 **26-49-701. Uniformity of application and construction.**

8098 In applying and construing this chapter, consideration [~~must~~] shall be given to the need  
8099 to promote uniformity of the law with respect to its subject matter among states that enact it.

8100 Section 208. Section **26A-1-112** is amended to read:

8101 **26A-1-112. Appointment of personnel.**

8102 (1) All local health department personnel shall be hired by the local health officer or  
8103 [~~his~~] the local health officer's designee in accordance with the merit system, personnel policies,  
8104 and compensation plans approved by the board and ratified pursuant to Subsection (2). The  
8105 personnel shall have qualifications for their positions equivalent to those approved for  
8106 comparable positions in the Departments of Health and Environmental Quality.

8107 (2) The merit system, personnel policies, and compensation plans approved under  
8108 Subsection (1) [~~must~~] shall be ratified by all the counties participating in the local health  
8109 department.

8110 (3) Subject to the local merit system, employees of the local health department may be  
8111 removed by the local health officer for cause. A hearing shall be granted if requested by the  
8112 employee.

8113 Section 209. Section **26A-1-126** is amended to read:

8114 **26A-1-126. Medical reserve corps.**

8115 (1) In addition to the duties listed in Section 26A-1-114, a local health department may  
8116 establish a medical reserve corps in accordance with this section.

8117 (2) The purpose of a medical reserve corps is to enable a local health authority to  
8118 respond with appropriate health care professionals to a national, state, or local emergency, a

8119 public health emergency as defined in Section 26-23b-102, or a declaration by the president of  
8120 the United States or other federal official requesting public health related activities.

8121 (3) When an emergency has been declared in accordance with Subsection (2), a local  
8122 health department may activate a medical reserve corps for the duration of the emergency.

8123 (4) For purposes of this section, a medical reserve corps may include persons who:

8124 (a) are licensed under Title 58, Occupations and Professions, and who are operating  
8125 within the scope of their practice;

8126 (b) are exempt from licensure, or operating under modified scope of practice  
8127 provisions in accordance with Subsections 58-1-307(4) and (5); and

8128 (c) within the 10 years preceding the declared emergency, held a valid license, in good  
8129 standing in Utah, for one of the occupations described in Subsection 58-13-2(1), but the license  
8130 is not currently active.

8131 (5) (a) Notwithstanding the provisions of Subsections 58-1-307(4)(a) and (5)(b) the  
8132 local health department may authorize a person described in Subsection (4) to operate in a  
8133 modified scope of practice as necessary to respond to the declared emergency.

8134 (b) A person operating as a member of an activated medical reserve corps under this  
8135 section:

8136 (i) [~~must~~] shall be volunteering for and supervised by the local health department;

8137 (ii) [~~must~~] shall comply with the provisions of this section;

8138 (iii) is exempt from the licensing laws of Title 58, Occupations and Professions; and

8139 (iv) [~~must~~] shall carry a certificate issued by the local health department which  
8140 designates the individual as a member of the medical reserve corps during the duration of the  
8141 emergency.

8142 (6) The local department of health may access the Division of Occupational and  
8143 Professional Licensing database for the purpose of determining if a person's current or expired  
8144 license to practice in the state was in good standing.

8145 (7) The local department of health shall maintain a registry of persons who are  
8146 members of a medical reserve corps. The registry of the medical reserve corps shall be made  
8147 available to the public and to the Division of Occupational and Professional Licensing.

8148 Section 210. Section **29-1-2** is amended to read:

8149 **29-1-2. Property worth more than \$250 -- Limitation of liability -- Special**

8150 **arrangements -- Theft by, or negligence of, innkeeper or servant.**

8151 An innkeeper, hotel keeper, boarding house or lodging house keeper [~~shall not be~~  
8152 ~~obliged~~] is not required to receive from a guest for deposit in such safe or vault, property  
8153 described in the next preceding section exceeding a total value of \$250, and [~~shall not be~~] is  
8154 not liable for such property exceeding such value whether received or not. Such innkeeper,  
8155 hotel keeper, boarding house or lodging house keeper, by special arrangement with a guest,  
8156 may receive for deposit in such safe or vault property upon such written terms as may be  
8157 agreed upon. [~~An~~] A person who is an innkeeper, hotel keeper, boarding house or lodging  
8158 house keeper shall be liable for a loss of any of such property of a guest in [~~his~~] the person's inn  
8159 caused by the theft or negligence of the innkeeper or [~~his~~] the innkeeper's servant.

8160 Section 211. Section **29-1-3** is amended to read:

8161 **29-1-3. Other personal property -- Limitation of liability.**

8162 (1) The liability of a person who is an innkeeper, hotel keeper, boarding or lodging  
8163 house keeper, for loss of or injury to personal property placed in [~~his care by his~~] the person's  
8164 care by the person's guests other than that described in Section 29-1-1, shall be that of a  
8165 depository for hire. [~~Such liability shall not~~]

8166 (2) The liability described in Subsection (1) may not exceed \$150 for each trunk and its  
8167 contents, \$50 for each valise, suitcase or other piece of hand luggage and its contents, and \$10  
8168 for each box, bundle or package, and its contents, so placed in [~~his~~] the person's care, unless  
8169 [~~he~~] the person has consented in writing with [~~such~~] the guest to assume a greater liability.

8170 Section 212. Section **30-1-4.5** is amended to read:

8171 **30-1-4.5. Validity of marriage not solemnized.**

8172 (1) A marriage which is not solemnized according to this chapter shall be legal and  
8173 valid if a court or administrative order establishes that it arises out of a contract between a man  
8174 and a woman who:

8175 (a) are of legal age and capable of giving consent;

8176 (b) are legally capable of entering a solemnized marriage under the provisions of this  
8177 chapter;

8178 (c) have cohabited;

8179 (d) mutually assume marital rights, duties, and obligations; and

8180 (e) who hold themselves out as and have acquired a uniform and general reputation as

8181 husband and wife.

8182 (2) The determination or establishment of a marriage under this section [~~must~~] shall  
8183 occur during the relationship described in Subsection (1), or within one year following the  
8184 termination of that relationship. Evidence of a marriage recognizable under this section may be  
8185 manifested in any form, and may be proved under the same general rules of evidence as facts in  
8186 other cases.

8187 Section 213. Section **30-1-5** is amended to read:

8188 **30-1-5. Marriage solemnization -- Before unauthorized person -- Validity.**

8189 (1) A marriage solemnized before a person professing to have authority to perform  
8190 marriages [~~shall not~~] may not be invalidated for lack of authority, if consummated in the belief  
8191 of the parties or either of them that [~~he~~] the person had authority and that they have been  
8192 lawfully married.

8193 (2) This section may not be construed to validate a marriage that is prohibited or void  
8194 under Section 30-1-2.

8195 Section 214. Section **30-1-10** is amended to read:

8196 **30-1-10. Application by persons unknown to clerk -- Affidavit -- Penalty.**

8197 (1) When the parties are personally unknown to the clerk a license [~~shall not issue~~]  
8198 may not be issued until an affidavit is made before [~~him~~] the clerk, which shall be filed and  
8199 preserved by [~~him~~] the clerk, by a party applying for [~~such~~] the license, showing that there is no  
8200 lawful reason in the way of [~~such~~] the marriage. [~~The party making such affidavit or any~~  
8201 ~~subscribing witness, if he falsely swears therein, is guilty of perjury.~~]

8202 (2) A party who makes an affidavit described in Subsection (1) or a subscribing  
8203 witness to the affidavit who falsely swears in the affidavit is guilty of perjury.

8204 Section 215. Section **30-1-32** is amended to read:

8205 **30-1-32. Master plan for counseling.**

8206 (1) It shall be the function and duty of the premarital counseling board, after holding  
8207 public hearings, to make, adopt, and certify to the county legislative body a master plan for  
8208 premarital counseling of marriage license applicants within the purposes and objectives of this  
8209 act.

8210 (2) The master plan [~~shall include, but not be limited to,~~] described in Subsection (1)  
8211 shall include:

- 8212 (a) counseling procedures [~~which~~] that:
- 8213 (i) will make applicants aware of problem areas in their proposed marriage [~~and~~];
- 8214 (ii) suggest ways of meeting problems [~~and which~~]; and
- 8215 (iii) will induce reconsideration or postponement [~~where~~] when:
- 8216 (A) the applicants are not sufficiently matured or are not financially capable of meeting
- 8217 the responsibilities of marriage; or
- 8218 (B) are marrying for reasons not conducive to a sound lasting marriage[~~The plan shall~~
- 8219 ~~include~~]; and
- 8220 (b) standards for evaluating premarital counseling received by the applicants, prior to
- 8221 their application for a marriage license, which would justify issuance of certificate without
- 8222 further counseling being given or required.
- 8223 (3) The board may, from time to time, amend or extend the plan described in
- 8224 Subsection (1).
- 8225 (4) The premarital counseling board may, subject to Subsection (5):
- 8226 (a) appoint a staff and employees as may be necessary for its work; and [~~may~~]
- 8227 (b) contract with social service agencies or other consultants within the county or
- 8228 counties for services it requires[~~providing, its expenditures shall not~~].
- 8229 (5) Expenditures for the appointments and contracts described in Subsection (4) may
- 8230 not exceed the sums appropriated by the county legislative body plus sums placed at its
- 8231 disposal through gift or otherwise.
- 8232 Section 216. Section **30-1-33** is amended to read:
- 8233 **30-1-33. Conformity to master plan for counseling as prerequisite to marriage**
- 8234 **license -- Exceptions.**
- 8235 Whenever the board of commissioners of a county has adopted a master plan for
- 8236 premarital counseling no resident of the county may obtain a marriage license without
- 8237 conforming to the plan, except that:
- 8238 (1) Any person who applies for a marriage license shall have the right to secure the
- 8239 license and to marry notwithstanding their failure to conform to the required premarital
- 8240 counseling or their failure to obtain a certificate of authorization from the premarital counseling
- 8241 board if they wait six months from the date of application for issuance of the license.
- 8242 (2) This [~~act shall not~~] chapter does not apply to any application for a marriage license

8243 where both parties are at least 19 years of age and neither has been previously divorced.

8244 (3) This [~~act shall not~~] chapter does not apply to any application for a marriage license  
8245 unless both applicants have physically resided in [~~the state of~~] Utah for 60 days immediately  
8246 preceding their application.

8247 (4) Premarital counseling required by this act shall be [~~deemed~~] considered fulfilled if  
8248 the applicants present a certificate verified by a clergyman that the applicants have completed a  
8249 course of premarital counseling approved by [~~his~~] a church and given by or under the  
8250 supervision of the clergyman.

8251 Section 217. Section **30-1-35** is amended to read:

8252 **30-1-35. Persons performing counseling services designated by board --**  
8253 **Exemption from license requirements.**

8254 For the purposes of this [~~act~~] chapter the premarital counseling board of each county or  
8255 combination of counties may determine those persons who are to perform any services under  
8256 this [~~act~~] chapter and any person so acting [~~shall not be~~] is not subject to prosecution or other  
8257 sanctions for [~~his~~] the person's failure to hold any license for these services as may be required  
8258 by the laws of the state [~~of Utah~~].

8259 Section 218. Section **30-1-37** is amended to read:

8260 **30-1-37. Confidentiality of information obtained under counseling provisions.**

8261 Except for the information required or to be required on the marriage license  
8262 application form, any information given by a marriage license applicant in compliance with this  
8263 [~~act~~] chapter shall be confidential information and [~~shall not~~] may not be released by any  
8264 person, board, commission, or other entity. However, the premarital counseling board or board  
8265 of commissioners may use the information, without identification of individuals, to compile  
8266 and release statistical data.

8267 Section 219. Section **30-2-7** is amended to read:

8268 **30-2-7. Husband's liability for wife's torts.**

8269 For civil injuries committed by a married woman damages may be recovered from her  
8270 alone, and her husband [~~shall not~~] may not be held liable [~~therefor~~] for those civil injuries,  
8271 except in cases where he would be jointly liable with her if the marriage did not exist.

8272 Section 220. Section **30-3-16.7** is amended to read:

8273 **30-3-16.7. Effect of petition -- Pendency of action.**

8274 (1) The filing of a petition for conciliation under this act shall, for a period of 60 days  
8275 thereafter, act as a bar to the filing by either spouse of an action for divorce, annulment of  
8276 marriage or separate maintenance unless the court otherwise orders.

8277 (2) The pendency of an action for divorce, annulment of marriage or separate  
8278 maintenance ~~[shall not]~~ does not prevent either party to the action from filing a petition for  
8279 conciliation under this act, either on ~~[his]~~ the party's own or at the request and direction of the  
8280 court as authorized by Section 30-3-17~~[-and the]~~.

8281 (3) The filing of a petition for conciliation shall stay for a period of 60 days, unless the  
8282 court otherwise orders, any trial or default hearing upon the complaint. ~~[However,]~~

8283 (4) Notwithstanding any other provision of this section, when the judge of the family  
8284 court division is advised in writing by a marriage counselor to whom a petition for conciliation  
8285 has been referred that a reconciliation of the parties cannot be effected, the bar to filing an  
8286 action or the stay of trial or default hearing shall be removed.

8287 Section 221. Section **30-3-17** is amended to read:

8288 **30-3-17. Power and jurisdiction of judge.**

8289 (1) The judge of a district court may:

8290 (a) counsel either spouse or both ~~[and may in his]~~;

8291 (b) in the judge's discretion require one or both ~~[of them]~~ spouses to appear before  
8292 ~~[him and,]~~ the judge;

8293 (c) in those counties where a domestic relations counselor has been appointed pursuant  
8294 to this ~~[act]~~ chapter, require ~~[them]~~ the spouses to file a petition for conciliation and to appear  
8295 before ~~[such]~~ the counselor~~[-]~~; or ~~[may]~~

8296 (d) recommend the aid of:

8297 (i) a physician, psychiatrist, psychologist, social service worker, or other specialists or  
8298 scientific expert~~[-]~~; or

8299 (ii) the pastor, bishop, or presiding officer of any religious denomination to which the  
8300 parties may belong.

8301 (2) The power and jurisdiction granted by this ~~[act shall be]~~ chapter is in addition to,  
8302 and not in limitation of, that presently exercised by the district courts ~~[and shall not be in~~  
8303 limitation thereof].

8304 Section 222. Section **30-3-17.1** is amended to read:

8305           **30-3-17.1. Proceedings considered confidential -- Written evaluation by**  
8306 **counselor.**

8307           (1) The petition for conciliation and all communications, verbal or written, from the  
8308 parties to the domestic relations counselors or other personnel of the conciliation department in  
8309 counseling or conciliation proceedings shall be [~~deemed~~] considered to be made in official  
8310 confidence within the meaning of Section 78B-1-137 and [~~shall not be~~] is not admissible or  
8311 usable for any purpose in any divorce hearing or other proceeding. [~~However,~~]

8312           (2) Notwithstanding Subsection (1), the marriage counselor may submit to the  
8313 appropriate court a written evaluation of the prospects or prognosis of a particular marriage  
8314 without divulging facts or revealing confidential disclosures.

8315           Section 223. Section **30-3-18** is amended to read:

8316           **30-3-18. Waiting period for hearing after filing for divorce -- Exemption -- Use of**  
8317 **counseling and education services not to be construed as condonation or promotion.**

8318           (1) Unless the court, for good cause shown and set forth in the findings, otherwise  
8319 orders, no hearing for decree of divorce shall be held by the court until 90 days shall have  
8320 elapsed from the filing of the complaint, [~~provided~~] but the court may make [~~such~~] interim  
8321 orders as may be just and equitable.

8322           (2) The 90-day period as provided in Subsection (1) [~~shall not~~] does not apply in any  
8323 case where both parties have completed the mandatory educational course for divorcing parents  
8324 as provided in Section 30-3-11.3.

8325           (3) The use of counseling, mediation, and education services provided under this  
8326 chapter may not be construed as condoning the acts that may constitute grounds for divorce on  
8327 the part of either spouse nor of promoting divorce.

8328           Section 224. Section **30-3-33** is amended to read:

8329           **30-3-33. Advisory guidelines.**

8330           In addition to the parent-time schedules provided in Sections 30-3-35 and 30-3-35.5,  
8331 the following advisory guidelines are suggested to govern all parent-time arrangements  
8332 between parents.

8333           (1) Parent-time schedules mutually agreed upon by both parents are preferable to a  
8334 court-imposed solution.

8335           (2) The parent-time schedule shall be utilized to maximize the continuity and stability

8336 of the child's life.

8337 (3) Special consideration shall be given by each parent to make the child available to  
8338 attend family functions including funerals, weddings, family reunions, religious holidays,  
8339 important ceremonies, and other significant events in the life of the child or in the life of either  
8340 parent which may inadvertently conflict with the parent-time schedule.

8341 (4) The responsibility for the pick up, delivery, and return of the child shall be  
8342 determined by the court when the parent-time order is entered, and may be changed at any time  
8343 a subsequent modification is made to the parent-time order.

8344 (5) If the noncustodial parent will be providing transportation, the custodial parent  
8345 shall have the child ready for parent-time at the time the child is to be picked up and shall be  
8346 present at the custodial home or shall make reasonable alternate arrangements to receive the  
8347 child at the time the child is returned.

8348 (6) If the custodial parent will be transporting the child, the noncustodial parent shall  
8349 be at the appointed place at the time the noncustodial parent is to receive the child, and have  
8350 the child ready to be picked up at the appointed time and place, or have made reasonable  
8351 alternate arrangements for the custodial parent to pick up the child.

8352 (7) Regular school hours may not be interrupted for a school-age child for the exercise  
8353 of parent-time by either parent.

8354 (8) The court may make alterations in the parent-time schedule to reasonably  
8355 accommodate the work schedule of both parents and may increase the parent-time allowed to  
8356 the noncustodial parent but ~~shall not~~ may not diminish the standardized parent-time provided  
8357 in Sections 30-3-35 and 30-3-35.5.

8358 (9) The court may make alterations in the parent-time schedule to reasonably  
8359 accommodate the distance between the parties and the expense of exercising parent-time.

8360 (10) Neither parent-time nor child support is to be withheld due to either parent's  
8361 failure to comply with a court-ordered parent-time schedule.

8362 (11) The custodial parent shall notify the noncustodial parent within 24 hours of  
8363 receiving notice of all significant school, social, sports, and community functions in which the  
8364 child is participating or being honored, and the noncustodial parent shall be entitled to attend  
8365 and participate fully.

8366 (12) The noncustodial parent shall have access directly to all school reports including

8367 preschool and daycare reports and medical records and shall be notified immediately by the  
8368 custodial parent in the event of a medical emergency.

8369 (13) Each parent shall provide the other with [his] the parent's current address and  
8370 telephone number, email address, and other virtual parent-time access information within 24  
8371 hours of any change.

8372 (14) Each parent shall permit and encourage, during reasonable hours, reasonable and  
8373 uncensored communications with the child, in the form of mail privileges and virtual  
8374 parent-time if the equipment is reasonably available, provided that if the parties cannot agree  
8375 on whether the equipment is reasonably available, the court shall decide whether the equipment  
8376 for virtual parent-time is reasonably available, taking into consideration:

8377 (a) the best interests of the child;

8378 (b) each parent's ability to handle any additional expenses for virtual parent-time; and

8379 (c) any other factors the court considers material.

8380 (15) Parental care shall be presumed to be better care for the child than surrogate care  
8381 and the court shall encourage the parties to cooperate in allowing the noncustodial parent, if  
8382 willing and able to transport the children, to provide the child care. Child care arrangements  
8383 existing during the marriage are preferred as are child care arrangements with nominal or no  
8384 charge.

8385 (16) Each parent shall provide all surrogate care providers with the name, current  
8386 address, and telephone number of the other parent and shall provide the noncustodial parent  
8387 with the name, current address, and telephone number of all surrogate care providers unless the  
8388 court for good cause orders otherwise.

8389 (17) Each parent shall be entitled to an equal division of major religious holidays  
8390 celebrated by the parents, and the parent who celebrates a religious holiday that the other parent  
8391 does not celebrate shall have the right to be together with the child on the religious holiday.

8392 (18) If the child is on a different parent-time schedule than a sibling, based on Sections  
8393 30-3-35 and 30-3-35.5, the parents should consider if an upward deviation for parent-time with  
8394 all the minor children so that parent-time is uniform between school aged and nonschool aged  
8395 children, is appropriate.

8396 Section 225. Section **30-8-3** is amended to read:

8397 **30-8-3. Writing -- Signature required.**

8398 A premarital agreement [~~must~~] shall be in writing and signed by both parties. It is  
8399 enforceable without consideration.

8400 Section 226. Section **31A-2-301** is amended to read:

8401 **31A-2-301. Special hearing officers -- Witness and mileage fees.**

8402 (1) If the commissioner considers it necessary because of the technicality or complexity  
8403 of the subject, [~~he~~] the commissioner may appoint a special hearing officer from outside the  
8404 department staff and may contract for a reasonable professional fee for the services.

8405 (2) (a) In hearings before the commissioner, witness fees and reimbursement for  
8406 mileage traveled, if claimed, shall be allowed at the same rate as in district courts.

8407 (b) Witness fees and reimbursement for mileage, together with the actual expense  
8408 necessarily incurred in securing attendance of witnesses and their testimony, and the hearing  
8409 officer's fee and reasonable actual expenses, shall be paid by the Insurance Department.

8410 (c) The commissioner shall be reimbursed for these costs as provided in Section  
8411 31A-2-205 if:

8412 (i) the hearing is incident to an examination for which costs are payable under Section  
8413 31A-2-205; or

8414 (ii) the commissioner orders the persons involved in the hearing to reimburse the  
8415 department for hearing costs, which the commissioner may do if [~~he~~] the commissioner had  
8416 reasonable cause to believe that the order which issued or might have issued was necessary.

8417 (3) Whenever the commissioner is reimbursed for costs under this section, the  
8418 expenditures [~~shall not~~] may not be charged against the department budget.

8419 Section 227. Section **31A-2-302** is amended to read:

8420 **31A-2-302. Commissioner's disapproval.**

8421 (1) When the law requires the commissioner's approval for a certain action without a  
8422 deemer clause, that approval [~~must~~] shall be express. The commissioner's disapproval of an  
8423 action is assumed if the commissioner does not act within 60 days after receiving the  
8424 application for approval or give notice of the commissioner's reasonable extension of that time  
8425 period with the commissioner's reasons for the extension. Assumed disapproval under this  
8426 subsection entitles the aggrieved person to request agency action under Section 63G-4-201.

8427 (2) When the law provides that a certain action is not effective if disapproved by the  
8428 commissioner within a certain period, the affirmative approval by the commissioner may make

8429 the action effective at a designated earlier date, but not earlier than the date of the  
8430 commissioner's affirmative approval.

8431 (3) Subsections (1) and (2) do not apply to the extent that the law specifically provides  
8432 otherwise.

8433 Section 228. Section **31A-5-208** is amended to read:

8434 **31A-5-208. Deposit of proceeds of subscriptions.**

8435 (1) All funds, and the securities and documents representing interests in property,  
8436 received by a stock corporation for stock subscriptions or by a mutual for applications for  
8437 insurance policies or for mutual bond or contribution note subscriptions, shall be deposited in  
8438 the name of the corporation with a custodian financial institution qualified under Subsection  
8439 31A-2-206(1). This deposit is subject to an escrow agreement approved by the commissioner  
8440 under which withdrawals may be made only in accordance with conditions specified in the  
8441 agreement, and with the commissioner's approval. Securities may be held as authorized in  
8442 Subsection 31A-2-206(2) and ~~[must]~~ are required to be approved by the commissioner.

8443 (2) This section does not apply to stock or mutual insurance corporations already in  
8444 existence on July 1, 1986.

8445 Section 229. Section **31A-5-305** is amended to read:

8446 **31A-5-305. Authorized securities.**

8447 (1) (a) The articles of incorporation of a stock corporation may authorize the kind of  
8448 shares permitted by Sections 16-10a-601 and 16-10a-602, and stock rights and options, except  
8449 that:

8450 (i) nonvoting common stock may not be issued;

8451 (ii) all classes of common stock ~~[must]~~ shall have equal voting rights;

8452 (iii) all common stock ~~[must]~~ shall have a stated par value; and

8453 (iv) except with the commissioner's approval, for two years after the initial issuance of  
8454 a certificate of authority, the corporation may issue no shares and no other securities  
8455 convertible into shares except a single class of common stock.

8456 (b) Section 16-10a-604 applies to the issuance of certificates for fractional shares or  
8457 scrip.

8458 (c) The consideration and payment for shares and certificates representing shares is  
8459 governed by Subsection 31A-5-207(1)(a).

8460 (d) The liability of subscribers and shareholders for unpaid subscriptions and the status  
8461 of stock is governed by Section 16-10a-622.

8462 (e) A shareholder's preemptive rights is governed by Section 16-10a-630.

8463 (f) Stock corporations may issue bonds and contribution notes on the same basis as  
8464 mutuals under Subsections (2)(a) and (b).

8465 (2) (a) The articles of incorporation of a nonassessable mutual may authorize bonds of  
8466 one or more classes. The articles of incorporation shall specify the amount of each class of  
8467 bonds the corporation is authorized to issue, their designations, preferences, limitations, rates  
8468 of interest, relative rights, and other terms, subject to all of the following provisions:

8469 (i) During the first year after the initial issuance of a certificate of authority, the  
8470 corporation may issue only a single class of bonds with identical rights.

8471 (ii) After the first year, but within five years after the initial issuance of a certificate of  
8472 authority, additional classes of bonds may be authorized after receiving the approval of the  
8473 commissioner. The commissioner shall approve the issuance if the commissioner finds that  
8474 policyholders and prior bondholders will not be prejudiced.

8475 (iii) The rate of interest shall be fair.

8476 (iv) The bonds shall bear a maturity date not later than 10 years from the date of  
8477 issuance, when principal and accrued interest shall be due and payable, subject to Subsection  
8478 (2)(d).

8479 (b) A mutual may issue contribution notes with the commissioner's approval. The  
8480 contribution notes may be denominated by any name that is not misleading. The contribution  
8481 notes are subject to this subsection. The commissioner may approve the issuance only if the  
8482 commissioner finds that:

8483 (i) the notes will not be issued in denominations of less than \$2,500, and no single  
8484 issue will be sold to more than 15 persons;

8485 (ii) no discount, commission, or other fee will be paid or allowed;

8486 (iii) the notes will not be the subject of a public offering;

8487 (iv) the terms of the notes are not prejudicial to policyholders, holders of mutual bonds,  
8488 or prior contribution notes; and

8489 (v) the mutual's articles or bylaws do not forbid their issuance.

8490 (c) A mutual may not:

8491 (i) if it has any outstanding obligations on bonds or contribution notes, borrow on  
8492 contribution notes from, or sell bonds to, any other insurer without the approval of the  
8493 commissioner; or

8494 (ii) make a loan to another insurer except a fully secured loan at usual market rates of  
8495 interest.

8496 (d) Payment of the principal or interest on bonds or contribution notes may be made in  
8497 whole or in part only after approval by the commissioner. The commissioner's approval shall  
8498 be given if all the financial requirements of the issuer to do the insurance business it is then  
8499 doing will continue to be satisfied after that payment, and if the interests of its insureds and the  
8500 public are not endangered by the payment. In the event of liquidation under Chapter 27a,  
8501 Insurer Receivership Act, unpaid amounts of principal and interest on contribution notes are  
8502 subordinate to the payment of principal and interest on any bonds issued by the corporation.

8503 (e) This section does not prevent a mutual from borrowing money on notes which are  
8504 its general obligations, nor from pledging any part of its disposable assets.

8505 (3) This section does not apply to securities issued prior to July 1, 1986.

8506 Section 230. Section **31A-6a-104** is amended to read:

8507 **31A-6a-104. Required disclosures.**

8508 (1) A service contract reimbursement insurance policy insuring a service contract that  
8509 is issued, sold, or offered for sale in this state [~~must~~] shall conspicuously state that, upon failure  
8510 of the service contract provider to perform under the contract, the issuer of the policy shall:

8511 (a) pay on behalf of the service contract provider any sums the service contract  
8512 provider is legally obligated to pay according to the service contract provider's contractual  
8513 obligations under the service contract issued or sold by the service contract provider; or

8514 (b) provide the service which the service contract provider is legally obligated to  
8515 perform, according to the service contract provider's contractual obligations under the service  
8516 contract issued or sold by the service contract provider.

8517 (2) (a) A service contract may not be issued, sold, or offered for sale in this state unless  
8518 the service contract contains the following statements in substantially the following form:

8519 (i) "Obligations of the provider under this service contract are guaranteed under a  
8520 service contract reimbursement insurance policy. Should the provider fail to pay or provide  
8521 service on any claim within 60 days after proof of loss has been filed, the contract holder is

8522 entitled to make a claim directly against the Insurance Company."; and

8523 (ii) "This service contract or warranty is subject to limited regulation by the Utah  
8524 Insurance Department. To file a complaint, contact the Utah Insurance Department."

8525 (b) A service contract or reimbursement insurance policy may not be issued, sold, or  
8526 offered for sale in this state unless the contract contains a statement in substantially the  
8527 following form, "Coverage afforded under this contract is not guaranteed by the Property and  
8528 Casualty Guaranty Association."

8529 (3) A service contract shall:

8530 (a) conspicuously state the name, address, and a toll free claims service telephone  
8531 number of the reimbursement insurer;

8532 (b) identify the service contract provider, the seller, and the service contract holder;

8533 (c) conspicuously state the total purchase price and the terms under which the service  
8534 contract is to be paid;

8535 (d) conspicuously state the existence of any deductible amount;

8536 (e) specify the merchandise, service to be provided, and any limitation, exception, or  
8537 exclusion;

8538 (f) state a term, restriction, or condition governing the transferability of the service  
8539 contract; and

8540 (g) state a term, restriction, or condition that governs cancellation of the service  
8541 contract as provided in Sections 31A-21-303 through 31A-21-305 by either the contract holder  
8542 or service contract provider.

8543 (4) If prior approval of repair work is required, a service contract [~~must~~] shall  
8544 conspicuously state the procedure for obtaining prior approval and for making a claim,  
8545 including:

8546 (a) a toll free telephone number for claim service; and

8547 (b) a procedure for obtaining reimbursement for emergency repairs performed outside  
8548 of normal business hours.

8549 (5) A preexisting condition clause in a service contract [~~must~~] shall specifically state  
8550 which preexisting condition is excluded from coverage.

8551 (6) (a) Except as provided in Subsection (6)(c), a service contract [~~must~~] shall state the  
8552 conditions upon which the use of a nonmanufacturers' part is allowed.

8553 (b) A condition described in Subsection (6)(a) [~~must~~] shall comply with applicable  
8554 state and federal laws.

8555 (c) This Subsection (6) does not apply to a home warranty contract.

8556 Section 231. Section **31A-8a-201** is amended to read:

8557 **31A-8a-201. License required.**

8558 (1) Except as provided in Subsection 31A-8a-103(3), prior to operating a health  
8559 discount program, a person [~~must~~] shall:

8560 (a) be authorized to transact business in this state; and

8561 (b) be licensed by the commissioner.

8562 (2) (a) An application for licensure under this chapter [~~must~~] shall be filed with the  
8563 commissioner on a form prescribed by the commissioner.

8564 (b) The application shall be sworn to by an officer or authorized representative of the  
8565 health discount program and shall include:

8566 (i) articles of incorporation with bylaws or other enabling documents that establish the  
8567 organizational structure;

8568 (ii) information required by the commissioner by administrative rule which the  
8569 commissioner determines is necessary to:

8570 (A) identify and locate principals, operators, and marketers involved with the health  
8571 discount program; and

8572 (B) protect the interests of enrollees of health discount programs, health care providers,  
8573 and consumers;

8574 (iii) biographical information, and when requested by the commissioner, a criminal  
8575 background check, under the provisions of Subsection 31A-23a-105(3);

8576 (iv) the disclosures required in Section 31A-8a-203; and

8577 (v) the fee established in accordance with Section 31A-3-103.

8578 Section 232. Section **31A-8a-203** is amended to read:

8579 **31A-8a-203. Information filed with the department.**

8580 (1) Prior to operating a health discount program, a person [~~must~~] shall submit the  
8581 following to the commissioner:

8582 (a) a copy of contract forms used by the health discount program for:

8583 (i) health care providers or health care provider networks participating in the health

- 8584 discount program, including the discounts for medical services provided to enrollees;
- 8585       (ii) marketing;
- 8586       (iii) administration of the health discount program;
- 8587       (iv) enrollment;
- 8588       (v) investment management for the health discount programs; and
- 8589       (vi) subcontracts for any services;
- 8590       (b) the program's proposed marketing plan; and
- 8591       (c) dispute resolution procedures for program holders.
- 8592       (2) The company [must] shall file prior to use:
- 8593       (a) the form of contracts used by the health discount program operator;
- 8594       (b) the marketing plan; and
- 8595       (c) dispute resolution procedures.
- 8596       (3) The commissioner may adopt rules in accordance with Title 63G, Chapter 3, Utah
- 8597 Administrative Rulemaking Act, to implement this section.

8598       Section 233. Section **31A-8a-204** is amended to read:

8599       **31A-8a-204. Advertising restrictions and requirements.**

- 8600       (1) An operator of a health discount program may not:
- 8601       (a) use any form of words or terms that may confuse health discount programs with
- 8602 other types of health insurance in advertising or marketing such as "health plan," "health
- 8603 benefit plan," "coverage," "copay," "copayments," "preexisting conditions," "guaranteed issue,"
- 8604 "premium," and "preferred provider";
- 8605       (b) use other terms as designated by the commissioner by administrative rule in
- 8606 advertisement or marketing that could reasonably mislead a consumer to believe that a discount
- 8607 health program is any other form of health insurance; or
- 8608       (c) refer to sales representatives as "agents," "producers," or "consultants."
- 8609       (2) A health discount program operator:
- 8610       (a) [must] shall have a written agreement with any marketer of the health discount
- 8611 program prior to marketing, selling, promoting, or distributing the health discount programs;
- 8612       (b) [must] shall file with the commissioner all advertisement, marketing materials,
- 8613 brochures, and discount programs prior to their use or distribution; and
- 8614       (c) [must] shall make the following disclosures:

- 8615 (i) in writing in at least 10-point type and bolded; and  
8616 (ii) with any marketing or advertising to the public and with any enrollment forms  
8617 given to an enrollee:
- 8618 (A) the program is not a health insurance policy;  
8619 (B) the program provides discounts only at certain health care providers for health care  
8620 services;
- 8621 (C) the program holder is obligated to pay for all health care services but will receive a  
8622 discount from those health care providers who have contracted with the health discount  
8623 program; and
- 8624 (D) the corporate name and the location of the health discount program operator.
- 8625 (3) A health discount program operator or marketer who sells the health discount  
8626 program with another product [must] shall provide the consumer a written itemization of the  
8627 fees of the health discount program separate from any fees or charges for the other product,  
8628 which can be purchased separately.
- 8629 Section 234. Section **31A-8a-205** is amended to read:
- 8630 **31A-8a-205. Disclosure of health discount program terms.**
- 8631 (1) (a) Health discount program operators [must] shall provide to each purchaser or  
8632 potential purchaser a copy of the terms of the discount program at the time of purchase.
- 8633 (b) For purposes of this section "purchaser" means the employer in an employer  
8634 sponsored plan, or an individual purchasing outside of an employer relationship.
- 8635 (2) The disclosure required by Subsection (1) should be clear and thorough and should  
8636 include any administrative or monthly fees, trial periods, procedures for securing discounts,  
8637 cancellation procedures and corresponding refund requests, and procedures for filing disputes.
- 8638 (3) (a) A contract [must] shall be signed by the purchaser acknowledging the terms  
8639 before any fees are collected and [must] shall include notice of the purchaser's 10-day rescission  
8640 rights.
- 8641 (b) For purposes of this Subsection (3) and Section 46-4-201, when a contract is  
8642 entered into via telephone, facsimile transmission or the Internet, the following is considered a  
8643 signing of the contract:
- 8644 (i) if via the Internet, the online application form is completed and sent by the  
8645 purchaser to the health discount program operator;

8646 (ii) if via facsimile transmission, the application is completed, signed and faxed to the  
8647 health discount program operator; or

8648 (iii) if via telephone, the script used by the health discount program operator to solicit  
8649 the purchaser [~~must~~] shall include any limitations or exclusions to the program, and the  
8650 contract [~~must~~] shall be provided to the purchaser via facsimile, mail, or email within 10  
8651 working days of the purchaser consenting to enrolling over the telephone.

8652 Section 235. Section **31A-8a-206** is amended to read:

8653 **31A-8a-206. Provider agreements -- Record keeping.**

8654 (1) A health discount program operator may not place any restrictions on an enrollee's  
8655 access to health care providers such as waiting periods or notification periods.

8656 (2) A health discount program operator may not reimburse health care providers for  
8657 services rendered to an enrollee, unless the health discount program operator is a licensed third  
8658 party administrator.

8659 (3) (a) A health discount program operator [~~must~~] shall have a written agreement with  
8660 a health care provider who agrees to provide discounts to health discount program enrollees.

8661 (b) If the written agreement is with a provider network, the health discount plan [~~must~~]  
8662 shall require the provider network to have written agreements with each of its health care  
8663 providers.

8664 (4) The health discount program operator shall maintain a copy of each active health  
8665 care provider agreement.

8666 Section 236. Section **31A-8a-207** is amended to read:

8667 **31A-8a-207. Notice of change.**

8668 (1) A health discount program operator [~~must~~] shall provide the commissioner notice  
8669 of:

8670 (a) any change in the health discount program's organizational name, change of  
8671 business or mailing address, or change in ownership or principals; and

8672 (b) any change in the information submitted in accordance with Section 31A-8a-203.

8673 (2) (a) The notice required by Subsection (1) [~~should~~] shall be submitted 30 days prior  
8674 to any change.

8675 (b) [~~The~~] Approval by the commissioner [~~must approve~~] is required for any changes in  
8676 forms that required approval under Section 31A-8a-203.

8677 (3) A health insurer or health maintenance organization licensed under this title shall  
8678 annually file with the Accident and Health Data Survey, a list of all value-added benefits  
8679 offered at no cost to its enrollees.

8680 Section 237. Section **31A-9-503** is amended to read:

8681 **31A-9-503. Conversion of a fraternal to a mutual.**

8682 A domestic fraternal may be converted into a mutual, as follows:

8683 (1) In addition to complying with the requirements of Chapter 16, Insurance Holding  
8684 Companies, the board or the supreme governing body shall adopt a plan of conversion stating:

8685 (a) the reasons for and purposes of the proposed action;

8686 (b) the proposed terms, conditions, and procedures and the estimated expenses of  
8687 implementing the conversion;

8688 (c) the proposed name of the corporation; and

8689 (d) the proposed articles and bylaws.

8690 (2) If the board and the supreme governing body disagree on the conversion plan, the  
8691 decision of the supreme governing body prevails.

8692 (3) The plan shall be filed with the commissioner for approval, together with any  
8693 information under Subsection 31A-5-204(2) the commissioner reasonably requires. The  
8694 commissioner shall approve the plan unless ~~he~~ the commissioner finds, after a hearing, that it  
8695 would be contrary to the law, that the new mutual would not satisfy the requirements for a  
8696 certificate of authority under Section 31A-5-212, that the plan would be contrary to the  
8697 interests of members or the public, or that the applicable requirements of Chapter 16, Insurance  
8698 Holding Companies, have not been satisfied.

8699 (4) After being approved by the commissioner, the plan shall be submitted for approval  
8700 to the persons who were voting members on the date of the commissioner's approval under  
8701 Subsection (3). For approval of the plan, at least a majority of the votes cast ~~must~~ shall be in  
8702 favor of the plan, or a larger number if required by the laws of the fraternal.

8703 (5) The officers and directors of the fraternal shall be the initial officers and directors  
8704 of the mutual.

8705 (6) A copy of the resolution adopted under Subsection (4) shall be filed with the  
8706 commissioner, stating the number of members entitled to vote, the number voting, the method  
8707 of voting, and the number of votes cast in favor of the plan, stating separately the votes cast by

8708 mail and the votes cast in person.

8709 (7) If the requirements of the law are met, the commissioner shall issue a certificate of  
8710 authority to the new mutual. The fraternal then ceases its legal existence and the corporate  
8711 existence of the new mutual begins. However, the new mutual is considered to have been  
8712 incorporated as of the date the converted fraternal was incorporated. The new mutual has all  
8713 the assets and is liable for all of the obligations of the converted fraternal. The commissioner  
8714 may grant a period not exceeding one year for adjustment to the requirements of Chapter 5,  
8715 Domestic Stock and Mutual Insurance Corporations, specifying the extent to which particular  
8716 provisions of Chapter 5 do not apply.

8717 (8) The corporation may not pay compensation other than regular salaries to existing  
8718 personnel in connection with the proposed conversion. With the commissioner's approval,  
8719 payment may be made at reasonable rates for printing costs and for legal and other professional  
8720 fees for services actually rendered in connection with the conversion. All expenses of the  
8721 conversion, including the expenses incurred by the commissioner and the prorated salaries of  
8722 any insurance office staff members involved, shall be paid by the corporation being converted.

8723 Section 238. Section **31A-11-107** is amended to read:

8724 **31A-11-107. Issuance of certificate of authority -- Reinsurance of excess services.**

8725 (1) The commissioner shall issue a certificate applied for under Section 31A-11-106 if  
8726 ~~he~~ the commissioner finds that:

8727 (a) the corporation is able to negotiate, execute, and carry out the motor club business  
8728 in a sound, reliable, and ongoing manner;

8729 (b) the reinsurance requirements of Subsection (2) are satisfied; and

8730 (c) all other applicable requirements of law are satisfied.

8731 (2) If a motor club provides legal expense service other than that authorized in  
8732 Subsection 31A-11-102(1)(b), or other trip reimbursement service than that authorized in  
8733 Subsection 31A-11-102(1)(d), or bail service other than that authorized under Section  
8734 31A-11-112, it ~~must~~ shall fully reinsure the excess service with an insurer authorized under  
8735 Chapter 5, Domestic Stock and Mutual Insurance Corporations, or 14, Foreign Insurers. That  
8736 insurer ~~must~~ shall assume direct liability to the insured, and ~~must~~ shall fully comply with  
8737 Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance  
8738 Intermediaries.

8739 Section 239. Section **31A-15-203** is amended to read:

8740 **31A-15-203. Risk retention groups chartered in this state.**

8741 (1) (a) A risk retention group under this part shall be chartered and licensed to write  
8742 only liability insurance pursuant to this part and, except as provided elsewhere in this part,  
8743 [~~must~~] shall comply with all of the laws, rules, and requirements that apply to liability insurers  
8744 chartered and licensed in this state, and with Section 31A-15-204 to the extent the requirements  
8745 are not a limitation on other laws, rules, or requirements of this state.

8746 (b) Notwithstanding any other provision to the contrary, all risk retention groups  
8747 chartered in this state shall file an annual statement with the department and the NAIC in a  
8748 form prescribed by the commissioner, and completed in diskette form if required by the  
8749 commissioner, completed in accordance with the statement instructions and the NAIC  
8750 Accounting Practices and Procedures Manual.

8751 (2) Before it may offer insurance in any state, each risk retention group shall also  
8752 submit for approval to the commissioner a plan of operation or feasibility study. The risk  
8753 retention group shall submit an appropriate revision of the plan or study in the event of any  
8754 subsequent material change in any item of the plan or study within 10 days of any such change.  
8755 The group may not offer any additional kinds of liability insurance, in this state or in any other  
8756 state, until any revision of the plan or study is approved by the commissioner.

8757 (3) (a) At the time of filing its application for charter, the risk retention group shall  
8758 provide to the commissioner in summary form the following information:

8759 (i) the identity of the initial members of the group;

8760 (ii) the identity of those individuals who organized the group or who will provide  
8761 administrative services or otherwise influence or control the activities of the group;

8762 (iii) the amount and nature of initial capitalization;

8763 (iv) the coverages to be afforded; and

8764 (v) the states in which the group intends to operate.

8765 (b) Upon receipt of this information the commissioner shall forward the information to  
8766 the NAIC. Providing notification to the NAIC is in addition to, and may not be sufficient to  
8767 satisfy, the requirements of Section 31A-15-204 or any other sections of this part.

8768 Section 240. Section **31A-15-207** is amended to read:

8769 **31A-15-207. Purchasing groups -- Exemption from certain laws.**

8770 A purchasing group and its insurers are subject to all applicable laws of this state,  
8771 except that a purchasing group and its insurers are exempt, in regard to liability insurance for  
8772 the purchasing group, from any law that would:

8773 (1) prohibit the establishment of a purchasing group;

8774 (2) make it unlawful for an insurer to provide, or offer to provide, to a purchasing  
8775 group or its members insurance on a basis providing advantages based on their loss and  
8776 expense experience not afforded to other persons with respect to rates, policy forms, coverages,  
8777 or other matters;

8778 (3) prohibit a purchasing group or its members from purchasing insurance on a group  
8779 basis described in Subsection (2);

8780 (4) prohibit a purchasing group from obtaining insurance on a group basis because the  
8781 group has not been in existence for a minimum period of time or because any member has not  
8782 belonged to the group for a minimum period of time;

8783 (5) require that a purchasing group [must] have a minimum number of members,  
8784 common ownership or affiliation, or certain legal form;

8785 (6) require that a certain percentage of a purchasing group [must] obtain insurance on a  
8786 group basis;

8787 (7) otherwise discriminate against a purchasing group or any of its members; or

8788 (8) require that any insurance policy issued to a purchasing group or any of its  
8789 members be countersigned by an insurance producer residing in this state.

8790 Section 241. Section **31A-15-210** is amended to read:

8791 **31A-15-210. Purchasing group taxation.**

8792 Premium taxes and taxes on premiums paid for coverage of risks resident or located in  
8793 this state by a purchasing group or any members of the purchasing groups are imposed and  
8794 [must] shall be paid as follows:

8795 (1) If the insurer is an admitted insurer, taxes are imposed on the insurer at the same  
8796 rate and in the same manner and subject to the same procedures, interest, and penalties that  
8797 apply to premium taxes and other taxes imposed on other admitted liability insurers relative to  
8798 coverage of risks resident or located in this state.

8799 (2) If the insurer is an approved, nonadmitted surplus lines insurer, taxes are imposed  
8800 on the licensed producer who effected coverage on risks resident or located in this state at the

8801 same rate and in the same manner and subject to the same procedures, interest, and penalties  
8802 that apply to taxes imposed on other licensed producers effecting coverage with approved,  
8803 nonadmitted surplus lines insurers on risks resident or located in this state.

8804 Section 242. Section **31A-17-503** is amended to read:

8805 **31A-17-503. Actuarial opinion of reserves.**

8806 (1) This section becomes operative on December 31, 1993.

8807 (2) General: Every life insurance company doing business in this state shall annually  
8808 submit the opinion of a qualified actuary as to whether the reserves and related actuarial items  
8809 held in support of the policies and contracts specified by the commissioner by rule are  
8810 computed appropriately, are based on assumptions which satisfy contractual provisions, are  
8811 consistent with prior reported amounts, and comply with applicable laws of this state. The  
8812 commissioner by rule shall define the specifics of this opinion and add any other items  
8813 considered to be necessary to its scope.

8814 (3) Actuarial analysis of reserves and assets supporting reserves:

8815 (a) Every life insurance company, except as exempted by or pursuant to rule, shall also  
8816 annually include in the opinion required by Subsection (2), an opinion of the same qualified  
8817 actuary as to whether the reserves and related actuarial items held in support of the policies and  
8818 contracts specified by the commissioner by rule, when considered in light of the assets held by  
8819 the company with respect to the reserves and related actuarial items, including [~~but not limited~~  
8820 ~~to~~] the investment earnings on the assets and the considerations anticipated to be received and  
8821 retained under the policies and contracts, make adequate provision for the company's  
8822 obligations under the policies and contracts, including [~~but not limited to~~] the benefits under  
8823 the expenses associated with the policies and contracts.

8824 (b) The commissioner may provide by rule for a transition period for establishing any  
8825 higher reserves which the qualified actuary may consider necessary in order to render the  
8826 opinion required by this section.

8827 (4) Requirement for opinion under Subsection (3): Each opinion required by  
8828 Subsection (3) shall be governed by the following provisions:

8829 (a) A memorandum, in form and substance acceptable to the commissioner as specified  
8830 by rule, shall be prepared to support each actuarial opinion.

8831 (b) If the insurance company fails to provide a supporting memorandum at the request

8832 of the commissioner within a period specified by rule or the commissioner determines that the  
8833 supporting memorandum provided by the insurance company fails to meet the standards  
8834 prescribed by the rule or is otherwise unacceptable to the commissioner, the commissioner may  
8835 engage a qualified actuary at the expense of the company to review the opinion and the basis  
8836 for the opinion and prepare such supporting memorandum as is required by the commissioner.

8837 (5) Requirement for all opinions: Every opinion shall be governed by the following  
8838 provisions:

8839 (a) The opinion shall be submitted with the annual statement reflecting the valuation of  
8840 the reserve liabilities for each year ending on or after December 31, 1993.

8841 (b) The opinion shall apply to all business in force including individual and group  
8842 health insurance plans, in form and substance acceptable to the commissioner as specified by  
8843 rule.

8844 (c) The opinion shall be based on standards adopted from time to time by the Actuarial  
8845 Standards Board and on such additional standards as the commissioner may by rule prescribe.

8846 (d) In the case of an opinion required to be submitted by a foreign or alien company,  
8847 the commissioner may accept the opinion filed by that company with the insurance supervisory  
8848 official of another state if the commissioner determines that the opinion reasonably meets the  
8849 requirements applicable to a company domiciled in this state.

8850 (e) For the purposes of this section, "qualified actuary" means a member in good  
8851 standing of the American Academy of Actuaries who meets the requirements set forth by  
8852 department rule.

8853 (f) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for  
8854 damages to any person, other than the insurance company and the commissioner, for any act,  
8855 error, omission, decision, or conduct with respect to the actuary's opinion.

8856 (g) Disciplinary action by the commissioner against the company or the qualified  
8857 actuary shall be defined in rules by the commissioner.

8858 (h) Any memorandum in support of the opinion, and any other material provided by the  
8859 company to the commissioner in connection therewith, are considered protected records under  
8860 Section 63G-2-305 and may not be made public and are not subject to subpoena under  
8861 Subsection 63G-2-202(7), other than for the purpose of defending an action seeking damages  
8862 from any person by reason of any action required by this section or rules promulgated under

8863 this section. However, the memorandum or other material may otherwise be released by the  
 8864 commissioner (i) with the written consent of the company or (ii) to the American Academy of  
 8865 Actuaries upon request stating that the memorandum or other material is required for the  
 8866 purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the  
 8867 commissioner for preserving the confidentiality of the memorandum or other material. Once  
 8868 any portion of the confidential memorandum is cited in its marketing or is cited before any  
 8869 governmental agency other than the department or is released to the news media, all portions of  
 8870 the memorandum are no longer confidential.

8871 Section 243. Section **31A-17-506** is amended to read:

8872 **31A-17-506. Computation of minimum standard by calendar year of issue.**

8873 (1) Applicability of Section 31A-17-506: The interest rates used in determining the  
 8874 minimum standard for the valuation shall be the calendar year statutory valuation interest rates  
 8875 as defined in this section for:

8876 (a) all life insurance policies issued in a particular calendar year, on or after the  
 8877 operative date of Subsection 31A-22-408(6)(d);

8878 (b) all individual annuity and pure endowment contracts issued in a particular calendar  
 8879 year on or after January 1, 1982;

8880 (c) all annuities and pure endowments purchased in a particular calendar year on or  
 8881 after January 1, 1982, under group annuity and pure endowment contracts; and

8882 (d) the net increase, if any, in a particular calendar year after January 1, 1982, in  
 8883 amounts held under guaranteed interest contracts.

8884 (2) Calendar year statutory valuation interest rates:

8885 (a) The calendar year statutory valuation interest rates, "I," shall be determined as  
 8886 follows and the results rounded to the nearer 1/4 of 1%:

8887 (i) for life insurance:

8888 
$$I = .03 + W(R1 - .03) + (W/2)(R2 - .09);$$

8889 (ii) for single premium immediate annuities and for annuity benefits involving life  
 8890 contingencies arising from other annuities with cash settlement options and from guaranteed  
 8891 interest contracts with cash settlement options:

8892 
$$I = .03 + W(R - .03),$$

8893 where R1 is the lesser of R and .09,

8894 R2 is the greater of R and .09,

8895 R is the reference interest rate defined in Subsection (4), and

8896 W is the weighting factor defined in this section;

8897 (iii) for other annuities with cash settlement options and guaranteed interest contracts

8898 with cash settlement options, valued on an issue year basis, except as stated in Subsection

8899 (2)(a)(ii), the formula for life insurance stated in Subsection (2)(a)(i) shall apply to annuities

8900 and guaranteed interest contracts with guarantee durations in excess of 10 years, and the

8901 formula for single premium immediate annuities stated in Subsection (2)(a)(ii) shall apply to

8902 annuities and guaranteed interest contracts with guarantee duration of 10 years or less;

8903 (iv) for other annuities with no cash settlement options and for guaranteed interest

8904 contracts with no cash settlement options, the formula for single premium immediate annuities

8905 stated in Subsection (2)(a)(ii) shall apply; and

8906 (v) for other annuities with cash settlement options and guaranteed interest contracts

8907 with cash settlement options, valued on a change in fund basis, the formula for single premium

8908 immediate annuities stated in Subsection (2)(a)(ii) shall apply.

8909 (b) However, if the calendar year statutory valuation interest rate for any life insurance

8910 policies issued in any calendar year determined without reference to this sentence differs from

8911 the corresponding actual rate for similar policies issued in the immediately preceding calendar

8912 year by less than [~~1/2~~] one-half of 1% the calendar year statutory valuation interest rate for such

8913 life insurance policies shall be equal to the corresponding actual rate for the immediately

8914 preceding calendar year. For purposes of applying the immediately preceding sentence, the

8915 calendar year statutory valuation interest rate for life insurance policies issued in a calendar

8916 year shall be determined for 1980, using the reference interest rate defined in 1979, and shall be

8917 determined for each subsequent calendar year regardless of when Subsection 31A-22-408(6)(d)

8918 becomes operative.

8919 (3) Weighting factors:

8920 (a) The weighting factors referred to in the formulas stated in Subsection (2) are given

8921 in the following tables:

8922 (i) (A) Weighting factors for life insurance:

8923

8924	Guarantee Duration (Years)	Weighting Factors
8925	10 or less:	.50
8926	More than 10, but less than 20:	.45
8927	More than 20:	.35

8928 (B) For life insurance, the guarantee duration is the maximum number of years the life  
 8929 insurance can remain in force on a basis guaranteed in the policy or under options to convert to  
 8930 plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed  
 8931 in the original policy;

8932 (ii) Weighting factor for single premium immediate annuities and for annuity benefits  
 8933 involving life contingencies arising from other annuities with cash settlement options and  
 8934 guaranteed interest contracts with cash settlement options: .80

8935 (iii) Weighting factors for other annuities and for guaranteed interest contracts, except  
 8936 as stated in Subsection (3)(a)(ii), shall be as specified in the tables in Subsections (3)(a)(iii)(A),  
 8937 (B), and (C), according to the rules and definitions in Subsection (3)(b):

8938 (A) For annuities and guaranteed interest contracts valued on an issue year basis:

8939	Guarantee Duration (Years)	Weighting Factors for Plan Type		
8940		A	B	C
8941	5 or less:	.80	.60	.50
8942	More than 5, but not more than 10:	.75	.60	.50
8943	More than 10, but not more than 20:	.65	.50	.45
8944	More than 20:	.45	.35	.35
8945	Plan Type			
8946		A	B	C

8947 (B) For annuities and guaranteed interest  
 8948 contracts valued on a change in fund basis, the  
 8949 factors shown in Subsection (3)(a)(iii)(A)  
 8950 increased by:

8951		.15	.25	.05
8952		Plan Type		
8953		A	B	C

8954 (C) For annuities and guaranteed interest  
8955 contracts valued on an issue year basis, other than  
8956 those with no cash settlement options, which do  
8957 not guarantee interest on considerations received  
8958 more than one year after issue or purchase and for  
8959 annuities and guaranteed interest contracts valued  
8960 on a change in fund basis which do not guarantee  
8961 interest rates on considerations received more  
8962 than 12 months beyond the valuation date, the  
8963 factors shown in Subsection (3)(a)(iii)(A) or  
8964 derived in Subsection (3)(a)(iii)(B) increased by:

.05 .05 .05.

8965 (b) (i) For other annuities with cash settlement options and guaranteed interest  
8966 contracts with cash settlement options, the guarantee duration is the number of years for which  
8967 the contract guarantees interest rates in excess of the calendar year statutory valuation interest  
8968 rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities  
8969 with no cash settlement options and for guaranteed interest contracts with no cash settlement  
8970 options, the guaranteed duration is the number of years from the date of issue or date of  
8971 purchase to the date annuity benefits are scheduled to commence.

8972 (ii) Plan type as used in the above tables is defined as follows:

8973 (A) Plan Type A: At any time policyholder may withdraw funds only:

8974 (I) with an adjustment to reflect changes in interest rates or asset values since receipt of  
8975 the funds by the insurance company;

8976 (II) without such adjustment but installments over five years or more;

8977 (III) as an immediate life annuity; or

8978 (IV) no withdrawal permitted.

8979 (B) (I) Plan Type B: Before expiration of the interest rate guarantee, policyholder  
8980 withdraw funds only:

8981 (Aa) with an adjustment to reflect changes in interest rates or asset values since receipt

8982 of the funds by the insurance company;

8983 (Bb) without such adjustment but in installments over five years or more; or

8984 (Cc) no withdrawal permitted.

8985 (II) At the end of interest rate guarantee, funds may be withdrawn without such

8986 adjustment in a single sum or installments over less than five years.

8987 (C) Plan Type C: Policyholder may withdraw funds before expiration of interest rate

8988 guarantee in a single sum or installments over less than five years either:

8989 (I) without adjustment to reflect changes in interest rates or asset values since receipt of

8990 the funds by the insurance company; or

8991 (II) subject only to a fixed surrender charge stipulated in the contract as a percentage of

8992 the fund.

8993 (iii) A company may elect to value guaranteed interest contracts with cash settlement

8994 options and annuities with cash settlement options on either an issue year basis or on a change

8995 in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities

8996 with no cash settlement options [~~must~~] shall be valued on an issue year basis. As used in this

8997 section, an issue year basis of valuation refers to a valuation basis under which the interest rate

8998 used to determine the minimum valuation standard for the entire duration of the annuity or

8999 guaranteed interest contract is the calendar year valuation interest rate for the year of issue or

9000 year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of

9001 valuation refers to a valuation basis under which the interest rate used to determine the

9002 minimum valuation standard applicable to each change in the fund held under the annuity or

9003 guaranteed interest contract is the calendar year valuation interest rate for the year of the

9004 change in the fund.

9005 (4) Reference interest rate: "Reference interest rate" referred to in Subsection (2)(a) is

9006 defined as follows:

9007 (a) For all life insurance, the lesser of the average over a period of 36 months and the

9008 average over a period of 12 months, ending on June 30 of the calendar year next preceding the

9009 year of issue, of the Monthly Average of the composite Yield on Seasoned Corporate Bonds, as

9010 published by Moody's Investors Service, Inc.

9011 (b) For single premium immediate annuities and for annuity benefits involving life

9012 contingencies arising from other annuities with cash settlement options and guaranteed interest

9013 contracts with cash settlement options, the average over a period of 12 months, ending on June  
9014 30 of the calendar year of issue or year of purchase, of the Monthly Average of the Composite  
9015 Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

9016 (c) For other annuities with cash settlement options and guaranteed interest contracts  
9017 with cash settlement options, valued on a year of issue basis, except as stated in Subsection  
9018 (4)(b), with guarantee duration in excess of 10 years, the lesser of the average over a period of  
9019 36 months and the average over a period of 12 months, ending on June 30 of the calendar year  
9020 of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate  
9021 Bonds, as published by Moody's Investors Service, Inc.

9022 (d) For other annuities with cash settlement options and guaranteed interest contracts  
9023 with cash settlement options, valued on a year of issue basis, except as stated in Subsection  
9024 (4)(b), with guarantee duration of 10 years or less, the average over a period of 12 months,  
9025 ending on June 30 of the calendar year of issue or purchase, of the Monthly Average of the  
9026 Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service,  
9027 Inc.

9028 (e) For other annuities with no cash settlement options and for guaranteed interest  
9029 contracts with no cash settlement options, the average over a period of 12 months, ending on  
9030 June 30 of the calendar year of issue or purchase, of the Monthly Average of the Composite  
9031 Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

9032 (f) For other annuities with cash settlement options and guaranteed interest contracts  
9033 with cash settlement options, valued on a change in fund basis, except as stated in Subsection  
9034 (4)(b), the average over a period of 12 months, ending on June 30 of the calendar year of the  
9035 change in the fund, of the Monthly Average of the Composite Yield on Seasoned Corporate  
9036 Bonds, as published by Moody's Investors Service, Inc.

9037 (5) Alternative method for determining reference interest rates: In the event that the  
9038 Monthly Average of the Composite Yield on Seasoned Corporate Bonds is no longer published  
9039 by Moody's Investors Service, Inc. or in the event that the National Association of Insurance  
9040 Commissioners determines that the Monthly Average of the Composite Yield on Seasoned  
9041 Corporate Bonds as published by Moody's Investors Service, Inc. is no longer appropriate for  
9042 the determination of the reference interest rate, then an alternative method for determination of  
9043 the reference interest rate, which is adopted by the National Association of Insurance

9044 Commissioners and approved by rule promulgated by the commissioner, may be substituted.

9045 Section 244. Section **31A-17-507** is amended to read:

9046 **31A-17-507. Reserve valuation method -- Life insurance and endowment benefits.**

9047 (1) Except as otherwise provided in Sections 31A-17-508, 31A-17-511, and  
9048 31A-17-513, reserves according to the commissioner's reserve valuation method, for the life  
9049 insurance and endowment benefits of policies providing for a uniform amount of insurance and  
9050 requiring the payment of uniform premiums shall be the excess, if any, of the present value, at  
9051 the date of valuation, of such future guaranteed benefits provided for by such policies, over the  
9052 then present value of any future modified net premiums therefor. The modified net premiums  
9053 for any such policy shall be such uniform percentage of the respective contract premiums for  
9054 such benefits that the present value, at the date of issue of the policy, of all such modified net  
9055 premiums shall be equal to the sum of the then present value of such benefits provided for by  
9056 the policy and the excess of Subsection (1)(a) over Subsection (1)(b), as follows:

9057 (a) A net level annual premium equal to the present value, at the date of issue, of such  
9058 benefits provided for after the first policy year, divided by the present value, at the date of  
9059 issue, of an annuity of one per annum payable on the first and each subsequent anniversary of  
9060 such policy on which a premium falls due; provided, however, that such net level annual  
9061 premium [~~shall not~~] may not exceed the net level annual premium on the 19 year premium  
9062 whole life plan for insurance of the same amount at an age one year higher than the age at issue  
9063 of such policy.

9064 (b) A net one year term premium for such benefits provided for in the first policy year.

9065 (2) Provided that for any life insurance policy issued on or after January 1, 1997, for  
9066 which the contract premium in the first policy year exceeds that of the second year and for  
9067 which no comparable additional benefit is provided in the first year for such excess and which  
9068 provides an endowment benefit or a cash surrender value or a combination thereof in an  
9069 amount greater than such excess premium, the reserve according to the commissioner's reserve  
9070 valuation method as of any policy anniversary occurring on or before the assumed ending date  
9071 defined herein as the first policy anniversary on which the sum of any endowment benefit and  
9072 any cash surrender value then available is greater than such excess premium shall, except as  
9073 otherwise provided in Section 31A-17-511, be the greater of the reserve as of such policy  
9074 anniversary calculated as described in Subsection (1) and the reserve as of such policy

9075 anniversary calculated as described in that subsection, but with:

9076 (a) the value defined in Subsection (1)(a) being reduced by 15% of the amount of such  
9077 excess first year premium;

9078 (b) all present values of benefits and premiums being determined without reference to  
9079 premiums or benefits provided for by the policy after the assumed ending date;

9080 (c) the policy being assumed to mature on such date as an endowment; and

9081 (d) the cash surrender value provided on such date being considered as an endowment  
9082 benefit. In making the above comparison the mortality and interest bases stated in Sections  
9083 31A-17-504 and 31A-17-506 shall be used.

9084 (3) Reserves according to the commissioner's reserve valuation method for:

9085 (a) life insurance policies providing for a varying amount of insurance or requiring the  
9086 payment of varying premiums;

9087 (b) group annuity and pure endowment contracts purchased under a retirement plan or  
9088 plan of deferred compensation, established or maintained by an employer, including a  
9089 partnership or sole proprietorship, or by an employee organization, or by both, other than a plan  
9090 providing individual retirement accounts or individual retirement annuities under Section 408,  
9091 Internal Revenue Code;

9092 (c) accident and health and accidental death benefits in all policies and contracts; and

9093 (d) all other benefits, except life insurance and endowment benefits in life insurance  
9094 policies and benefits provided by all other annuity and pure endowment contracts, shall be  
9095 calculated by a method consistent with the principles of Subsections (1) and (2).

9096 Section 245. Section **31A-17-510** is amended to read:

9097 **31A-17-510. Optional reserve calculation.**

9098 (1) Reserves for all policies and contracts issued prior to January 1, 1994, may be  
9099 calculated, at the option of the company, according to any standards which produce greater  
9100 aggregate reserves for all such policies and contracts than the minimum reserves required by  
9101 the laws in effect immediately prior to that date. Reserves for any category of policies,  
9102 contracts, or benefits as established by the commissioner, issued on or after January 1, 1994,  
9103 may be calculated, at the option of the company, according to any standards which produce  
9104 greater aggregate reserves for such category than those calculated according to the minimum  
9105 standard herein provided, but the rate or rates of interest used for policies and contracts, other

9106 than annuity and pure endowment contracts, [~~shall not~~] may not be higher than the  
9107 corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided  
9108 therein.

9109 (2) Any such company which at any time shall have adopted any standard of valuation  
9110 producing greater aggregate reserves than those calculated according to the minimum standard  
9111 herein provided may, with the approval of the commissioner, adopt any lower standard of  
9112 valuation, but not lower than the minimum herein provided; provided, however, that, for the  
9113 purposes of this section, the holding of additional reserves previously determined by a qualified  
9114 actuary to be necessary to render the opinion required by Section 31A-17-502 [~~shall not~~] may  
9115 not be considered to be the adoption of a higher standard of valuation.

9116 Section 246. Section **31A-17-512** is amended to read:

9117 **31A-17-512. Reserve calculation -- Indeterminate premium plans.**

9118 (1) In the case of any plan of life insurance which provides for future premium  
9119 determination, the amounts of which are to be determined by the insurance company based on  
9120 then estimates of future experience, or in the case of any plan of life insurance or annuity which  
9121 is of such a nature that the minimum reserves cannot be determined by the methods described  
9122 in Sections 31A-17-507, 31A-17-508, and 31A-17-511, the reserves which are held under any  
9123 such plan [~~must~~] shall:

9124 (a) be appropriate in relation to the benefits and the pattern of premiums for that plan;  
9125 and

9126 (b) be computed by a method which is consistent with the principles of this part, as  
9127 determined by rules promulgated by the commissioner.

9128 Section 247. Section **31A-18-106** is amended to read:

9129 **31A-18-106. Investment limitations generally applicable.**

9130 (1) The investment limitations listed in Subsections (1)(a) through (m) apply to an  
9131 insurer.

9132 (a) For an investment authorized under Subsection 31A-18-105(1) that is not  
9133 amortizable under applicable valuation rules, the limitation is 5% of assets.

9134 (b) For an investment authorized under Subsection 31A-18-105(2), the limitation is  
9135 10% of assets.

9136 (c) For an investment authorized under Subsection 31A-18-105(3), the limitation is

9137 50% of assets.

9138 (d) For an investment authorized under Subsection 31A-18-105(4) that is considered to  
9139 be an investment in a kind of security or evidence of debt pledged, the investment is subject to  
9140 the class limitations applicable to the pledged security or evidence of debt.

9141 (e) For an investment authorized under Subsection 31A-18-105(5), the limitation is  
9142 35% of assets.

9143 (f) For an investment authorized under Subsection 31A-18-105(6), the limitation is:

9144 (i) 20% of assets for a life insurer; and

9145 (ii) 50% of assets for a nonlife insurer.

9146 (g) For an investment authorized under Subsection 31A-18-105(7), the limitation is:

9147 (i) 5% of assets; or

9148 (ii) for an insurer organized and operating under Chapter 7, Nonprofit Health Service  
9149 Insurance Corporations, 25% of assets.

9150 (h) For an investment authorized under Subsection 31A-18-105(8), the limitation is:

9151 (i) 20% of assets, inclusive of home office and branch office properties; or

9152 (ii) for an insurer organized and operating under Chapter 7, Nonprofit Health Service  
9153 Insurance Corporations, 35% of assets, inclusive of home office and branch office properties.

9154 (i) For an investment authorized under Subsection 31A-18-105(10), the limitation is  
9155 1% of assets.

9156 (j) For an investment authorized under Subsection 31A-18-105(11), the limitation is  
9157 the greater of that permitted or required for compliance with Section 31A-18-103.

9158 (k) Except as provided in Subsection (1)(l), an insurer's investments in subsidiaries is  
9159 limited to 50% of the insurer's total adjusted capital. An investment by an insurer in a  
9160 subsidiary includes:

9161 (i) a loan, advance, or contribution to a subsidiary by an insurer; and

9162 (ii) an insurer holding a bond, note, or stock of a subsidiary.

9163 (l) Under a plan of merger approved by the commissioner, the commissioner may  
9164 allow an insurer any portion of its assets invested in an insurance subsidiary. The approved  
9165 plan of merger shall require the acquiring insurer to conform its accounting for investments in  
9166 subsidiaries to Subsection (1)(k) within a specified period that may not exceed five years.

9167 (m) For an investment authorized under Subsections 31A-18-105(13) and (14), the

9168 aggregate limitation is 10% of assets.

9169 (2) The limits on investments listed in Subsections (2)(a) through (e) apply to each  
9170 insurer.

9171 (a) (i) For all investments in a single entity, its affiliates, and subsidiaries, the  
9172 limitation is 10% of assets, except that the limit imposed by this Subsection (2)(a) does not  
9173 apply to:

9174 (A) an investment in the government of the United States or its agencies;

9175 (B) an investment guaranteed by the government of the United States;

9176 (C) an investment in the insurer's insurance subsidiaries; or

9177 (D) a cash deposit that:

9178 (I) is cash;

9179 (II) is held by a depository institution, as defined in Section 7-1-103, that:

9180 (Aa) is solvent;

9181 (Bb) is federally insured; and

9182 (Cc) subject to Subsection (2)(a)(ii), has a Tier 1 leverage ratio of at least 5%, if the  
9183 depository institution is a bank as defined in Section 7-1-103, or a ratio of Tier 1 capital to total  
9184 assets of at least 5%, if the depository institution is not a bank; and

9185 (III) does not exceed the greater of:

9186 (Aa) .4 times the Tier 1 capital of the depository institution; or

9187 (Bb) the amount insured by a federal deposit insurance agency.

9188 (ii) The commissioner by rule made in accordance with Title 63G, Chapter 3, Utah  
9189 Administrative Rulemaking Act, shall:

9190 (A) define "Tier 1 leverage ratio";

9191 (B) define "Tier 1 capital"; and

9192 (C) proscribe the method to calculate Tier 1 capital.

9193 (b) An investment authorized by Subsection 31A-18-105(3) shall comply with the  
9194 requirements listed in this Subsection (2)(b).

9195 (i) (A) Except as provided in this Subsection (2)(b)(i), the amount of a loan secured by  
9196 a mortgage or deed of trust may not exceed 80% of the value of the real estate interest  
9197 mortgaged, unless the excess over 80%:

9198 (I) is insured or guaranteed by:

- 9199 (Aa) the United States;
- 9200 (Bb) a state of the United States;
- 9201 (Cc) an instrumentality, agency, or political subdivision of the United States or a state;
- 9202 or
- 9203 (Dd) a combination of entities described in this Subsection (2)(b)(i)(A)(I); or
- 9204 (II) is insured by an insurer approved by the commissioner and qualified to insure that
- 9205 type of risk in this state.
- 9206 (B) A mortgage loan representing a purchase money mortgage acquired from the sale
- 9207 of real estate is not subject to the limitation of Subsection (2)(b)(i)(A).
- 9208 (ii) Subject to Subsection (2)(b)(v), a loan or evidence of debt secured by real estate
- 9209 may only be secured by:
- 9210 (A) unencumbered real property that is located in the United States; or
- 9211 (B) an unencumbered interest in real property that is located in the United States.
- 9212 (iii) Evidence of debt secured by a first mortgage or deed of trust upon a leasehold
- 9213 estate shall require that:
- 9214 (A) the leasehold estate exceed the maturity of the loan by not less than 10% of the
- 9215 lease term;
- 9216 (B) the real estate not be otherwise encumbered; and
- 9217 (C) the mortgagee is entitled to be subrogated to all rights under the leasehold.
- 9218 (iv) Subject to Subsection (2)(b)(v):
- 9219 (A) participation in a mortgage loan [~~must~~] shall:
- 9220 (I) be senior to other participants; and
- 9221 (II) give the holder substantially the rights of a first mortgagee; or
- 9222 (B) the interest of the insurer in the evidence of indebtedness [~~must~~] shall be of equal
- 9223 priority, to the extent of the interest, with other interests in the real property.
- 9224 (v) A fee simple or leasehold real estate or an interest in a fee simple or leasehold is
- 9225 not considered to be encumbered within the meaning of this chapter by reason of a prior
- 9226 mortgage or trust deed held or assumed by the insurer as a lien on the property, if:
- 9227 (A) the total of the mortgages or trust deeds held does not exceed 70% of the value of
- 9228 the property; and
- 9229 (B) the security created by the prior mortgage or trust deed is a first lien.

9230 (c) A loan permitted under Subsection 31A-18-105(4) may not exceed 75% of the  
9231 market value of the collateral pledged, except that a loan upon the pledge of a United States  
9232 government bond may be equal to the market value of the pledge.

9233 (d) For an equity interest in a single real estate property authorized under Subsection  
9234 31A-18-105(8), the limitation is 5% of assets.

9235 (e) An investment authorized under Subsection 31A-18-105(10) shall be in connection  
9236 with a potential change in the value of specifically identified:

9237 (i) asset that the insurer owns; or

9238 (ii) liability that the insurer has incurred.

9239 (3) The restrictions on investments listed in Subsections (3)(a) and (b) apply to each  
9240 insurer.

9241 (a) Except for a financial futures contract and real property acquired and occupied by  
9242 the insurer for home and branch office purposes, a security or other investment is not eligible  
9243 for purchase or acquisition under this chapter unless it is:

9244 (i) interest bearing or income paying; and

9245 (ii) not then in default.

9246 (b) A security is not eligible for purchase at a price above its market value.

9247 (4) Computation of percentage limitations under this section:

9248 (a) is based only upon the insurer's total qualified invested assets described in Section  
9249 31A-18-105 and this section, as these assets are valued under Section 31A-17-401; and

9250 (b) excludes investments permitted under Section 31A-18-108 and Subsections  
9251 31A-17-203(2) and (3).

9252 (5) An insurer may not make an investment that, because the investment does not  
9253 conform to Section 31A-18-105 and this section, has the result of rendering the insurer, under  
9254 Chapter 17, Part 6, Risk-Based Capital, subject to proceedings under Chapter 27a, Insurer  
9255 Receivership Act.

9256 (6) A pattern of persistent deviation from the investment diversification standards set  
9257 forth in Section 31A-18-105 and this section may be grounds for a finding that the one or more  
9258 persons with authority to make the insurer's investment decisions are "incompetent" as used in  
9259 Subsection 31A-5-410(3).

9260 (7) Section 77r-1 of the Secondary Mortgage Market Enhancement Act of 1984 does

9261 not apply to the purchase, holding, investment, or valuation limitations of assets of insurance  
9262 companies subject to this chapter.

9263 Section 248. Section **31A-19a-206** is amended to read:

9264 **31A-19a-206. Disapproval of rates.**

9265 (1) (a) Except for a conflict with the requirements of Section 31A-19a-201 or  
9266 31A-19a-202, the commissioner may disapprove a rate at any time that the rate directly  
9267 conflicts with:

9268 (i) this title; or

9269 (ii) any rule made under this title.

9270 (b) The disapproval under Subsection (1)(a) shall:

9271 (i) be in writing;

9272 (ii) specify the statute or rule with which the filing conflicts; and

9273 (iii) state when the rule is no longer effective.

9274 (c) (i) If an insurer's or rate service organization's rate filing is disapproved under  
9275 Subsection (1)(a), the insurer or rate service organization may request a hearing on the  
9276 disapproval within 30 calendar days of the date on which the order described in Subsection  
9277 (1)(a) is issued.

9278 (ii) If a hearing is requested under Subsection (1)(c)(i), the commissioner shall  
9279 schedule the hearing within 30 calendar days of the date on which the commissioner receives  
9280 the request for a hearing.

9281 (iii) After the hearing, the commissioner shall issue an order:

9282 (A) approving the rate filing; or

9283 (B) disapproving the rate filing.

9284 (2) (a) If within 90 calendar days of the date on which a rate filing is filed the  
9285 commissioner finds that the rate filing does not meet the requirements of Section 31A-19a-201  
9286 or 31A-19a-202, the commissioner shall send a written order disapproving the rate filing to the  
9287 insurer or rate organization that made the filing.

9288 (b) The order described in Subsection (2)(a) shall specify how the rate filing fails to  
9289 meet the requirements of Section 31A-19a-201 or 31A-19a-202.

9290 (c) (i) If an insurer's or rate service organization's rate filing is disapproved under  
9291 Subsection (2)(a), the insurer or rate service organization may request a hearing on the

9292 disapproval within 30 calendar days of the date on which the order described in Subsection  
9293 (2)(a) is issued.

9294 (ii) If a hearing is requested under Subsection (2)(c)(i), the commissioner shall  
9295 schedule the hearing within 30 calendar days of the date on which the commissioner receives  
9296 the request for a hearing.

9297 (iii) After the hearing, the commissioner shall issue an order:

9298 (A) approving the rate filing; or

9299 (B) (I) disapproving the rate filing; and

9300 (II) stating when, within a reasonable time from the date on which the order is issued,  
9301 the rate is no longer effective.

9302 (d) In a hearing held under this Subsection (2), the insurer or rate service organization  
9303 bears the burden of proving compliance with the requirements of Section 31A-19a-201 or  
9304 31A-19a-202.

9305 (3) (a) If the order described in Subsection (2)(a) is issued after the implementation of  
9306 the rate filing, the commissioner may order that use of the rate filing be discontinued for any  
9307 policy issued or renewed on or after a date not less than 30 calendar days from the date the  
9308 order was issued.

9309 (b) If an insurer or rate service organization requests a hearing under Subsection (2),  
9310 the order to discontinue use of the rate filing is stayed:

9311 (i) beginning on the date the insurer or rate service organization requests a hearing; and

9312 (ii) ending on the date the commissioner issues an order after the hearing that addresses  
9313 the stay.

9314 (4) If the order described in Subsection (2)(a) is issued before the implementation of  
9315 the rate filing:

9316 (a) an insurer or rate service organization may not implement the rate filing; and

9317 (b) the rates of the insurer or rate service organization at the time of disapproval  
9318 continue to be in effect.

9319 (5) (a) If after a hearing the commissioner finds that a rate that has been previously  
9320 filed and has been in effect for more than 90 calendar days no longer meets the requirements of  
9321 Section 31A-19a-201 or 31A-19a-202, the commissioner may order that use of the rate by any  
9322 insurer or rate service organization be discontinued.

9323 (b) The commissioner shall give any insurer that will be affected by an order that may  
9324 be issued under Subsection (5)(a) notice of the hearing at least 10 business days prior to the  
9325 hearing.

9326 (c) The order issued under Subsection (5)(a) shall:

9327 (i) be in writing;

9328 (ii) state the grounds for the order; and

9329 (iii) state when, within a reasonable time from the date on which the order is issued,  
9330 the rate is no longer effective.

9331 (d) The order issued under Subsection (5)(a) [~~shall not~~] may not affect any contract or  
9332 policy made or issued prior to the expiration of the period set forth in the order.

9333 (e) The order issued under Subsection (5)(a) may include a provision for a premium  
9334 adjustment for contracts or policies made or issued after the effective date of the order.

9335 (6) (a) When an insurer has no legally effective rates as a result of the commissioner's  
9336 disapproval of rates or other act, the commissioner shall, on the insurer's request, specify  
9337 interim rates for the insurer.

9338 (b) An interim rate described in Subsection (6)(a):

9339 (i) shall be high enough to protect the interests of all parties; and

9340 (ii) may, when necessary to protect the policyholders, order that a specified portion of  
9341 the premiums be placed in an escrow account approved by the commissioner.

9342 (c) When the new rates become effective, the commissioner shall order the escrowed  
9343 funds or any overcharge in the interim rates to be distributed appropriately, except that minimal  
9344 refunds to policyholders need not be distributed.

9345 Section 249. Section **31A-19a-208** is amended to read:

9346 **31A-19a-208. Special restrictions on individual insurers.**

9347 (1) The commissioner may require by order that a particular insurer file any or all of its  
9348 rates and supplementary rate information 30 calendar days prior to their effective date, if the  
9349 commissioner finds, after a hearing, that to protect the interests of the insurer's insureds and the  
9350 public in Utah, the commissioner [~~must~~] shall exercise closer supervision of the insurer's rates,  
9351 because of the insurer's financial condition or rating practices.

9352 (2) The commissioner may extend the waiting period described in Subsection (1) for  
9353 any filing for not to exceed 30 additional calendar days, by written notice to the insurer before

9354 the first 30-day period expires.

9355 (3) A filing that has not been disapproved before the expiration of the waiting period is  
9356 considered to meet the requirements of this chapter, subject to the possibility of subsequent  
9357 disapproval under Section 31A-19a-206.

9358 Section 250. Section **31A-19a-309** is amended to read:

9359 **31A-19a-309. Recording and reporting of experience.**

9360 (1) (a) The commissioner may adopt rules for the development of statistical plans, for  
9361 use by all insurers in recording and reporting their loss and expense experience, in order that  
9362 the experience of those insurers may be made available to the commissioner.

9363 (b) The rules provided for in Subsection (1) may include:

9364 (i) the data that [~~must~~] shall be reported by an insurer;

9365 (ii) definitions of data elements;

9366 (iii) the timing and frequency of data reporting by an insurer;

9367 (iv) data quality standards;

9368 (v) data edit and audit requirements;

9369 (vi) data retention requirements;

9370 (vii) reports to be generated; and

9371 (viii) the timing of reports to be generated.

9372 (c) Except for workers' compensation insurance under Section 31A-19a-404, an insurer  
9373 may not be required to record or report its experience on a classification basis that is  
9374 inconsistent with its own rating system.

9375 (2) (a) The commissioner may designate one or more rate service organizations to  
9376 assist the commissioner in gathering that experience and making compilations of the  
9377 experience.

9378 (b) The compilations developed under Subsection (2)(a) shall be made available to the  
9379 public.

9380 (3) The commissioner may make rules and plans for the interchange of data necessary  
9381 for the application of rating plans.

9382 (4) To further uniform administration of rate regulatory laws, the commissioner and  
9383 every insurer and rate service organization may:

9384 (a) exchange information and experience data with insurance supervisory officials,

9385 insurers, and rate service organizations in other states; and

9386 (b) consult with the persons described in Subsection (4)(a) with respect to the  
9387 application of rating systems and the reporting of statistical data.

9388 Section 251. Section **31A-21-101** is amended to read:

9389 **31A-21-101. Scope of Chapters 21 and 22.**

9390 (1) Except as provided in Subsections (2) through (6), this chapter and Chapter 22,  
9391 Contracts in Specific Lines, apply to all insurance policies, applications, and certificates:

9392 (a) delivered or issued for delivery in this state;

9393 (b) on property ordinarily located in this state;

9394 (c) on persons residing in this state when the policy is issued; or

9395 (d) on business operations in this state.

9396 (2) This chapter and Chapter 22 do not apply to:

9397 (a) an exemption provided in Section 31A-1-103;

9398 (b) an insurance policy procured under Sections 31A-15-103 and 31A-15-104;

9399 (c) an insurance policy on business operations in this state:

9400 (i) if:

9401 (A) the contract is negotiated primarily outside this state; and

9402 (B) the operations in this state are incidental or subordinate to operations outside this  
9403 state; and

9404 (ii) except that insurance required by a Utah statute [~~must~~] shall conform to the  
9405 statutory requirements; or

9406 (d) other exemptions provided in this title.

9407 (3) (a) Sections 31A-21-102, 31A-21-103, 31A-21-104, Subsections 31A-21-107(1)  
9408 and (3), and Sections 31A-21-306, 31A-21-308, 31A-21-312, and 31A-21-314 apply to ocean  
9409 marine and inland marine insurance.

9410 (b) Section 31A-21-201 applies to inland marine insurance that is written according to  
9411 manual rules or rating plans.

9412 (4) A group or blanket policy is subject to this chapter and Chapter 22, except:

9413 (a) a group or blanket policy outside the scope of this title under Subsection  
9414 31A-1-103(3)(h); and

9415 (b) other exemptions provided under Subsection (5).

9416 (5) The commissioner may by rule exempt any class of insurance contract or class of  
9417 insurer from any or all of the provisions of this chapter and Chapter 22 if the interests of the  
9418 Utah insureds, creditors, or the public would not be harmed by the exemption.

9419 (6) Workers' compensation insurance, including that written by the Workers'  
9420 Compensation Fund created under Chapter 33, Workers' Compensation Fund, is subject to this  
9421 chapter and Chapter 22.

9422 (7) Unless clearly inapplicable, any provision of this chapter or Chapter 22 applicable  
9423 to either a policy or a contract is applicable to both.

9424 Section 252. Section **31A-21-312** is amended to read:

9425 **31A-21-312. Notice and proof of loss.**

9426 (1) Every insurance policy shall provide that:

9427 (a) when notice of loss is required separately from proof of loss, notice given by or on  
9428 behalf of the insured to any authorized agent of the insurer within this state, with particulars  
9429 sufficient to identify the policy, is notice to the insurer; and

9430 (b) failure to give any notice or file any proof of loss required by the policy within the  
9431 time specified in the policy does not invalidate a claim made by the insured, if the insured  
9432 shows that it was not reasonably possible to give the notice or file the proof of loss within the  
9433 prescribed time and that notice was given or proof of loss filed as soon as reasonably possible.

9434 (2) Failure to give notice or file proof of loss as required by Subsection (1)(b) does not  
9435 bar recovery under the policy if the insurer fails to show it was prejudiced by the failure. This  
9436 subsection may not be construed to extend the statute of limitations applicable under Section  
9437 31A-21-313.

9438 (3) The insurer shall, on request, promptly furnish an insured any forms or instructions  
9439 needed to make a proof of loss.

9440 (4) As an alternative to giving notice directly under Subsection (1)(a), it is a sufficient  
9441 service of notice or of proof of loss if a first class postage prepaid envelope addressed to the  
9442 insurer and containing the proper notice or proof of loss is deposited in any United States post  
9443 office within the time prescribed.

9444 (5) The commissioner shall adopt rules dealing with notice of loss and proof of loss  
9445 time limitations under insurance policies. Under Section 31A-21-202, the commissioner's  
9446 express approval [~~must~~] shall be received before any contract clause requiring notice of loss or

9447 proof of loss in a manner inconsistent with the rule may be used in an insurance contract.

9448 (6) The acknowledgment by the insurer of the receipt of notice, the furnishing of forms  
9449 for filing proofs of loss, the acceptance of those proofs, or the investigation of any claim are  
9450 not alone sufficient to waive any of the rights of the insurer in defense of any claim arising  
9451 under the insurance policy.

9452 Section 253. Section **31A-21-313** is amended to read:

9453 **31A-21-313. Limitation of actions.**

9454 (1) An action on a written policy or contract of first party insurance [~~must~~] shall be  
9455 commenced within three years after the inception of the loss.

9456 (2) Except as provided in Subsection (1) or elsewhere in this title, the law applicable to  
9457 limitation of actions in Title 78B, Chapter 2, Statutes of Limitations, applies to actions on  
9458 insurance policies.

9459 (3) An insurance policy may not:

9460 (a) limit the time for beginning an action on the policy to a time less than that  
9461 authorized by statute;

9462 (b) prescribe in what court an action may be brought on the policy; or

9463 (c) provide that no action may be brought, subject to permissible arbitration provisions  
9464 in contracts.

9465 (4) Unless by verified complaint it is alleged that prejudice to the complainant will  
9466 arise from a delay in bringing suit against an insurer, which prejudice is other than the delay  
9467 itself, no action may be brought against an insurer on an insurance policy to compel payment  
9468 under the policy until the earlier of:

9469 (a) 60 days after proof of loss has been furnished as required under the policy;

9470 (b) waiver by the insurer of proof of loss; or

9471 (c) the insurer's denial of full payment.

9472 (5) The period of limitation is tolled during the period in which the parties conduct an  
9473 appraisal or arbitration procedure prescribed by the insurance policy, by law, or as agreed to by  
9474 the parties.

9475 Section 254. Section **31A-21-403** is amended to read:

9476 **31A-21-403. Orders terminating effectiveness of policies.**

9477 Upon the commissioner's order, no mass marketed life or accident and health insurance

9478 issued by an insurer may continue to be effected on persons in this state. The commissioner  
9479 may issue an order under this section only if ~~he~~ the commissioner finds, after a hearing, that  
9480 the total charges for the insurance to the persons insured are unreasonable in relation to the  
9481 benefits provided. The commissioner's findings under this section ~~must~~ shall be in writing.  
9482 Orders under this section may direct the insurer to cease effecting the insurance until the total  
9483 charges for the insurance are found by the commissioner to be reasonable in relation to the  
9484 benefits provided.

9485 Section 255. Section **31A-22-305** is amended to read:

9486 **31A-22-305. Uninsured motorist coverage.**

9487 (1) As used in this section, "covered persons" includes:

9488 (a) the named insured;

9489 (b) persons related to the named insured by blood, marriage, adoption, or guardianship,  
9490 who are residents of the named insured's household, including those who usually make their  
9491 home in the same household but temporarily live elsewhere;

9492 (c) any person occupying or using a motor vehicle:

9493 (i) referred to in the policy; or

9494 (ii) owned by a self-insured; and

9495 (d) any person who is entitled to recover damages against the owner or operator of the  
9496 uninsured or underinsured motor vehicle because of bodily injury to or death of persons under  
9497 Subsection (1)(a), (b), or (c).

9498 (2) As used in this section, "uninsured motor vehicle" includes:

9499 (a) (i) a motor vehicle, the operation, maintenance, or use of which is not covered  
9500 under a liability policy at the time of an injury-causing occurrence; or

9501 (ii) (A) a motor vehicle covered with lower liability limits than required by Section  
9502 31A-22-304; and

9503 (B) the motor vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of  
9504 the deficiency;

9505 (b) an unidentified motor vehicle that left the scene of an accident proximately caused  
9506 by the motor vehicle operator;

9507 (c) a motor vehicle covered by a liability policy, but coverage for an accident is  
9508 disputed by the liability insurer for more than 60 days or continues to be disputed for more than

9509 60 days; or

9510 (d) (i) an insured motor vehicle if, before or after the accident, the liability insurer of  
9511 the motor vehicle is declared insolvent by a court of competent jurisdiction; and

9512 (ii) the motor vehicle described in Subsection (2)(d)(i) is uninsured only to the extent  
9513 that the claim against the insolvent insurer is not paid by a guaranty association or fund.

9514 (3) (a) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides  
9515 coverage for covered persons who are legally entitled to recover damages from owners or  
9516 operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death.

9517 (b) For new policies written on or after January 1, 2001, the limits of uninsured  
9518 motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle  
9519 liability coverage or the maximum uninsured motorist coverage limits available by the insurer  
9520 under the insured's motor vehicle policy, unless the insured purchases coverage in a lesser  
9521 amount by signing an acknowledgment form that:

9522 (i) is filed with the department;

9523 (ii) is provided by the insurer;

9524 (iii) waives the higher coverage;

9525 (iv) reasonably explains the purpose of uninsured motorist coverage; and

9526 (v) discloses the additional premiums required to purchase uninsured motorist  
9527 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability  
9528 coverage or the maximum uninsured motorist coverage limits available by the insurer under the  
9529 insured's motor vehicle policy.

9530 (c) A self-insured, including a governmental entity, may elect to provide uninsured  
9531 motorist coverage in an amount that is less than its maximum self-insured retention under  
9532 Subsections (3)(b) and (4)(a) by issuing a declaratory memorandum or policy statement from  
9533 the chief financial officer or chief risk officer that declares the:

9534 (i) self-insured entity's coverage level; and

9535 (ii) process for filing an uninsured motorist claim.

9536 (d) Uninsured motorist coverage may not be sold with limits that are less than the  
9537 minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304.

9538 (e) The acknowledgment under Subsection (3)(b) continues for that issuer of the  
9539 uninsured motorist coverage until the insured, in writing, requests different uninsured motorist

9540 coverage from the insurer.

9541 (f) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for  
9542 policies existing on that date, the insurer shall disclose in the same medium as the premium  
9543 renewal notice, an explanation of:

9544 (A) the purpose of uninsured motorist coverage; and

9545 (B) the costs associated with increasing the coverage in amounts up to and including  
9546 the maximum amount available by the insurer under the insured's motor vehicle policy.

9547 (ii) The disclosure required under this Subsection (3)(f) shall be sent to all insureds that  
9548 carry uninsured motorist coverage limits in an amount less than the insured's motor vehicle  
9549 liability policy limits or the maximum uninsured motorist coverage limits available by the  
9550 insurer under the insured's motor vehicle policy.

9551 (4) (a) (i) Except as provided in Subsection (4)(b), the named insured may reject  
9552 uninsured motorist coverage by an express writing to the insurer that provides liability  
9553 coverage under Subsection 31A-22-302(1)(a).

9554 (ii) This rejection shall be on a form provided by the insurer that includes a reasonable  
9555 explanation of the purpose of uninsured motorist coverage.

9556 (iii) This rejection continues for that issuer of the liability coverage until the insured in  
9557 writing requests uninsured motorist coverage from that liability insurer.

9558 (b) (i) All persons, including governmental entities, that are engaged in the business of,  
9559 or that accept payment for, transporting natural persons by motor vehicle, and all school  
9560 districts that provide transportation services for their students, shall provide coverage for all  
9561 motor vehicles used for that purpose, by purchase of a policy of insurance or by self-insurance,  
9562 uninsured motorist coverage of at least \$25,000 per person and \$500,000 per accident.

9563 (ii) This coverage is secondary to any other insurance covering an injured covered  
9564 person.

9565 (c) Uninsured motorist coverage:

9566 (i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers'  
9567 Compensation Act;

9568 (ii) may not be subrogated by the workers' compensation insurance carrier;

9569 (iii) may not be reduced by any benefits provided by workers' compensation insurance;

9570 (iv) may be reduced by health insurance subrogation only after the covered person has

9571 been made whole;

9572 (v) may not be collected for bodily injury or death sustained by a person:

9573 (A) while committing a violation of Section 41-1a-1314;

9574 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated

9575 in violation of Section 41-1a-1314; or

9576 (C) while committing a felony; and

9577 (vi) notwithstanding Subsection (4)(c)(v), may be recovered:

9578 (A) for a person under 18 years of age who is injured within the scope of Subsection

9579 (4)(c)(v) but limited to medical and funeral expenses; or

9580 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured

9581 within the course and scope of the law enforcement officer's duties.

9582 (d) As used in this Subsection (4), "motor vehicle" has the same meaning as under

9583 Section 41-1a-102.

9584 (5) When a covered person alleges that an uninsured motor vehicle under Subsection

9585 (2)(b) proximately caused an accident without touching the covered person or the motor

9586 vehicle occupied by the covered person, the covered person [~~must~~] shall show the existence of

9587 the uninsured motor vehicle by clear and convincing evidence consisting of more than the

9588 covered person's testimony.

9589 (6) (a) The limit of liability for uninsured motorist coverage for two or more motor

9590 vehicles may not be added together, combined, or stacked to determine the limit of insurance

9591 coverage available to an injured person for any one accident.

9592 (b) (i) Subsection (6)(a) applies to all persons except a covered person as defined under

9593 Subsection (7)(b)(ii).

9594 (ii) A covered person as defined under Subsection (7)(b)(ii) is entitled to the highest

9595 limits of uninsured motorist coverage afforded for any one motor vehicle that the covered

9596 person is the named insured or an insured family member.

9597 (iii) This coverage shall be in addition to the coverage on the motor vehicle the covered

9598 person is occupying.

9599 (iv) Neither the primary nor the secondary coverage may be set off against the other.

9600 (c) Coverage on a motor vehicle occupied at the time of an accident shall be primary

9601 coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall

9602 be secondary coverage.

9603 (7) (a) Uninsured motorist coverage under this section applies to bodily injury,  
9604 sickness, disease, or death of covered persons while occupying or using a motor vehicle only if  
9605 the motor vehicle is described in the policy under which a claim is made, or if the motor  
9606 vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy.  
9607 Except as provided in Subsection (6) or this Subsection (7), a covered person injured in a  
9608 motor vehicle described in a policy that includes uninsured motorist benefits may not elect to  
9609 collect uninsured motorist coverage benefits from any other motor vehicle insurance policy  
9610 under which the person is a covered person.

9611 (b) Each of the following persons may also recover uninsured motorist benefits under  
9612 any one other policy in which they are described as a "covered person" as defined in Subsection  
9613 (1):

9614 (i) a covered person injured as a pedestrian by an uninsured motor vehicle; and  
9615 (ii) except as provided in Subsection (7)(c), a covered person injured while occupying  
9616 or using a motor vehicle that is not owned, leased, or furnished:

9617 (A) to the covered person;

9618 (B) to the covered person's spouse; or

9619 (C) to the covered person's resident parent or resident sibling.

9620 (c) (i) A covered person may recover benefits from no more than two additional  
9621 policies, one additional policy from each parent's household if the covered person is:

9622 (A) a dependent minor of parents who reside in separate households; and

9623 (B) injured while occupying or using a motor vehicle that is not owned, leased, or  
9624 furnished:

9625 (I) to the covered person;

9626 (II) to the covered person's resident parent; or

9627 (III) to the covered person's resident sibling.

9628 (ii) Each parent's policy under this Subsection (7)(c) is liable only for the percentage of  
9629 the damages that the limit of liability of each parent's policy of uninsured motorist coverage  
9630 bears to the total of both parents' uninsured coverage applicable to the accident.

9631 (d) A covered person's recovery under any available policies may not exceed the full  
9632 amount of damages.

9633 (e) A covered person in Subsection (7)(b) is not barred against making subsequent  
9634 elections if recovery is unavailable under previous elections.

9635 (f) (i) As used in this section, "interpolicy stacking" means recovering benefits for a  
9636 single incident of loss under more than one insurance policy.

9637 (ii) Except to the extent permitted by Subsection (6) and this Subsection (7),  
9638 interpolicy stacking is prohibited for uninsured motorist coverage.

9639 (8) (a) When a claim is brought by a named insured or a person described in  
9640 Subsection (1) and is asserted against the covered person's uninsured motorist carrier, the  
9641 claimant may elect to resolve the claim:

9642 (i) by submitting the claim to binding arbitration; or

9643 (ii) through litigation.

9644 (b) Unless otherwise provided in the policy under which uninsured benefits are  
9645 claimed, the election provided in Subsection (8)(a) is available to the claimant only.

9646 (c) Once the claimant has elected to commence litigation under Subsection (8)(a)(ii),  
9647 the claimant may not elect to resolve the claim through binding arbitration under this section  
9648 without the written consent of the uninsured motorist carrier.

9649 (d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to  
9650 binding arbitration under Subsection (8)(a)(i) shall be resolved by a single arbitrator.

9651 (ii) All parties shall agree on the single arbitrator selected under Subsection (8)(d)(i).

9652 (iii) If the parties are unable to agree on a single arbitrator as required under Subsection  
9653 (8)(d)(ii), the parties shall select a panel of three arbitrators.

9654 (e) If the parties select a panel of three arbitrators under Subsection (8)(d)(iii):

9655 (i) each side shall select one arbitrator; and

9656 (ii) the arbitrators appointed under Subsection (8)(e)(i) shall select one additional  
9657 arbitrator to be included in the panel.

9658 (f) Unless otherwise agreed to in writing:

9659 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected  
9660 under Subsection (8)(d)(i); or

9661 (ii) if an arbitration panel is selected under Subsection (8)(d)(iii):

9662 (A) each party shall pay the fees and costs of the arbitrator selected by that party; and

9663 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected

9664 under Subsection (8)(e)(ii).

9665 (g) Except as otherwise provided in this section or unless otherwise agreed to in  
9666 writing by the parties, an arbitration proceeding conducted under this section shall be governed  
9667 by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

9668 (h) The arbitration shall be conducted in accordance with Rules 26 through 37, 54, and  
9669 68 of the Utah Rules of Civil Procedure.

9670 (i) All issues of discovery shall be resolved by the arbitrator or the arbitration panel.

9671 (j) A written decision by a single arbitrator or by a majority of the arbitration panel  
9672 shall constitute a final decision.

9673 (k) (i) The amount of an arbitration award may not exceed the uninsured motorist  
9674 policy limits of all applicable uninsured motorist policies, including applicable uninsured  
9675 motorist umbrella policies.

9676 (ii) If the initial arbitration award exceeds the uninsured motorist policy limits of all  
9677 applicable uninsured motorist policies, the arbitration award shall be reduced to an amount  
9678 equal to the combined uninsured motorist policy limits of all applicable uninsured motorist  
9679 policies.

9680 (l) The arbitrator or arbitration panel may not decide the issues of coverage or  
9681 extra-contractual damages, including:

9682 (i) whether the claimant is a covered person;

9683 (ii) whether the policy extends coverage to the loss; or

9684 (iii) any allegations or claims asserting consequential damages or bad faith liability.

9685 (m) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or  
9686 class-representative basis.

9687 (n) If the arbitrator or arbitration panel finds that the action was not brought, pursued,  
9688 or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney fees  
9689 and costs against the party that failed to bring, pursue, or defend the claim in good faith.

9690 (o) An arbitration award issued under this section shall be the final resolution of all  
9691 claims not excluded by Subsection (8)(l) between the parties unless:

9692 (i) the award was procured by corruption, fraud, or other undue means; or

9693 (ii) either party, within 20 days after service of the arbitration award:

9694 (A) files a complaint requesting a trial de novo in the district court; and

9695 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo  
9696 under Subsection (8)(o)(ii)(A).

9697 (p) (i) Upon filing a complaint for a trial de novo under Subsection (8)(o), the claim  
9698 shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules  
9699 of Evidence in the district court.

9700 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may  
9701 request a jury trial with a complaint requesting a trial de novo under Subsection (8)(o)(ii)(A).

9702 (q) (i) If the claimant, as the moving party in a trial de novo requested under  
9703 Subsection (8)(o), does not obtain a verdict that is at least \$5,000 and is at least 20% greater  
9704 than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.

9705 (ii) If the uninsured motorist carrier, as the moving party in a trial de novo requested  
9706 under Subsection (8)(o), does not obtain a verdict that is at least 20% less than the arbitration  
9707 award, the uninsured motorist carrier is responsible for all of the nonmoving party's costs.

9708 (iii) Except as provided in Subsection (8)(q)(iv), the costs under this Subsection (8)(q)  
9709 shall include:

9710 (A) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

9711 (B) the costs of expert witnesses and depositions.

9712 (iv) An award of costs under this Subsection (8)(q) may not exceed \$2,500.

9713 (r) For purposes of determining whether a party's verdict is greater or less than the  
9714 arbitration award under Subsection (8)(q), a court may not consider any recovery or other relief  
9715 granted on a claim for damages if the claim for damages:

9716 (i) was not fully disclosed in writing prior to the arbitration proceeding; or

9717 (ii) was not disclosed in response to discovery contrary to the Utah Rules of Civil  
9718 Procedure.

9719 (s) If a district court determines, upon a motion of the nonmoving party, that the  
9720 moving party's use of the trial de novo process was filed in bad faith in accordance with  
9721 Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving  
9722 party.

9723 (t) Nothing in this section is intended to limit any claim under any other portion of an  
9724 applicable insurance policy.

9725 (u) If there are multiple uninsured motorist policies, as set forth in Subsection (7), the

9726 claimant may elect to arbitrate in one hearing the claims against all the uninsured motorist  
9727 carriers.

9728 (9) (a) Within 30 days after a covered person elects to submit a claim for uninsured  
9729 motorist benefits to binding arbitration or files litigation, the covered person shall provide to  
9730 the uninsured motorist carrier:

9731 (i) a written demand for payment of uninsured motorist coverage benefits, setting forth:

9732 (A) the specific monetary amount of the demand; and

9733 (B) the factual and legal basis and any supporting documentation for the demand;

9734 (ii) a written statement under oath disclosing:

9735 (A) (I) the names and last known addresses of all health care providers who have  
9736 rendered health care services to the covered person that are material to the claims for which  
9737 uninsured motorist benefits are sought for a period of five years preceding the date of the event  
9738 giving rise to the claim for uninsured motorist benefits up to the time the election for  
9739 arbitration or litigation has been exercised; and

9740 (II) whether the covered person has seen other health care providers who have rendered  
9741 health care services to the covered person, which the covered person claims are immaterial to  
9742 the claims for which uninsured motorist benefits are sought, for a period of five years  
9743 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the  
9744 time the election for arbitration or litigation has been exercised that have not been disclosed  
9745 under Subsection (9)(a)(ii)(A)(I);

9746 (B) (I) the names and last known addresses of all health insurers or other entities to  
9747 whom the covered person has submitted claims for health care services or benefits material to  
9748 the claims for which uninsured motorist benefits are sought, for a period of five years  
9749 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the  
9750 time the election for arbitration or litigation has been exercised; and

9751 (II) whether the identity of any health insurers or other entities to whom the covered  
9752 person has submitted claims for health care services or benefits, which the covered person  
9753 claims are immaterial to the claims for which uninsured motorist benefits are sought, for a  
9754 period of five years preceding the date of the event giving rise to the claim for uninsured  
9755 motorist benefits up to the time the election for arbitration or litigation have not been disclosed;

9756 (C) if lost wages, diminished earning capacity, or similar damages are claimed, all

9757 employers of the covered person for a period of five years preceding the date of the event  
9758 giving rise to the claim for uninsured motorist benefits up to the time the election for  
9759 arbitration or litigation has been exercised;

9760 (D) other documents to reasonably support the claims being asserted; and

9761 (E) all state and federal statutory lienholders including a statement as to whether the  
9762 covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health  
9763 Insurance Program benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act,  
9764 or if the claim is subject to any other state or federal statutory liens; and

9765 (iii) signed authorizations to allow the uninsured motorist carrier to only obtain records  
9766 and billings from the individuals or entities disclosed.

9767 (b) (i) If the uninsured motorist carrier determines that the disclosure of undisclosed  
9768 health care providers or health care insurers under Subsection (9)(a)(ii) is reasonably necessary,  
9769 the uninsured motorist carrier may:

9770 (A) make a request for the disclosure of the identity of the health care providers or  
9771 health care insurers; and

9772 (B) make a request for authorizations to allow the uninsured motorist carrier to only  
9773 obtain records and billings from the individuals or entities not disclosed.

9774 (ii) If the covered person does not provide the requested information within 10 days:

9775 (A) the covered person shall disclose, in writing, the legal or factual basis for the  
9776 failure to disclose the health care providers or health care insurers; and

9777 (B) either the covered person or the uninsured motorist carrier may request the  
9778 arbitrator or arbitration panel to resolve the issue of whether the identities or records are to be  
9779 provided if the covered person has elected arbitration.

9780 (iii) The time periods imposed by Subsection (9)(c)(i) are tolled pending resolution of  
9781 the dispute concerning the disclosure and production of records of the health care providers or  
9782 health care insurers.

9783 (c) (i) An uninsured motorist carrier that receives an election for arbitration or a notice  
9784 of filing litigation and the demand for payment of uninsured motorist benefits under Subsection  
9785 (9)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the demand and  
9786 receipt of the items specified in Subsections (9)(a)(i) through (iii), to:

9787 (A) provide a written response to the written demand for payment provided for in

9788 Subsection (9)(a)(i);

9789 (B) except as provided in Subsection (9)(c)(i)(C), tender the amount, if any, of the  
9790 uninsured motorist carrier's determination of the amount owed to the covered person; and

9791 (C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah  
9792 Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's  
9793 Health Insurance Act, or if the claim is subject to any other state or federal statutory liens,  
9794 tender the amount, if any, of the uninsured motorist carrier's determination of the amount owed  
9795 to the covered person less:

9796 (I) if the amount of the state or federal statutory lien is established, the amount of the  
9797 lien; or

9798 (II) if the amount of the state or federal statutory lien is not established, two times the  
9799 amount of the medical expenses subject to the state or federal statutory lien until such time as  
9800 the amount of the state or federal statutory lien is established.

9801 (ii) If the amount tendered by the uninsured motorist carrier under Subsection (9)(c)(i)  
9802 is the total amount of the uninsured motorist policy limits, the tendered amount shall be  
9803 accepted by the covered person.

9804 (d) A covered person who receives a written response from an uninsured motorist  
9805 carrier as provided for in Subsection (9)(c)(i), may:

9806 (i) elect to accept the amount tendered in Subsection (9)(c)(i) as payment in full of all  
9807 uninsured motorist claims; or

9808 (ii) elect to:

9809 (A) accept the amount tendered in Subsection (9)(c)(i) as partial payment of all  
9810 uninsured motorist claims; and

9811 (B) litigate or arbitrate the remaining claim.

9812 (e) If a covered person elects to accept the amount tendered under Subsection (9)(c)(i)  
9813 as partial payment of all uninsured motorist claims, the final award obtained through  
9814 arbitration, litigation, or later settlement shall be reduced by any payment made by the  
9815 uninsured motorist carrier under Subsection (9)(c)(i).

9816 (f) In an arbitration proceeding on the remaining uninsured claims:

9817 (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid  
9818 under Subsection (9)(c)(i) until after the arbitration award has been rendered; and

9819 (ii) the parties may not disclose the amount of the limits of uninsured motorist benefits  
9820 provided by the policy.

9821 (g) If the final award obtained through arbitration or litigation is greater than the  
9822 average of the covered person's initial written demand for payment provided for in Subsection  
9823 (9)(a)(i) and the uninsured motorist carrier's initial written response provided for in Subsection  
9824 (9)(c)(i), the uninsured motorist carrier shall pay:

9825 (i) the final award obtained through arbitration or litigation, except that if the award  
9826 exceeds the policy limits of the subject uninsured motorist policy by more than \$15,000, the  
9827 amount shall be reduced to an amount equal to the policy limits plus \$15,000; and

9828 (ii) any of the following applicable costs:

9829 (A) any costs as set forth in Rule 54(d), Utah Rules of Civil Procedure;

9830 (B) the arbitrator or arbitration panel's fee; and

9831 (C) the reasonable costs of expert witnesses and depositions used in the presentation of  
9832 evidence during arbitration or litigation.

9833 (h) (i) The covered person shall provide an affidavit of costs within five days of an  
9834 arbitration award.

9835 (ii) (A) Objection to the affidavit of costs shall specify with particularity the costs to  
9836 which the uninsured motorist carrier objects.

9837 (B) The objection shall be resolved by the arbitrator or arbitration panel.

9838 (iii) The award of costs by the arbitrator or arbitration panel under Subsection (9)(g)(ii)  
9839 may not exceed \$5,000.

9840 (i) (i) A covered person shall disclose all material information, other than rebuttal  
9841 evidence, as specified in Subsection (9)(a).

9842 (ii) If the information under Subsection (9)(i)(i) is not disclosed, the covered person  
9843 may not recover costs or any amounts in excess of the policy under Subsection (9)(g).

9844 (j) This Subsection (9) does not limit any other cause of action that arose or may arise  
9845 against the uninsured motorist carrier from the same dispute.

9846 (k) The provisions of this Subsection (9) only apply to motor vehicle accidents that  
9847 occur on or after March 30, 2010.

9848 Section 256. Section **31A-22-408** is amended to read:

9849 **31A-22-408. Standard Nonforfeiture Law for Life Insurance.**

9850 (1) This section is known as the "Standard Nonforfeiture Law for Life Insurance." It  
9851 does not apply to group life insurance.

9852 (2) In the case of policies issued on or after July 1, 1961, no policy of life insurance,  
9853 except as stated in Subsection (8), may be delivered or issued for delivery in this state unless it  
9854 contains in substance the following provisions, or corresponding provisions which in the  
9855 opinion of the commissioner are at least as favorable to the defaulting or surrendering  
9856 policyholder as are the minimum requirements hereinafter specified, and are essentially in  
9857 compliance with Subsection (8):

9858 (a) That, in the event of default in any premium payment, after premiums have been  
9859 paid for at least one full year the company will grant, upon proper request not later than 60 days  
9860 after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated  
9861 in the policy, effective as of such due date, of such amount as is specified in this section. In  
9862 lieu of that stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper  
9863 request not later than 60 days after the due date of the premium in default, an actuarially  
9864 equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer  
9865 period of death benefits or, if applicable, a greater amount or earlier payment of endowment  
9866 benefits.

9867 (b) That, upon surrender of the policy within 60 days after the due date of any premium  
9868 payment in default after premiums have been paid for at least three full years in the case of  
9869 ordinary insurance or five full years in the case of industrial insurance, the company will pay,  
9870 in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as is  
9871 specified in this section.

9872 (c) That a specified paid-up nonforfeiture benefit shall become effective as specified in  
9873 the policy unless the person entitled to make such election elects another available option not  
9874 later than 60 days after the due date of the premium in default.

9875 (d) That, if the policy shall have been paid by the completion of all premium payments  
9876 or if it is continued under any paid-up nonforfeiture benefit which became effective on or after  
9877 the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in  
9878 the case of industrial insurance, the company will pay upon surrender of the policy within 30  
9879 days after any policy anniversary, a cash surrender value in the amount specified in this section.

9880 (e) In the case of policies which cause, on a basis guaranteed in the policy, unscheduled

9881 changes in benefits or premiums, or which provide an option for changes in benefits or  
9882 premiums other than a change to a new policy, a statement of the mortality table, interest rate,  
9883 and method used in calculating cash surrender values and the paid-up nonforfeiture benefits  
9884 available under the policy. In the case of all other policies, a statement of the mortality table  
9885 and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture  
9886 benefit, if any, available under the policy on each policy anniversary either during the first 20  
9887 policy years or during the term of the policy, whichever is shorter, such values and benefits to  
9888 be calculated upon the assumption that there are no dividends or paid-up additions credited to  
9889 the policy and that there is no indebtedness to the company on the policy.

9890 (f) A statement that the cash surrender values and the paid-up nonforfeiture benefits  
9891 available under the policy are not less than the minimum values and benefits required by or  
9892 pursuant to the insurance law of the state in which the policy is delivered; an explanation of the  
9893 manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by  
9894 the existence of any paid-up additions credited to the policy or any indebtedness to the  
9895 company on the policy; if a detailed statement of the method of computation of the values and  
9896 benefits shown in the policy is not stated therein, a statement that such method of computation  
9897 has been filed with the insurance supervisory official of the state in which the policy is  
9898 delivered; and a statement of the method to be used in calculating the cash surrender value and  
9899 paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the  
9900 last anniversary for which such values and benefits are consecutively shown in the policy.

9901 Any of the foregoing provisions or portions thereof not applicable by reason of the plan  
9902 of insurance may, to the extent inapplicable, be omitted from the policy.

9903 The company shall reserve the right to defer the payment of any cash surrender value  
9904 for a period of six months after demand therefor with surrender of the policy with the consent  
9905 of the commissioner; provided, however, that the policy shall remain in full force and effect  
9906 until the insurer has made the payment.

9907 (3) Any cash surrender value available under the policy in the event of default in a  
9908 premium payment due on any policy anniversary, whether or not required by Subsection (2),  
9909 shall be an amount not less than the excess, if any, of the present value, on such anniversary, of  
9910 the future guaranteed benefits which would have been provided for by the policy, including any  
9911 existing paid-up additions, if there had been no default, over the sum of: (a) the then present

9912 value of the adjusted premiums as defined in Subsections (5) and (6), corresponding to  
9913 premiums which would have fallen due on and after such anniversary, and (b) the amount of  
9914 any indebtedness to the company on the policy.

9915         Provided, however, that for any policy issued on or after the operative date of  
9916 Subsection (6)(d) as defined therein, which provides supplemental life insurance or annuity  
9917 benefits at the option of the insured and for an identifiable additional premium by rider or  
9918 supplemental policy provision, the cash surrender value referred to in the first paragraph of this  
9919 subsection shall be an amount not less than the sum of the cash surrender value as defined in  
9920 such paragraph for an otherwise similar policy issued at the same age without such rider or  
9921 supplemental policy provision and the cash surrender value as defined in such paragraph for a  
9922 policy which provides only the benefits otherwise provided by such rider or supplemental  
9923 policy provision.

9924         Provided, further, that for any family policy issued on or after the operative date of  
9925 Subsection (6)(d) as defined therein, which defines a primary insured and provides term  
9926 insurance on the life of the spouse of the primary insured expiring before the spouse's age 71,  
9927 the cash surrender value referred to in the first paragraph of this subsection shall be an amount  
9928 not less than the sum of the cash surrender value as defined in such paragraph for an otherwise  
9929 similar policy issued at the same age without such term insurance on the life of the spouse and  
9930 the cash surrender value as defined in such paragraph for a policy which provides only the  
9931 benefits otherwise provided by such term insurance on the life of the spouse. Any cash  
9932 surrender value available within 30 days after any policy anniversary under any policy paid-up  
9933 by completion of all premium payments or any policy continued under any paid-up  
9934 nonforfeiture benefit, whether or not required by Subsection (2) shall be an amount not less  
9935 than the present value, on such anniversary, of the future guaranteed benefits provided for by  
9936 the policy, including any existing paid-up additions, decreased by any indebtedness to the  
9937 company on the policy.

9938         (4) Any paid-up nonforfeiture benefit available under the policy in the event of default  
9939 in a premium payment due on any policy anniversary shall be such that its present value as of  
9940 such anniversary shall be at least equal to the cash surrender value then provided for by the  
9941 policy or, if none is provided for, that cash surrender value which would have been required by  
9942 this section in the absence of the condition that premiums shall have been paid for at least a

9943 specified period.

9944           (5) (a) This Subsection (5)(a) does not apply to policies issued on or after the operative  
9945 date of Subsection (6)(d) as defined therein. Except as provided in Subsection (5)(c), the  
9946 adjusted premiums for any policy shall be calculated on an annual basis and shall be such  
9947 uniform percentage of the respective premiums specified in the policy for each policy year,  
9948 excluding any extra premiums charged because of impairments or special hazards, that the  
9949 present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to  
9950 the sum of: (i) the then present value of the future guaranteed benefits provided for by the  
9951 policy; (ii) 2% of the amount of insurance, if the insurance be uniform in amount, or of the  
9952 equivalent uniform amount if the amount of insurance varies with duration of the policy; (iii)  
9953 40% of the adjusted premium for the first policy year; and (iv) 25% of either the adjusted  
9954 premium for the first policy year or the adjusted premium for a whole life policy of the same  
9955 uniform or equivalent uniform amount with uniform premiums for the whole of life issued at  
9956 the same age for the same amount of insurance, whichever is less. Provided, however, that in  
9957 applying the percentages specified in Subsections (5)(a)(iii) and (iv), no adjusted premium  
9958 shall be considered to exceed 4% of the amount of insurance or uniform amount equivalent  
9959 thereto. The date of issue of a policy for the purpose of this section shall be the date as of  
9960 which the rated age of the insured is determined.

9961           (b) In the case of a policy providing an amount of insurance varying with duration of  
9962 the policy, the equivalent uniform amount thereof for the purpose of this section shall be  
9963 considered to be the uniform amount of insurance provided by an otherwise similar policy,  
9964 containing the same endowment benefit or benefits, if any, issued at the same age and for the  
9965 same term, the amount of which does not vary with duration and the benefits under which have  
9966 the same present value at the date of issue as the benefits under the policy; provided, however,  
9967 that in the case of a policy providing a varying amount of insurance issued on the life of a child  
9968 under age 10, the equivalent uniform amount may be computed as though the amount of  
9969 insurance provided by the policy prior to the attainment of age 10 were the amount provided by  
9970 such policy at age 10.

9971           (c) The adjusted premiums for any policy providing term insurance benefits by rider or  
9972 supplemental policy provision shall be equal to: (i) the adjusted premiums for an otherwise  
9973 similar policy issued at the same age without such term insurance benefits, increased, during

9974 the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted  
9975 premiums for such term insurance, the foregoing items (i) and (ii) of this [paragraph]  
9976 Subsection (5)(c) being calculated separately and as specified in Subsections (5)(a) and (b)  
9977 except that, for the purposes of (ii), (iii), and (iv) of Subsection (5)(a), the amount of insurance  
9978 or equivalent uniform amount of insurance used in calculation of the adjusted premiums  
9979 referred to in (ii) of this [paragraph] Subsection (5)(c) shall be equal to the excess of the  
9980 corresponding amount determined for the entire policy over the amount used in the calculation  
9981 of the adjusted premiums in (i) of this [paragraph] Subsection (5)(c).

9982 (d) Except as otherwise provided in Subsection (6), all adjusted premiums and present  
9983 values referred to in this section shall for all policies of ordinary insurance be calculated on the  
9984 basis of the Commissioner's 1941 Standard Ordinary Mortality Table, provided that for any  
9985 category of ordinary insurance issued on female risks, adjusted premiums and present values  
9986 may be calculated according to an age not more than three years younger than the actual age of  
9987 the insured and such calculations for all policies of industrial insurance shall be made on the  
9988 basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the  
9989 basis of the rate of interest, not exceeding 3-1/2% per annum, specified in the policy for  
9990 calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that  
9991 in calculating the present value of any paid-up term insurance with accompanying pure  
9992 endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be  
9993 not more than 130% of the rates of mortality according to such applicable table. Provided,  
9994 further, that for insurance issued on a substandard basis, the calculation of any such adjusted  
9995 premiums and present values may be based on such other table of mortality as may be specified  
9996 by the company and approved by the commissioner.

9997 (6) (a) This Subsection (6)(a) does not apply to ordinary policies issued on or after the  
9998 operative date of Subsection (6)(d) as defined therein. In the case of ordinary policies issued  
9999 on or after the operative date of Subsection (6)(a) as defined in Subsection (6)(b), all adjusted  
10000 premiums and present values referred to in this section shall be calculated on the basis of the  
10001 Commissioner's 1958 Standard Ordinary Mortality Table and the rate of interest as specified in  
10002 the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided  
10003 that such rate of interest [~~shall not~~ may not exceed 3-1/2% per annum for policies issued  
10004 before June 1, 1973, 4% per annum for policies issued on or after May 31, 1973, and before

10005 April 2, 1980, and the rate of interest [~~shall not~~] may not exceed 5-1/2% per annum for policies  
10006 issued after April 2, 1980, except that for any single premium whole life or endowment  
10007 insurance policy a rate of interest not exceeding 6-1/2% per annum may be used, and provided  
10008 that for any category of ordinary insurance issued on female risks, adjusted premiums and  
10009 present values may be calculated according to an age not more than six years younger than the  
10010 actual age of the insured. Provided, however, that in calculating the present value of any  
10011 paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture  
10012 benefit, the rates of mortality assumed may be not more than those shown in the  
10013 Commissioner's 1958 Extended Term Insurance Table. Provided, further, that for insurance  
10014 issued on a substandard basis, the calculation of any such adjusted premiums and present  
10015 values may be based on such other table of mortality as may be specified by the company and  
10016 approved by the commissioner.

10017 (b) Any company may file with the commissioner a written notice of its election to  
10018 comply with the provisions of Subsection (6)(a) after a specified date before January 1, 1966.  
10019 After filing such notice, then upon such specified date, which is the operative date of  
10020 Subsection (6)(a) for such company, this Subsection (6)(a) shall become operative with respect  
10021 to the ordinary policies thereafter issued by such company. If a company makes no such  
10022 election, the operative date of Subsection (6)(a) for such company is January 1, 1966.

10023 (c) This Subsection (6)(c) does not apply to industrial policies issued after the  
10024 operative date of Subsection (6)(d) as defined therein. In the case of industrial policies issued  
10025 on or after the operative date of this Subsection (6)(c) as defined herein, all adjusted premiums  
10026 and present values referred to in this section shall be calculated on the basis of the  
10027 Commissioner's 1961 Standard Industrial Mortality Table and the rate of interest specified in  
10028 the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided  
10029 that such rate of interest [~~shall not~~] may not exceed 3-1/2% per annum for policies issued  
10030 before June 1, 1973, 4% per annum for policies issued after May 31, 1973, and before April 2,  
10031 1980, and 5-1/2% per annum for policies issued after April 2, 1980, except that for any single  
10032 premium whole life or endowment insurance policy issued after April 2, 1980, a rate of interest  
10033 not exceeding 6-1/2% per annum may be used. Provided, however, that in calculating the  
10034 present value of any paid-up term insurance with accompanying pure endowment, if any,  
10035 offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those

10036 shown in the Commissioner's 1961 Industrial Extended Term Insurance Table. Provided,  
10037 further, that for insurance issued on a substandard basis, the calculation of any such adjusted  
10038 premiums and present values may be based on such other table of mortality as may be specified  
10039 by the company and approved by the commissioner.

10040 Any company may file with the commissioner a written notice of its election to comply  
10041 with the provisions of this Subsection (6)(c) after a specified date before January 1, 1968.  
10042 After filing such notice, then upon that specified date, which is the operative date of this  
10043 Subsection (6) (c) for such company, this Subsection (6)(c) shall become operative with respect  
10044 to the industrial policies thereafter issued by such company. If a company makes no such  
10045 election, the operative date of this ~~[paragraph]~~ Subsection (6)(c) for such company shall be  
10046 January 1, 1968.

10047 (d) (i) This Subsection (6)(d) applies to all policies issued on or after the operative date  
10048 of this subsection as defined herein. Except as provided in Subsection (6)(d)(vii), the adjusted  
10049 premiums for any policy shall be calculated on an annual basis and shall be such uniform  
10050 percentage of the respective premiums specified in the policy for each policy year, excluding  
10051 amounts payable as extra premiums to cover impairments or special hazards and also excluding  
10052 any uniform annual contract charge or policy fee specified in the policy in a statement of the  
10053 method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits,  
10054 that the present value, at the date of issue of policy, of all adjusted premiums shall be equal to  
10055 the sum of: (A) the then present value of the future guaranteed benefits provided for by the  
10056 policy; (B) 1% of either the amount of insurance, if the insurance be uniform in amount, or the  
10057 average amount of insurance at the beginning of each of the first 10 policy years; and (C) 125%  
10058 of the nonforfeiture net level premium as hereinafter defined. Provided, however, that in  
10059 applying the percentage specified in (C), no nonforfeiture net level premium shall be  
10060 considered to exceed 4% of either the amount of insurance, if the insurance be uniform in  
10061 amount, or the average amount of insurance at the beginning of each of the first 10 policy  
10062 years. The date of issue of a policy for the purpose of this subsection shall be the date as of  
10063 which the rated age of the insured is determined.

10064 (ii) The nonforfeiture net level premium shall be equal to the present value, at the date  
10065 of issue of the policy, of the guaranteed benefits provided for by the policy divided by the  
10066 present value, at the date of issue of the policy, of an annuity of one per annum payable on the

10067 date of issue of the policy and on each anniversary of such policy on which a premium falls  
10068 due.

10069 (iii) In the case of policies which cause on a basis guaranteed in the policy unscheduled  
10070 changes in benefits or premiums, or which provide an option for changes in benefits or  
10071 premiums other than change to a new policy, the adjusted premiums and present values shall  
10072 initially be calculated on the assumption that future benefits and premiums do not change from  
10073 those stipulated at the date of issue of the policy. At the time of any such change in the  
10074 benefits or premiums the future adjusted premiums, nonforfeiture net level premiums, and  
10075 present values shall be recalculated on the assumption that future benefits and premiums do not  
10076 change from those stipulated by the policy immediately after the change.

10077 (iv) Except as otherwise provided in Subsection (6)(d)(vii), the recalculated future  
10078 adjusted premiums for any such policy shall be such uniform percentage of the respective  
10079 future premiums specified in the policy for each policy year, excluding amounts specified in  
10080 the policy for each policy year, excluding amounts payable as extra premiums to cover  
10081 impairments and special hazards, and also excluding any uniform annual contract charge or  
10082 policy fee specified in the policy in a statement of the method to be used in calculating the cash  
10083 surrender values and paid-up nonforfeiture benefits, that the present value, at the time of  
10084 change to the newly defined benefits or premiums, of all such future adjusted premiums shall  
10085 be equal to the excess of (A) the sum of: (I) the then present value of the then future guaranteed  
10086 benefits provided for by the policy and (II) the additional expense allowance, if any, over (B)  
10087 the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit  
10088 under the policy.

10089 (v) The additional expense allowance, at the time of the change to the newly defined  
10090 benefits or premiums, shall be the sum of: (A) 1% of the excess, if positive, of the average  
10091 amount of insurance at the beginning of each of the first 10 policy years subsequent to the  
10092 change over the average amount of insurance prior to the change at the beginning of each of the  
10093 first 10 policy years subsequent to the time of the most recent previous change, or, if there has  
10094 been no previous change, the date of issue of the policy; and (B) 125% of the increase, if  
10095 positive, in the nonforfeiture net level premium.

10096 (vi) The recalculated nonforfeiture net level premium shall be equal to the result  
10097 obtained by dividing (A) by (B) where

10098 (A) equals the sum of:

10099 (I) the nonforfeiture net level premium applicable prior to the change times the present  
10100 value of an annuity of one per annum payable on each anniversary of the policy on or  
10101 subsequent to the date of the change on which a premium would have fallen due had the  
10102 change not occurred; and

10103 (II) the present value of the increase in future guaranteed benefits provided for by the  
10104 policy; and

10105 (B) equals the present value of an annuity of one per annum payable on each  
10106 anniversary of the policy on or subsequent to the date of change on which a premium falls due.

10107 (vii) Notwithstanding any other provision of this Subsection (6)(d) to the contrary, in  
10108 the case of a policy issued on a substandard basis which provides reduced graded amounts of  
10109 insurance so that, in each policy year, such policy has the same tabular mortality cost as an  
10110 otherwise similar policy issued on the standard basis which provides higher uniform amounts  
10111 of insurance, adjusted premiums and present values for such substandard policy may be  
10112 calculated as if it were issued to provide such higher uniform amounts of insurance on the  
10113 standard basis.

10114 (viii) All adjusted premiums and present values referred to in this section shall for all  
10115 policies of ordinary insurance be calculated on the basis of: (A) the Commissioner's 1980  
10116 Standard Ordinary Mortality Table; or (B) at the election of the company for any one or more  
10117 specified plans of life insurance, the Commissioner's 1980 Standard Ordinary Mortality Table  
10118 with Ten-Year Select Mortality Factors; shall for all policies of industrial insurance be  
10119 calculated on the basis of the Commissioner's 1961 Standard Industrial Mortality Table; and  
10120 shall for all policies issued in a particular calendar year be calculated on the basis of a rate of  
10121 interest not exceeding the nonforfeiture interest rate as defined in this subsection, for policies  
10122 issued in that calendar year. Provided, however, that:

10123 (I) At the option of the company, calculations for all policies issued in a particular  
10124 calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture  
10125 interest rate, as defined in this subsection, for policies issued in the immediately preceding  
10126 calendar year.

10127 (II) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions,  
10128 any cash surrender value available, whether or not required by Subsection (2), shall be

10129 calculated on the basis of the mortality table and rate of interest used in determining the  
10130 amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

10131 (III) A company may calculate the amount of any guaranteed paid-up nonforfeiture  
10132 benefit, including paid-up additions under the policy, on the basis of an interest rate no lower  
10133 than that specified in the policy for calculating cash surrender values.

10134 (IV) In calculating the present value of any paid-up term insurance with accompanying  
10135 pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may  
10136 be not more than those shown in the Commissioner's 1980 Extended Term Insurance Table for  
10137 policies of ordinary insurance and not more than the Commissioner's 1961 Industrial Extended  
10138 Term Insurance Table for policies of industrial insurance.

10139 (V) For insurance issued on a substandard basis, the calculation of any such adjusted  
10140 premiums and present values may be based on appropriate modifications of the aforementioned  
10141 tables.

10142 (VI) Any ordinary mortality tables, adopted after 1980 by the National Association of  
10143 Insurance Commissioners, that are approved by rules adopted by the commissioner for use in  
10144 determining the minimum nonforfeiture standard, may be substituted for the Commissioner's  
10145 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or  
10146 for the Commissioner's 1980 Extended Term Insurance Table.

10147 (VII) Any industrial mortality tables, adopted after 1980 by the National Association of  
10148 Insurance Commissioners, that are approved by rules adopted by the commissioner for use in  
10149 determining the minimum nonforfeiture standard may be substituted for the Commissioner's  
10150 1961 Industrial Extended Term Insurance Table.

10151 (ix) The nonforfeiture interest rate per annum for any policy issued in a particular  
10152 calendar year shall be equal to 125% of the calendar year statutory valuation interest rate for  
10153 such policy as defined in the Standard Valuation Law, rounded to the nearest [~~1/4~~] one-fourth  
10154 of 1%.

10155 (x) Notwithstanding any other provision in this title to the contrary, any refiling of  
10156 nonforfeiture values or their methods of computation for any previously approved policy form  
10157 which involves only a change in the interest rate or mortality table used to compute  
10158 nonforfeiture values does not require refiling of any other provisions of that policy form.

10159 (xi) After the effective date of this Subsection (6)(d), any company may, at any time

10160 before January 1, 1989, file with the commissioner a written notice of its election to comply  
10161 with the provisions of this subsection with regard to any number of plans of insurance after a  
10162 specified date before January 1, 1989, which specified date shall be the operative date of this  
10163 Subsection (6)(d) for the plan or plans, but if a company elects to make the provisions of this  
10164 subsection operative before January 1, 1989, for fewer than all plans, the company [~~must~~] shall  
10165 comply with rules adopted by the commissioner. There is no limit to the number of times this  
10166 election may be made. If the company makes no such election, the operative date of this  
10167 subsection for such company shall be January 1, 1989.

10168 (7) In the case of any plan of life insurance which provides for future premium  
10169 determination, the amounts of which are to be determined by the insurance company based on  
10170 the estimates of future experience, or in the case of any plan of life insurance which is of such  
10171 nature that minimum values cannot be determined by the methods described in Subsection (2),  
10172 (3), (4), (5), (6)(a), (6)(b), (6)(c), or (6)(d) herein, then:

10173 (a) the plan of life insurance shall satisfy the commissioner [~~must be satisfied~~] that the  
10174 benefits provided under the plan are substantially as favorable to policyholders and insureds as  
10175 the minimum benefits otherwise required by Subsection (2), (3), (4), (5), (6)(a), (6)(b), (6)(c),  
10176 or (6)(d);

10177 (b) the plan of life insurance shall satisfy the commissioner [~~must be satisfied~~] that the  
10178 benefits and the pattern of premiums of that plan are not such as to mislead prospective  
10179 policyholders or insureds; and

10180 (c) the cash surrender values and paid-up nonforfeiture benefits provided by [~~such~~] the  
10181 plan [~~must not~~] may not be less than the minimum values and benefits required for the plan  
10182 computed by a method consistent with the principles of this Standard Nonforfeiture Law for  
10183 Life Insurance, as determined by rules adopted by the commissioner.

10184 (8) Any cash surrender value and any paid-up nonforfeiture benefit, available under the  
10185 policy in the event of default in a premium payment due at any time other than on the policy  
10186 anniversary, shall be calculated with allowance for the lapse of time and the payment of  
10187 fractional premiums beyond the last preceding policy anniversary. All values referred to in  
10188 Subsections (3), (4), (5), and (6) of this section may be calculated upon the assumption that any  
10189 death benefit is payable at the end of the policy year of death. The net value of any paid-up  
10190 additions, other than paid-up term additions, may not be less than the amounts used to provide

10191 such additions. Notwithstanding the provisions of Subsection (3), additional benefits payable:  
10192 (a) in the event of death or dismemberment by accident or accidental means, (b) in the event of  
10193 total and permanent disability, (c) as reversionary annuity or deferred reversionary annuity  
10194 benefits, (d) as term insurance benefits provided by a rider or supplemental policy provision to  
10195 which, if issued as a separate policy, this section would not apply, (e) as term insurance on the  
10196 life of a child or on the lives of children provided in a policy on the life of a parent of the child,  
10197 if such term insurance expires before the child's age is 26, if uniform in amount after the child's  
10198 age is one, and has not become paid-up by reason of the death of a parent of the child, and (f)  
10199 as other policy benefits additional to life insurance endowment benefits, and premiums for all  
10200 such additional benefits, shall be disregarded in ascertaining cash surrender values and  
10201 nonforfeiture benefits required by this section, and no such additional benefits shall be required  
10202 to be included in any paid-up nonforfeiture benefits.

10203 (9) This Subsection (9), in addition to all other applicable subsections of this section,  
10204 applies to all policies issued on or after January 1, 1985. Any cash surrender value available  
10205 under the policy in the event of default in a premium payment due on any policy anniversary  
10206 shall be in an amount which does not differ by more than 2/10 of 1% of either the amount of  
10207 insurance, if the insurance be uniform in amount, or the average amount of insurance at the  
10208 beginning of each of the first 10 policy years, from the sum of: (a) the greater of zero and the  
10209 basic cash value hereinafter specified, and (b) the present value of any existing paid-up  
10210 additions less the amount of any indebtedness to the company under the policy.

10211 The basic cash value shall be equal to the present value, on such anniversary of the  
10212 future guaranteed benefits which would have been provided for by the policy, excluding any  
10213 existing paid-up additions and before deduction of any indebtedness to the company, if there  
10214 had been no default, less the then present value of the nonforfeiture factors, as hereinafter  
10215 defined, corresponding to premiums which would have fallen due on and after such  
10216 anniversary. Provided, however, that the effects on the basic cash value of supplemental life  
10217 insurance or annuity benefits or of family coverage, as described in Subsection (3) or (5),  
10218 whichever is applicable, shall be the same as are the effects specified in Subsection (3) or (5),  
10219 whichever is applicable, on the cash surrender values defined in that subsection.

10220 The nonforfeiture factor for each policy year shall be an amount equal to a percentage  
10221 of the adjusted premium for the policy year, as defined in Subsection (5) or (6)(d), whichever is

10222 applicable. Except as is required by the next succeeding sentence of this paragraph, such  
10223 percentage:

10224 (a) [~~must~~] shall be the same percentage for each policy year between the second policy  
10225 anniversary and the later of: (i) the fifth policy anniversary and (ii) the first policy anniversary  
10226 at which there is available under the policy a cash surrender value in an amount, before  
10227 including any paid-up additions and before deducting any indebtedness, of at least 2/10 of 1%  
10228 of either the amount of insurance, if the insurance be uniform in amount, or the average amount  
10229 of insurance at the beginning of each of the first 10 policy years; and

10230 (b) [~~must~~] shall be such that no percentage after the later of the two policy  
10231 anniversaries specified in Subsection (9)(a) may apply to fewer than five consecutive policy  
10232 years.

10233 Provided, that no basic cash value may be less than the value which would be obtained  
10234 if the adjusted premiums for the policy, as defined in Subsection (5) or Subsection (6)(d),  
10235 whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the  
10236 basic value.

10237 All adjusted premiums and present values referred to in this Subsection (9) shall for a  
10238 particular policy be calculated on the same mortality and interest bases as are used in  
10239 demonstrating the policy's compliance with the other subsections of this law. The cash  
10240 surrender values referred to in this subsection shall include any endowment benefits provided  
10241 for by the policy.

10242 Any cash surrender value available other than in the event of default in a premium  
10243 payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit  
10244 available under the policy in the event of default in a premium payment shall be determined in  
10245 manners consistent with the manners specified for determining the analogous minimum  
10246 amounts in Subsections (2), (3), (4), (5), (6), and (8). The amounts of any cash surrender  
10247 values and of any paid-up nonforfeiture benefits granted in connection with additional benefits  
10248 such as those listed as Subsections (8)(a) through (f) shall conform with the principles of this  
10249 Subsection (9).

10250 (10) This section does not apply to any of the following:

10251 (a) reinsurance;

10252 (b) group insurance;

- 10253 (c) pure endowment;
- 10254 (d) an annuity or reversionary annuity contract;
- 10255 (e) a term policy of uniform amount, which provides no guaranteed nonforfeiture or  
10256 endowment benefits, or renewal thereof, of 20 years or less expiring before age 71, for which  
10257 uniform premiums are payable during the entire term of the policy;
- 10258 (f) a term policy of decreasing amount, which provides no guaranteed nonforfeiture or  
10259 endowment benefits, on which each adjusted premium, calculated as specified in Subsections  
10260 (5) and (6), is less than the adjusted premium so calculated, on a term policy of uniform  
10261 amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment  
10262 benefits, issued at the same age and for the same initial amount of insurance, and for a term of  
10263 20 years or less expiring before age 71, for which uniform premiums are payable during the  
10264 entire term of the policy;
- 10265 (g) a policy, which provides no guaranteed nonforfeiture or endowment benefits, for  
10266 which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at  
10267 the beginning of any policy year, calculated as specified in Subsections (3), (4), (5), and (6)  
10268 exceeds 2-1/2% of the amount of insurance at the beginning of the same policy year; or
- 10269 (h) a policy which shall be delivered outside this state through an agent or other  
10270 representative of the company issuing the policy.

10271 For purposes of determining the applicability of this section, the age of expiry for a  
10272 joint term insurance policy shall be the age of expiry of the oldest life.

10273 (11) The commissioner may adopt rules interpreting, describing, and clarifying the  
10274 application of this nonforfeiture law to any form of life insurance for which the interpretation,  
10275 description, or clarification is ~~deemed~~ considered necessary by the commissioner, including  
10276 ~~[but not limited to,]~~ unusual and new forms of life insurance.

10277 Section 257. Section **31A-22-610.5** is amended to read:

10278 **31A-22-610.5. Dependent coverage.**

10279 (1) As used in this section, "child" has the same meaning as defined in Section  
10280 78B-12-102.

10281 (2) (a) Any individual or group accident and health insurance policy or health  
10282 maintenance organization contract that provides coverage for a policyholder's or certificate  
10283 holder's dependent may not terminate coverage of an unmarried dependent by reason of the

10284 dependent's age before the dependent's 26th birthday and shall, upon application, provide  
10285 coverage for all unmarried dependents up to age 26.

10286 (b) The cost of coverage for unmarried dependents 19 to 26 years of age shall be  
10287 included in the premium on the same basis as other dependent coverage.

10288 (c) This section does not prohibit the employer from requiring the employee to pay all  
10289 or part of the cost of coverage for unmarried dependents.

10290 (d) An individual health insurance policy, group health insurance policy, or health  
10291 maintenance organization shall continue in force coverage for a dependent through the last day  
10292 of the month in which the dependent ceases to be a dependent:

10293 (i) if premiums are paid; and

10294 (ii) notwithstanding Section 31A-8-402.3, 31A-8-402.5, 31A-22-721, 31A-30-107.1,  
10295 or 31A-30-107.3.

10296 (3) An individual or group accident and health insurance policy or health maintenance  
10297 organization contract shall reinstate dependent coverage, and for purposes of all exclusions and  
10298 limitations, shall treat the dependent as if the coverage had been in force since it was  
10299 terminated; if:

10300 (a) the dependent has not reached the age of 26 by July 1, 1995;

10301 (b) the dependent had coverage prior to July 1, 1994;

10302 (c) prior to July 1, 1994, the dependent's coverage was terminated solely due to the age  
10303 of the dependent; and

10304 (d) the policy has not been terminated since the dependent's coverage was terminated.

10305 (4) (a) When a parent is required by a court or administrative order to provide health  
10306 insurance coverage for a child, an accident and health insurer may not deny enrollment of a  
10307 child under the accident and health insurance plan of the child's parent on the grounds the  
10308 child:

10309 (i) was born out of wedlock and is entitled to coverage under Subsection (5);

10310 (ii) was born out of wedlock and the custodial parent seeks enrollment for the child  
10311 under the custodial parent's policy;

10312 (iii) is not claimed as a dependent on the parent's federal tax return; or

10313 (iv) does not reside with the parent or in the insurer's service area.

10314 (b) A child enrolled as required under Subsection (4)(a)(iv) is subject to the terms of

10315 the accident and health insurance plan contract pertaining to services received outside of an  
10316 insurer's service area. A health maintenance organization [~~must~~] shall comply with Section  
10317 31A-8-502.

10318 (5) When a child has accident and health coverage through an insurer of a noncustodial  
10319 parent, and when requested by the noncustodial or custodial parent, the insurer shall:

10320 (a) provide information to the custodial parent as necessary for the child to obtain  
10321 benefits through that coverage, but the insurer or employer, or the agents or employees of either  
10322 of them, are not civilly or criminally liable for providing information in compliance with this  
10323 Subsection (5)(a), whether the information is provided pursuant to a verbal or written request;

10324 (b) permit the custodial parent or the service provider, with the custodial parent's  
10325 approval, to submit claims for covered services without the approval of the noncustodial  
10326 parent; and

10327 (c) make payments on claims submitted in accordance with Subsection (5)(b) directly  
10328 to the custodial parent, the child who obtained benefits, the provider, or the state Medicaid  
10329 agency.

10330 (6) When a parent is required by a court or administrative order to provide health  
10331 coverage for a child, and the parent is eligible for family health coverage, the insurer shall:

10332 (a) permit the parent to enroll, under the family coverage, a child who is otherwise  
10333 eligible for the coverage without regard to an enrollment season restrictions;

10334 (b) if the parent is enrolled but fails to make application to obtain coverage for the  
10335 child, enroll the child under family coverage upon application of the child's other parent, the  
10336 state agency administering the Medicaid program, or the state agency administering 42 U.S.C.  
10337 Sec. 651 through 669, the child support enforcement program; and

10338 (c) (i) when the child is covered by an individual policy, not disenroll or eliminate  
10339 coverage of the child unless the insurer is provided satisfactory written evidence that:

10340 (A) the court or administrative order is no longer in effect; or

10341 (B) the child is or will be enrolled in comparable accident and health coverage through  
10342 another insurer which will take effect not later than the effective date of disenrollment; or

10343 (ii) when the child is covered by a group policy, not disenroll or eliminate coverage of  
10344 the child unless the employer is provided with satisfactory written evidence, which evidence is  
10345 also provided to the insurer, that Subsection (9)(c)(i), (ii) or (iii) has happened.

10346 (7) An insurer may not impose requirements on a state agency that has been assigned  
10347 the rights of an individual eligible for medical assistance under Medicaid and covered for  
10348 accident and health benefits from the insurer that are different from requirements applicable to  
10349 an agent or assignee of any other individual so covered.

10350 (8) Insurers may not reduce their coverage of pediatric vaccines below the benefit level  
10351 in effect on May 1, 1993.

10352 (9) When a parent is required by a court or administrative order to provide health  
10353 coverage, which is available through an employer doing business in this state, the employer  
10354 shall:

10355 (a) permit the parent to enroll under family coverage any child who is otherwise  
10356 eligible for coverage without regard to any enrollment season restrictions;

10357 (b) if the parent is enrolled but fails to make application to obtain coverage of the child,  
10358 enroll the child under family coverage upon application by the child's other parent, by the state  
10359 agency administering the Medicaid program, or the state agency administering 42 U.S.C. Sec.  
10360 651 through 669, the child support enforcement program;

10361 (c) not disenroll or eliminate coverage of the child unless the employer is provided  
10362 satisfactory written evidence that:

10363 (i) the court order is no longer in effect;

10364 (ii) the child is or will be enrolled in comparable coverage which will take effect no  
10365 later than the effective date of disenrollment; or

10366 (iii) the employer has eliminated family health coverage for all of its employees; and

10367 (d) withhold from the employee's compensation the employee's share, if any, of  
10368 premiums for health coverage and to pay this amount to the insurer.

10369 (10) An order issued under Section 62A-11-326.1 may be considered a "qualified  
10370 medical support order" for the purpose of enrolling a dependent child in a group accident and  
10371 health insurance plan as defined in Section 609(a), Federal Employee Retirement Income  
10372 Security Act of 1974.

10373 (11) This section does not affect any insurer's ability to require as a precondition of any  
10374 child being covered under any policy of insurance that:

10375 (a) the parent continues to be eligible for coverage;

10376 (b) the child shall be identified to the insurer with adequate information to comply with

10377 this section; and

10378 (c) the premium shall be paid when due.

10379 (12) The provisions of this section apply to employee welfare benefit plans as defined  
10380 in Section 26-19-2.

10381 (13) The commissioner shall adopt rules interpreting and implementing this section  
10382 with regard to out-of-area court ordered dependent coverage.

10383 Section 258. Section **31A-22-611** is amended to read:

10384 **31A-22-611. Coverage for children with a disability.**

10385 (1) For the purposes of this section:

10386 (a) "Disabled dependent" means a child who is and continues to be both:

10387 (i) unable to engage in substantial gainful employment to the degree that the child can  
10388 achieve economic independence due to a medically determinable physical or mental  
10389 impairment which can be expected to result in death, or which has lasted or can be expected to  
10390 last for a continuous period of not less than 12 months; and

10391 (ii) chiefly dependent upon an insured for support and maintenance since the child  
10392 reached the age specified in Subsection 31A-22-610.5(2).

10393 [~~(c)~~] (b) "Mental impairment" means a mental or psychological disorder such as:

10394 (i) mental retardation;

10395 (ii) organic brain syndrome;

10396 (iii) emotional or mental illness; or

10397 (iv) specific learning disabilities as determined by the insurer.

10398 [~~(b)~~] (c) "Physical impairment" means a physiological disorder, condition, or  
10399 disfigurement, or anatomical loss affecting one or more of the following body systems:

10400 (i) neurological;

10401 (ii) musculoskeletal;

10402 (iii) special sense organs;

10403 (iv) respiratory organs;

10404 (v) speech organs;

10405 (vi) cardiovascular;

10406 (vii) reproductive;

10407 (viii) digestive;

10408 (ix) genito-urinary;

10409 (x) hemic and lymphatic;

10410 (xi) skin; or

10411 (xii) endocrine.

10412 (2) The insurer may require proof of the incapacity and dependency be furnished by the  
10413 person insured under the policy within 30 days of the effective date or the date the child attains  
10414 the age specified in Subsection 31A-22-610.5(2), and at any time thereafter, except that the  
10415 insurer may not require proof more often than annually after the two-year period immediately  
10416 following attainment of the limiting age by the disabled dependent.

10417 (3) Any individual or group accident and health insurance policy or health maintenance  
10418 organization contract that provides coverage for a policyholder's or certificate holder's  
10419 dependent shall, upon application, provide coverage for all unmarried disabled dependents who  
10420 have been continuously covered, with no break of more than 63 days, under any accident and  
10421 health insurance since the age specified in Subsection 31A-22-610.5(2).

10422 (4) Every accident and health insurance policy or contract that provides coverage of a  
10423 disabled dependent [~~shall not~~] may not terminate the policy due to an age limitation.

10424 Section 259. Section **31A-22-613.5** is amended to read:

10425 **31A-22-613.5. Price and value comparisons of health insurance -- Basic Health**  
10426 **Care Plan.**

10427 (1) (a) This section applies to all health benefit plans.

10428 (b) Subsection (2) applies to:

10429 (i) all health benefit plans; and

10430 (ii) coverage offered to state employees under Subsection 49-20-202(1)(a).

10431 (2) (a) The commissioner shall promote informed consumer behavior and responsible  
10432 health benefit plans by requiring an insurer issuing a health benefit plan to:

10433 (i) provide to all enrollees, prior to enrollment in the health benefit plan written  
10434 disclosure of:

10435 (A) restrictions or limitations on prescription drugs and biologics including:

10436 (I) the use of a formulary;

10437 (II) co-payments and deductibles for prescription drugs; and

10438 (III) requirements for generic substitution;

- 10439 (B) coverage limits under the plan; and
- 10440 (C) any limitation or exclusion of coverage including:
- 10441 (I) a limitation or exclusion for a secondary medical condition related to a limitation or
- 10442 exclusion from coverage; and
- 10443 (II) easily understood examples of a limitation or exclusion of coverage for a secondary
- 10444 medical condition; and
- 10445 (ii) provide the commissioner with:
- 10446 (A) the information described in Subsections 63M-1-2506(3) through (6) in the
- 10447 standardized electronic format required by Subsection 63M-1-2506(1); and
- 10448 (B) information regarding insurer transparency in accordance with Subsection (5).
- 10449 (b) An insurer shall provide the disclosure required by Subsection (2)(a)(i) in writing to
- 10450 the commissioner:
- 10451 (i) upon commencement of operations in the state; and
- 10452 (ii) anytime the insurer amends any of the following described in Subsection (2)(a)(i):
- 10453 (A) treatment policies;
- 10454 (B) practice standards;
- 10455 (C) restrictions;
- 10456 (D) coverage limits of the insurer's health benefit plan or health insurance policy; or
- 10457 (E) limitations or exclusions of coverage including a limitation or exclusion for a
- 10458 secondary medical condition related to a limitation or exclusion of the insurer's health
- 10459 insurance plan.
- 10460 (c) An insurer shall provide the enrollee with notice of an increase in costs for
- 10461 prescription drug coverage due to a change in benefit design under Subsection (2)(a)(i)(A):
- 10462 (i) either:
- 10463 (A) in writing; or
- 10464 (B) on the insurer's website; and
- 10465 (ii) at least 30 days prior to the date of the implementation of the increase in cost, or as
- 10466 soon as reasonably possible.
- 10467 (d) If under Subsection (2)(a)(i)(A) a formulary is used, the insurer shall make
- 10468 available to prospective enrollees and maintain evidence of the fact of the disclosure of:
- 10469 (i) the drugs included;

- 10470 (ii) the patented drugs not included;
- 10471 (iii) any conditions that exist as a precedent to coverage; and
- 10472 (iv) any exclusion from coverage for secondary medical conditions that may result
- 10473 from the use of an excluded drug.
- 10474 (e) (i) The department shall develop examples of limitations or exclusions of a
- 10475 secondary medical condition that an insurer may use under Subsection (2)(a)(i)(C).
- 10476 (ii) Examples of a limitation or exclusion of coverage provided under Subsection
- 10477 (2)(a)(i)(C) or otherwise are for illustrative purposes only, and the failure of a particular fact
- 10478 situation to fall within the description of an example does not, by itself, support a finding of
- 10479 coverage.
- 10480 (3) An insurer who offers a health benefit plan under Chapter 30, Individual, Small
- 10481 Employer, and Group Health Insurance Act, shall offer a basic health care plan subject to the
- 10482 open enrollment provisions of Chapter 30, Individual, Small Employer, and Group Health
- 10483 Insurance Act, that:
- 10484 (a) is a federally qualified high deductible health plan;
- 10485 (b) has a deductible that is within \$250 of the lowest deductible that qualifies under a
- 10486 federally qualified high deductible health plan, as adjusted by federal law; and
- 10487 (c) does not exceed an annual out of pocket maximum equal to three times the amount
- 10488 of the annual deductible.
- 10489 (4) The commissioner:
- 10490 (a) shall forward the information submitted by an insurer under Subsection (2)(a)(ii) to
- 10491 the Health Insurance Exchange created under Section 63M-1-2504; and
- 10492 (b) may request information from an insurer to verify the information submitted by the
- 10493 insurer under this section.
- 10494 (5) The commissioner shall:
- 10495 (a) convene a group of insurers, a member representing the Public Employees' Benefit
- 10496 and Insurance Program, consumers, and an organization described in Subsection
- 10497 31A-22-614.6(3)(b), to develop information for consumers to compare health insurers and
- 10498 health benefit plans on the Health Insurance Exchange, which shall include consideration of:
- 10499 (i) the number and cost of an insurer's denied health claims;
- 10500 (ii) the cost of denied claims that is transferred to providers;

10501 (iii) the average out-of-pocket expenses incurred by participants in each health benefit  
10502 plan that is offered by an insurer in the Health Insurance Exchange;

10503 (iv) the relative efficiency and quality of claims administration and other administrative  
10504 processes for each insurer offering plans in the Health Insurance Exchange; and

10505 (v) consumer assessment of each insurer or health benefit plan;

10506 (b) adopt an administrative rule that establishes:

10507 (i) definition of terms;

10508 (ii) the methodology for determining and comparing the insurer transparency  
10509 information;

10510 (iii) the data, and format of the data, that an insurer [~~must~~] shall submit to the  
10511 department in order to facilitate the consumer comparison on the Health Insurance Exchange in  
10512 accordance with Section 63M-1-2506; and

10513 (iv) the dates on which the insurer [~~must~~] shall submit the data to the department in  
10514 order for the department to transmit the data to the Health Insurance Exchange in accordance  
10515 with Section 63M-1-2506; and

10516 (c) implement the rules adopted under Subsection (5)(b) in a manner that protects the  
10517 business confidentiality of the insurer.

10518 Section 260. Section ~~31A-22-618.5~~ is amended to read:

10519 **31A-22-618.5. Health benefit plan offerings.**

10520 (1) The purpose of this section is to increase the range of health benefit plans available  
10521 in the small group, small employer group, large group, and individual insurance markets.

10522 (2) A health maintenance organization that is subject to Chapter 8, Health Maintenance  
10523 Organizations and Limited Health Plans:

10524 (a) shall offer to potential purchasers at least one health benefit plan that is subject to  
10525 the requirements of Chapter 8, Health Maintenance Organizations and Limited Health Plans;  
10526 and

10527 (b) may offer to a potential purchaser one or more health benefit plans that:

10528 (i) are not subject to one or more of the following:

10529 (A) the limitations on insured indemnity benefits in Subsection 31A-8-105(4);

10530 (B) the limitation on point of service products in Subsections 31A-8-408(3) through

10531 (6);

10532 (C) except as provided in Subsection (2)(b)(ii), basic health care services as defined in  
10533 Section 31A-8-101; or

10534 (D) coverage mandates enacted after January 1, 2009 that are not required by federal  
10535 law, provided that the insurer offers one plan under Subsection (2)(a) that covers the mandate  
10536 enacted after January 1, 2009; and

10537 (ii) when offering a health plan under this section, provide coverage for an emergency  
10538 medical condition as required by Section 31A-22-627 as follows:

10539 (A) within the organization's service area, covered services shall include health care  
10540 services from non-affiliated providers when medically necessary to stabilize an emergency  
10541 medical condition; and

10542 (B) outside the organization's service area, covered services shall include medically  
10543 necessary health care services for the treatment of an emergency medical condition that are  
10544 immediately required while the enrollee is outside the geographic limits of the organization's  
10545 service area.

10546 (3) An insurer that offers a health benefit plan that is not subject to Chapter 8, Health  
10547 Maintenance Organizations and Limited Health Plans:

10548 (a) notwithstanding Subsection 31A-22-617(2), may offer a health benefit plan that  
10549 groups providers into the following reimbursement levels:

10550 (i) tier one contracted providers;

10551 (ii) tier two contracted providers who the insurer [~~must~~] shall reimburse at least 75% of  
10552 tier one providers; and

10553 (iii) one or more tiers of non-contracted providers; and

10554 (b) notwithstanding Subsection 31A-22-617(9) may offer a health benefit plan that is  
10555 not subject to Section 31A-22-618;

10556 (c) beginning July 1, 2012, may offer products under Subsection (3)(a) that:

10557 (i) are not subject to Subsection 31A-22-617(2); and

10558 (ii) are subject to the reimbursement requirements in Section 31A-8-501;

10559 (d) when offering a health plan under this Subsection (3), shall provide coverage of  
10560 emergency care services as required by Section 31A-22-627 by providing coverage at a  
10561 reimbursement level of at least 75% of tier one providers; and

10562 (e) are not subject to coverage mandates enacted after January 1, 2009 that are not

10563 required by federal law, provided that an insurer offers one plan that covers a mandate enacted  
10564 after January 1, 2009.

10565 (4) Section 31A-8-106 does not prohibit the offer of a health benefit plan under  
10566 Subsection (2)(b).

10567 (5) (a) Any difference in price between a health benefit plan offered under Subsections  
10568 (2)(a) and (b) shall be based on actuarially sound data.

10569 (b) Any difference in price between a health benefit plan offered under Subsections  
10570 (3)(a) and (b) shall be based on actuarially sound data.

10571 (6) Nothing in this section limits the number of health benefit plans that an insurer may  
10572 offer.

10573 Section 261. Section **31A-22-625** is amended to read:

10574 **31A-22-625. Catastrophic coverage of mental health conditions.**

10575 (1) As used in this section:

10576 (a) (i) "Catastrophic mental health coverage" means coverage in a health benefit plan  
10577 that does not impose a lifetime limit, annual payment limit, episodic limit, inpatient or  
10578 outpatient service limit, or maximum out-of-pocket limit that places a greater financial burden  
10579 on an insured for the evaluation and treatment of a mental health condition than for the  
10580 evaluation and treatment of a physical health condition.

10581 (ii) "Catastrophic mental health coverage" may include a restriction on cost sharing  
10582 factors, such as deductibles, copayments, or coinsurance, before reaching a maximum  
10583 out-of-pocket limit.

10584 (iii) "Catastrophic mental health coverage" may include one maximum out-of-pocket  
10585 limit for physical health conditions and another maximum out-of-pocket limit for mental health  
10586 conditions, except that if separate out-of-pocket limits are established, the out-of-pocket limit  
10587 for mental health conditions may not exceed the out-of-pocket limit for physical health  
10588 conditions.

10589 (b) (i) "50/50 mental health coverage" means coverage in a health benefit plan that  
10590 pays for at least 50% of covered services for the diagnosis and treatment of mental health  
10591 conditions.

10592 (ii) "50/50 mental health coverage" may include a restriction on:

10593 (A) episodic limits;

- 10594 (B) inpatient or outpatient service limits; or  
10595 (C) maximum out-of-pocket limits.  
10596 (c) "Large employer" is as defined in 42 U.S.C. Sec. 300gg-91.  
10597 (d) (i) "Mental health condition" means a condition or disorder involving mental illness  
10598 that falls under a diagnostic category listed in the Diagnostic and Statistical Manual, as  
10599 periodically revised.  
10600 (ii) "Mental health condition" does not include the following when diagnosed as the  
10601 primary or substantial reason or need for treatment:  
10602 (A) a marital or family problem;  
10603 (B) a social, occupational, religious, or other social maladjustment;  
10604 (C) a conduct disorder;  
10605 (D) a chronic adjustment disorder;  
10606 (E) a psychosexual disorder;  
10607 (F) a chronic organic brain syndrome;  
10608 (G) a personality disorder;  
10609 (H) a specific developmental disorder or learning disability; or  
10610 (I) mental retardation.  
10611 (e) "Small employer" is as defined in 42 U.S.C. Sec. 300gg-91.  
10612 (2) (a) At the time of purchase and renewal, an insurer shall offer to a small employer  
10613 that it insures or seeks to insure a choice between catastrophic mental health coverage and  
10614 50/50 mental health coverage.  
10615 (b) In addition to complying with Subsection (2)(a), an insurer may offer to provide:  
10616 (i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels  
10617 that exceed the minimum requirements of this section; or  
10618 (ii) coverage that excludes benefits for mental health conditions.  
10619 (c) A small employer may, at its option, choose either catastrophic mental health  
10620 coverage, 50/50 mental health coverage, or coverage offered under Subsection (2)(b),  
10621 regardless of the employer's previous coverage for mental health conditions.  
10622 (d) An insurer is exempt from the 30% index rating restriction in Section  
10623 31A-30-106.1 and, for the first year only that catastrophic mental health coverage is chosen, the  
10624 15% annual adjustment restriction in Section 31A-30-106.1, for any small employer with 20 or

10625 less enrolled employees who chooses coverage that meets or exceeds catastrophic mental  
10626 health coverage.

10627 (3) An insurer shall offer a large employer mental health and substance use disorder  
10628 benefit in compliance with Section 2705 of the Public Health Service Act, 42 U.S.C. Sec.  
10629 300gg-5, and federal regulations adopted pursuant to that act.

10630 (4) (a) An insurer may provide catastrophic mental health coverage to a small employer  
10631 through a managed care organization or system in a manner consistent with Chapter 8, Health  
10632 Maintenance Organizations and Limited Health Plans, regardless of whether the insurance  
10633 policy uses a managed care organization or system for the treatment of physical health  
10634 conditions.

10635 (b) (i) Notwithstanding any other provision of this title, an insurer may:

10636 (A) establish a closed panel of providers for catastrophic mental health coverage; and

10637 (B) refuse to provide a benefit to be paid for services rendered by a nonpanel provider  
10638 unless:

10639 (I) the insured is referred to a nonpanel provider with the prior authorization of the  
10640 insurer; and

10641 (II) the nonpanel provider agrees to follow the insurer's protocols and treatment  
10642 guidelines.

10643 (ii) If an insured receives services from a nonpanel provider in the manner permitted by  
10644 Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the  
10645 average amount paid by the insurer for comparable services of panel providers under a  
10646 noncapitated arrangement who are members of the same class of health care providers.

10647 (iii) This Subsection (4)(b) may not be construed as requiring an insurer to authorize a  
10648 referral to a nonpanel provider.

10649 (c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a  
10650 mental health condition [~~must~~] shall be rendered:

10651 (i) by a mental health therapist as defined in Section 58-60-102; or

10652 (ii) in a health care facility:

10653 (A) licensed or otherwise authorized to provide mental health services pursuant to:

10654 (I) Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

10655 (II) Title 62A, Chapter 2, Licensure of Programs and Facilities; and

10656 (B) that provides a program for the treatment of a mental health condition pursuant to a  
10657 written plan.

10658 (5) The commissioner may prohibit an insurance policy that provides mental health  
10659 coverage in a manner that is inconsistent with this section.

10660 (6) The commissioner shall:

10661 (a) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative  
10662 Rulemaking Act, as necessary to ensure compliance with this section; and

10663 (b) provide general figures on the percentage of insurance policies that include:

10664 (i) no mental health coverage;

10665 (ii) 50/50 mental health coverage;

10666 (iii) catastrophic mental health coverage; and

10667 (iv) coverage that exceeds the minimum requirements of this section.

10668 (7) This section may not be construed as discouraging or otherwise preventing an  
10669 insurer from providing mental health coverage in connection with an individual insurance  
10670 policy.

10671 (8) This section shall be repealed in accordance with Section 63I-1-231.

10672 Section 262. Section **31A-22-634** is amended to read:

10673 **31A-22-634. Prohibition against certain use of Social Security number --**

10674 **Exceptions -- Applicability of section.**

10675 (1) As used in this section:

10676 (a) "Insurer" means:

10677 (i) insurers governed by this part as described in Section 31A-22-600, and includes:

10678 (A) a health maintenance organization; and

10679 (B) a third-party administrator that is subject to this title; and

10680 (ii) notwithstanding Subsection 31A-1-103(3)(f) and Section 31A-22-600, a health,  
10681 dental, medical, Medicare supplement, or conversion program offered under Title 49, Chapter  
10682 20, Public Employees' Benefit and Insurance Program Act.

10683 (b) "Publicly display" or "publicly post" means to intentionally communicate or  
10684 otherwise make available to the general public.

10685 (2) An insurer or its subcontractors, including a pharmacy benefit manager, [~~shall not~~]  
10686 may not do any of the following:

10687 (a) publicly display or publicly post in any manner an individual's Social Security  
10688 number; or

10689 (b) print an individual's Social Security number on any card required for the individual  
10690 to access products or services provided or covered by the insurer.

10691 (3) This section does not prevent the collection, use, or release of a Social Security  
10692 number as required by state or federal law, or the use of a Social Security number for internal  
10693 verification or administrative purposes, or the release of a Social Security number to a health  
10694 care provider for claims administration purposes, or as part of the verification, eligibility, or  
10695 payment process.

10696 (4) If a federal law takes effect requiring the United States Department of Health and  
10697 Human Services to establish a national unique patient health identifier program, an insurer that  
10698 complies with the federal law shall be considered in compliance with this section.

10699 (5) An insurer [~~must~~] shall comply with the provisions of this section by July 1, 2004.

10700 (6) (a) An insurer may obtain an extension for compliance with the requirements of this  
10701 section in accordance with Subsections (6)(b) and (c).

10702 (b) The request for extension:

10703 (i) [~~must~~] shall be submitted in writing to the department prior to July 1, 2004; and

10704 (ii) [~~must~~] shall provide an explanation as to why the insurer cannot comply with the  
10705 requirements of this section by July 1, 2004.

10706 (c) The commissioner shall grant a request for extension:

10707 (i) for a period of time not to exceed March 1, 2005; and

10708 (ii) if the commissioner finds that the explanation provided under Subsection (6)(b)(ii)  
10709 is a reasonable explanation.

10710 Section 263. Section **31A-22-636** is amended to read:

10711 **31A-22-636. Standardized health benefit plan cards.**

10712 (1) As used in this section, "insurer" means:

10713 (a) an insurer governed by this part as described in Section 31A-22-600;

10714 (b) a health maintenance organization governed by Chapter 8, Health Maintenance  
10715 Organizations and Limited Health Benefit Plans;

10716 (c) a third party administrator; and

10717 (d) notwithstanding Subsection 31A-1-103(3)(f) and Section 31A-22-600, a health,

10718 medical, or conversion policy offered under Title 49, Chapter 20, Public Employees' Benefit  
10719 and Insurance Program Act.

10720 (2) In accordance with Subsection (3), an insurer [~~must~~] shall use and issue a health  
10721 benefit plan information card for the insurer's enrollees upon the purchase or renewal of, or  
10722 enrollment in, a health benefit plan on or after July 1, 2010.

10723 (3) The health benefit plan card shall include:

10724 (a) the covered person's name;

10725 (b) the name of the carrier and the carrier network name;

10726 (c) the contact information for the carrier or health benefit plan administrator;

10727 (d) general information regarding copayments and deductibles; and

10728 (e) an indication of whether the health benefit plan is regulated by the state.

10729 (4) (a) The commissioner shall work with the Department of Health, the Health Data  
10730 Authority, health care providers groups, and with state and national organizations that are  
10731 developing uniform standards for the electronic exchange of health insurance claims or  
10732 uniform standards for the electronic exchange of clinical health records.

10733 (b) When the commissioner determines that the groups described in Subsection (4)(a)  
10734 have reached a consensus regarding the electronic technology and standards necessary to  
10735 electronically exchange insurance enrollment and coverage information, the commissioner  
10736 shall begin the rulemaking process under Title 63G, Chapter 3, Utah Administrative  
10737 Rulemaking Act, to adopt standardized electronic interchange technology.

10738 (c) After rules are adopted under Subsection (4)(a), health care providers and their  
10739 licensing boards under Title 58, Occupations and Professions, and health facilities licensed  
10740 under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, shall work  
10741 together to implement the adoption of card swipe technology.

10742 Section 264. Section **31A-22-637** is amended to read:

10743 **31A-22-637. Health care provider payment information -- Notice of admissions.**

10744 (1) For purposes of this section, "insurer" is as defined in Section 31A-22-636.

10745 (2) (a) An insurer shall provide its health care providers who are under contract with  
10746 the insurer access to current information necessary for the health care provider to determine:

10747 (i) the effect of procedure codes on payment or compensation before a claim is  
10748 submitted for a procedure;

10749 (ii) the plans and carrier networks that the health care provider is subject to as part of  
10750 the contract with the carrier; and

10751 (iii) in accordance with Subsection 31A-26-301.6(10)(f), the specific rate and terms  
10752 under which the provider will be paid for health care services.

10753 (b) The information required by Subsection (2)(a) may be provided through a website,  
10754 and if requested by the health care provider, notice of the updated website shall be provided by  
10755 the carrier.

10756 (3) (a) An insurer [~~shall not~~] may not require a health care provider by contract,  
10757 reimbursement procedure, or otherwise to notify the insurer of a hospital in-patient emergency  
10758 admission within a period of time that is less than one business day of the hospital in-patient  
10759 admission, if compliance with the notification requirement would result in notification by the  
10760 health care provider on a weekend or federal holiday.

10761 (b) Subsection (3)(a) does not prohibit the applicability or administration of other  
10762 contract provisions between an insurer and a health care provider that require pre-authorization  
10763 for scheduled in-patient admissions.

10764 Section 265. Section **31A-22-716** is amended to read:

10765 **31A-22-716. Required provision for notice of termination.**

10766 (1) Every policy for group or blanket accident and health coverage issued or renewed  
10767 after July 1, 1990, shall include a provision that obligates the policyholder to give 30 days prior  
10768 written notice of termination to each employee or group member and to notify each employee  
10769 or group member of [~~his~~] the employee's or group member's rights to continue coverage upon  
10770 termination.

10771 (2) An insurer's monthly notice to the policyholder of premium payments due shall  
10772 include a statement of the policyholder's obligations as set forth in Subsection (1). Insurers  
10773 shall provide a sample notice to the policyholder at least once a year.

10774 (3) For the purpose of compliance with federal law and the Health Insurance Portability  
10775 and Accountability Act, P.L. No. 104-191, 110 Stat. 1960, all health benefit plans, health  
10776 insurers, and student health plans [~~must~~] shall provide a certificate of creditable coverage to  
10777 each covered person upon the person's termination from the plan as soon as reasonably  
10778 possible.

10779 Section 266. Section **31A-22-722.5** is amended to read:

10780           **31A-22-722.5. Mini-COBRA election -- American Recovery and Reinvestment**  
10781 **Act.**

10782           (1) (a) If the provisions of Subsection (1)(b) are met, an individual has a right to  
10783 contact the individual's employer or the insurer for the employer to participate in a transition  
10784 period for mini-COBRA benefits under Section 31A-22-722 in accordance with Section 3001  
10785 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended.

10786           (b) An individual has the right under Subsection (1)(a) if the individual:

10787           (i) was involuntarily terminated from employment during the period of time identified  
10788 in Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as  
10789 amended;

10790           (ii) is eligible for COBRA premium assistance under Section 3001 of the American  
10791 Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended;

10792           (iii) was eligible for Utah mini-COBRA as provided in Section 31A-22-722 at the time  
10793 of termination;

10794           (iv) elected Utah mini-Cobra; and

10795           (v) voluntarily dropped coverage, which includes dropping coverage through  
10796 non-payment of premiums, between December 1, 2009 and February 1, 2010.

10797           (2) (a) An individual or the employer of the individual shall contact the insurer and  
10798 inform the insurer that the individual wants to maintain coverage and pay retroactive premiums  
10799 under a transition period for mini-COBRA coverage in accordance with the provisions of  
10800 Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as  
10801 amended.

10802           (b) An individual or an employer on behalf of an eligible individual [~~must~~] shall  
10803 submit the applicable forms and premiums for coverage under Subsection (1) to the insurer in  
10804 accordance with the provisions of Section 3001 of the American Recovery and Reinvestment  
10805 Act of 2009 (Pub. L. 11-5), as amended.

10806           (3) An insured has the right to extend the employee's coverage under mini-cobra with  
10807 the current employer's group policy beyond the 12 months to the period of time the insured is  
10808 eligible to receive assistance in accordance with Section 3001 of the American Recovery and  
10809 Reinvestment Act of 2009 (Pub. L. 111-5) as amended.

10810           (4) An insurer that violates this section is subject to penalties in accordance with

10811 Section 31A-2-308.

10812 Section 267. Section **31A-22-723** is amended to read:

10813 **31A-22-723. Group and blanket conversion coverage.**

10814 (1) Notwithstanding Subsection 31A-1-103(3)(f), and except as provided in Subsection  
10815 (3), all policies of accident and health insurance offered on a group basis under this title, or  
10816 Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act, shall provide that  
10817 a person whose insurance under the group policy has been terminated is entitled to choose a  
10818 converted individual policy in accordance with this section and Section 31A-22-724.

10819 (2) A person who has lost group coverage may elect conversion coverage with the  
10820 insurer that provided prior group coverage if the person:

10821 (a) has been continuously covered for a period of three months by the group policy or  
10822 the group's preceding policies immediately prior to termination;

10823 (b) has exhausted either:

10824 (i) Utah mini-COBRA coverage as required in Section 31A-22-722;

10825 (ii) federal COBRA coverage; or

10826 (iii) alternative coverage under Section 31A-22-724;

10827 (c) has not acquired or is not covered under any other group coverage that covers all  
10828 preexisting conditions, including maternity, if the coverage exists; and

10829 (d) resides in the insurer's service area.

10830 (3) This section does not apply if the person's prior group coverage:

10831 (a) is a stand alone policy that only provides one of the following:

10832 (i) catastrophic benefits;

10833 (ii) aggregate stop loss benefits;

10834 (iii) specific stop loss benefits;

10835 (iv) benefits for specific diseases;

10836 (v) accidental injuries only;

10837 (vi) dental; or

10838 (vii) vision;

10839 (b) is an income replacement policy;

10840 (c) was terminated because the insured:

10841 (i) failed to pay any required individual contribution;

10842 (ii) performed an act or practice that constitutes fraud in connection with the coverage;

10843 or

10844 (iii) made intentional misrepresentation of material fact under the terms of coverage; or

10845 (d) was terminated pursuant to Subsection 31A-8-402.3(2)(a), 31A-22-721(2)(a), or

10846 31A-30-107(2)(a).

10847 (4) (a) The employer shall provide written notification of the right to an individual

10848 conversion policy within 30 days of the insured's termination of coverage to:

10849 (i) the terminated insured;

10850 (ii) the ex-spouse; or

10851 (iii) in the case of the death of the insured:

10852 (A) the surviving spouse; and

10853 (B) the guardian of any dependents, if different from a surviving spouse.

10854 (b) The notification required by Subsection (4)(a) shall:

10855 (i) be sent by first class mail;

10856 (ii) contain the name, address, and telephone number of the insurer that will provide

10857 the conversion coverage; and

10858 (iii) be sent to the insured's last-known address as shown on the records of the

10859 employer of:

10860 (A) the insured;

10861 (B) the ex-spouse; and

10862 (C) if the policy terminates by reason of the death of the insured to:

10863 (I) the surviving spouse; and

10864 (II) the guardian of any dependents, if different from a surviving spouse.

10865 (5) (a) An insurer is not required to issue a converted policy which provides benefits in

10866 excess of those provided under the group policy from which conversion is made.

10867 (b) Except as provided in Subsection (5)(c), if the conversion is made from a health

10868 benefit plan, the employee or member shall be offered:

10869 (i) at least the basic benefit plan as provided in Section 31A-22-613.5 through

10870 December 31, 2009; and

10871 (ii) beginning January 1, 2010, only the alternative coverage as provided in Subsection

10872 31A-22-724(1)(a).

10873 (c) If the benefit levels required under Subsection (5)(b) exceed the benefit levels  
10874 provided under the group policy, the conversion policy may offer benefits which are  
10875 substantially similar to those provided under the group policy.

10876 (6) Written application for the converted policy shall be made and the first premium  
10877 paid to the insurer no later than 60 days after termination of the group accident and health  
10878 insurance.

10879 (7) The converted policy shall be issued without evidence of insurability.

10880 (8) (a) The initial premium for the converted policy for the first 12 months and  
10881 subsequent renewal premiums shall be determined in accordance with premium rates  
10882 applicable to age, class of risk of the person, and the type and amount of insurance provided.

10883 (b) The initial premium for the first 12 months may not be raised based on pregnancy  
10884 of a covered insured.

10885 (c) The premium for converted policies shall be payable monthly or quarterly as  
10886 required by the insurer for the policy form and plan selected, unless another mode or premium  
10887 payment is mutually agreed upon.

10888 (9) The converted policy becomes effective at the time the insurance under the group  
10889 policy terminates.

10890 (10) (a) A newly issued converted policy covers the employee or the member and  
10891 ~~[must]~~ shall also cover all dependents covered by the group policy at the date of termination of  
10892 the group coverage.

10893 (b) The only dependents that may be added after the policy has been issued are children  
10894 and dependents as required by Section 31A-22-610 and Subsections 31A-22-610.5(6) and (7).

10895 (c) At the option of the insurer, a separate converted policy may be issued to cover any  
10896 dependent.

10897 (11) (a) To the extent the group policy provided maternity benefits, the conversion  
10898 policy shall provide maternity benefits equal to the lesser of the maternity benefits of the group  
10899 policy or the conversion policy until termination of a pregnancy that exists on the date of  
10900 conversion if one of the following is pregnant on the date of the conversion:

- 10901 (i) the insured;
- 10902 (ii) a spouse of the insured; or
- 10903 (iii) a dependent of the insured.

10904 (b) The requirements of this Subsection (11) do not apply to a pregnancy that occurs  
10905 after the date of conversion.

10906 (12) Except as provided in this Subsection (12), a converted policy is renewable with  
10907 respect to all individuals or dependents at the option of the insured. An insured may be  
10908 terminated from a converted policy for the following reasons:

10909 (a) a dependent is no longer eligible under the policy;

10910 (b) for a network plan, if the individual no longer lives, resides, or works in:

10911 (i) the insured's service area; or

10912 (ii) the area for which the covered carrier is authorized to do business;

10913 (c) the individual fails to pay premiums or contributions in accordance with the terms  
10914 of the converted policy, including any timeliness requirements;

10915 (d) the individual performs an act or practice that constitutes fraud in connection with  
10916 the coverage;

10917 (e) the individual makes an intentional misrepresentation of material fact under the  
10918 terms of the coverage; or

10919 (f) coverage is terminated uniformly without regard to any health status-related factor  
10920 relating to any covered individual.

10921 (13) Conditions pertaining to health may not be used as a basis for classification under  
10922 this section.

10923 (14) An insurer is only required to offer a conversion policy that complies with  
10924 Subsection 31A-22-724(1)(b) and, notwithstanding Sections 31A-8-402.5 and 31A-30-107.1,  
10925 may discontinue any other conversion policy if:

10926 (a) the discontinued conversion policy is discontinued uniformly without regard to any  
10927 health related factor;

10928 (b) any affected individual is provided with 90 days' advanced written notice of the  
10929 discontinuation of the existing conversion policy;

10930 (c) the policy holder is offered the insurer's conversion policy that complies with  
10931 Subsection 31A-22-724(1)(b); and

10932 (d) the policy holder is not re-rated for purposes of premium calculation.

10933 Section 268. Section **31A-22-806** is amended to read:

10934 **31A-22-806. Provisions of policies and certificates.**

10935 (1) All credit life insurance and credit accident and health insurance shall be evidenced  
10936 by an individual policy, or, in the case of group insurance, by a certificate of insurance  
10937 delivered to the debtor.

10938 (2) Each of these types of policies or certificates shall, in addition to satisfying the  
10939 requirements of Chapter 21, Underwriting Restrictions set forth:

10940 (a) the name and home office address of the insurer;

10941 (b) the identity, by name or otherwise, of the persons insured;

10942 (c) the rate, premium, or amount of payment by the debtor, if any, given separately for  
10943 credit life insurance and credit accident and health insurance;

10944 (d) a description of the amount, term, and coverage, including any exceptions,  
10945 limitations, and restrictions;

10946 (e) that the benefits shall be paid to the creditor to reduce or extinguish the unpaid  
10947 indebtedness; and

10948 (f) that whenever the amount of insurance exceeds the unpaid indebtedness, that excess  
10949 is payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate.

10950 (3) Except as provided in Subsection (4), the policy or certificate shall be delivered to  
10951 the debtor within 30 days after the date when the indebtedness is incurred.

10952 (4) (a) If the policy or certificate is not delivered to the debtor within 30 days after the  
10953 date the indebtedness is incurred, a copy of the application for the policy or a notice of  
10954 proposed insurance shall be delivered to the debtor.

10955 (b) The application or the notice shall be signed by the debtor and shall set forth:

10956 (i) the name and home office address of the insurer;

10957 (ii) the name of the debtor;

10958 (iii) the premium or amount of payment by the debtor, if any, separately for credit life  
10959 insurance and credit accident and health insurance; and

10960 (iv) the amount, term, and a brief description of the coverage provided.

10961 (c) The copy of the application for or notice of proposed insurance, shall also refer  
10962 exclusively to insurance coverage, and shall be separate from the loan, sale, or other credit  
10963 statement of account or instrument, unless the information required by this Subsection (4)(c) is  
10964 prominently set forth therein.

10965 (d) Upon acceptance of the insurance by the insurer and within 60 days after the later

10966 of the date on which the indebtedness is incurred or the date on which the credit life or credit  
10967 accident and health policy was purchased, the insurer shall deliver the individual policy or  
10968 group certificate of insurance to the debtor.

10969 (e) The application or notice shall state that upon acceptance by the insurer, the  
10970 insurance is effective as provided in Section 31A-22-805.

10971 (5) If the named insurer does not accept the risk, the debtor shall receive a policy or  
10972 certificate of insurance setting forth the name and home office address of the substituted  
10973 insurer and the amount of the premium to be charged. If the premium is less than that set forth  
10974 in the notice of proposed insurance, an appropriate refund shall be made.

10975 (6) If a creditor makes available to the debtors more than one plan of credit life or  
10976 credit accident and health insurance, all debtors [~~must~~] shall be informed of the plans  
10977 applicable to the specific type of loan transaction for which the debtor is applying.

10978 Section 269. Section **31A-22-1406** is amended to read:

10979 **31A-22-1406. Preexisting conditions.**

10980 (1) A long-term care insurance policy or certificate [~~shall not~~] may not use a definition  
10981 of a preexisting condition which is more restrictive than the following: "Preexisting condition  
10982 means a condition for which medical advice or treatment was recommended by or received  
10983 from a provider of health care services, within six months preceding the effective date of  
10984 coverage of an insured person."

10985 (2) A long-term care insurance policy or certificate may not exclude coverage for a loss  
10986 or confinement which is the result of a preexisting condition unless such loss or confinement  
10987 begins within six months following the effective date of coverage of an insured person.

10988 (3) The commissioner may extend the preexisting condition periods provided in  
10989 Subsections (1) and (2) as to specific age group categories in specific policy forms upon  
10990 finding that the extension is in the best interest of the public.

10991 (4) (a) The definition of preexisting condition does not prohibit an insurer from using  
10992 an application form designed to elicit the complete health history of an applicant and from  
10993 underwriting in accordance with that insurer's established underwriting standards on the basis  
10994 of the answers on that application.

10995 (b) Unless otherwise provided in the policy or certificate, a preexisting condition,  
10996 regardless of whether it is disclosed on the application, need not be covered until the waiting

10997 period described in Subsection (2) expires.

10998 (c) A long-term care insurance policy or certificate may not exclude or use waivers or  
10999 riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or  
11000 described preexisting diseases or physical condition beyond the waiting period described in  
11001 Subsection (2).

11002 Section 270. Section **31A-22-1409** is amended to read:

11003 **31A-22-1409. Statements of coverage.**

11004 (1) An outline of coverage shall be delivered to a prospective applicant for long-term  
11005 care insurance at the time of initial solicitation through means which prominently direct the  
11006 attention of the applicant to the document and its purpose.

11007 (2) The commissioner may prescribe a standard format of an outline of coverage,  
11008 including style, arrangement, and overall appearance, and the content.

11009 (3) In the case of agent solicitations an agent [~~must~~] shall deliver the outline of  
11010 coverage prior to the presentation of any application or enrollment form.

11011 (4) In the case of direct response solicitations, the outline of coverage [~~must~~] shall be  
11012 presented in conjunction with any application or enrollment form.

11013 (5) An outline of coverage under this section shall include:

11014 (a) a description of the principal benefits and coverage provided in the policy;

11015 (b) a statement of the principal exclusions, reductions, and limitations contained in the  
11016 policy;

11017 (c) a statement of the terms under which the policy or certificate, or both, may be  
11018 continued in force or discontinued, including any reservation in the policy of a right to change  
11019 premium;

11020 (d) a specific description of continuation or conversion provisions of group coverage;

11021 (e) a statement that the outline of coverage is not a contract of insurance but a summary  
11022 only and that the policy or group master policy contains governing contractual provisions;

11023 (f) a description of the terms under which the policy or certificate may be returned and  
11024 premium refunded;

11025 (g) a brief description of the relationship of cost of care and benefits; and

11026 (h) a statement that discloses to the policyholder or certificate holder whether the  
11027 policy is intended to be a federally tax-qualified, long-term care insurance contract under

11028 Section 7702B(b), Internal Revenue Code.

11029 (6) A certificate issued pursuant to a group long-term care insurance policy, which  
11030 policy is delivered or issued for delivery in this state, shall include:

11031 (a) a description of the principal benefits and coverage provided in the policy;

11032 (b) a statement of the principal exclusions, reductions, and limitations contained in the  
11033 policy;

11034 (c) a statement that the group master policy determines governing contractual  
11035 provisions; and

11036 (d) a statement that any long-term care inflation protection option required by rule is  
11037 not available under the policy.

11038 (7) If an application for a long-term care contract or certificate is approved, the issuer  
11039 shall deliver the contract or certificate of insurance to the applicant no later than 30 days after  
11040 the date of approval.

11041 (8) At the time of policy delivery, a policy summary shall be delivered for an  
11042 individual life insurance policy which provides long-term care benefits within the policy or by  
11043 rider. In the case of direct response solicitations, the insurer shall deliver the policy summary  
11044 upon the applicant's request. However, the insurer shall deliver the summary to the applicant no  
11045 later than at the time of policy delivery regardless of request. In addition to complying with all  
11046 applicable requirements, the summary shall also include:

11047 (a) an explanation of how the long-term care benefit interacts with other components of  
11048 the policy, including deductions from death benefits;

11049 (b) an illustration for each covered person of the amount of benefits, the length of  
11050 benefit, and the guaranteed lifetime benefits if any;

11051 (c) any exclusions, reductions, and limitations on benefits of long-term care; and

11052 (d) if applicable to the policy type, the summary shall also include:

11053 (i) a disclosure of the effects of exercising other rights under the policy;

11054 (ii) a disclosure of guarantees related to long-term care costs of insurance charges; and

11055 (iii) current and projected maximum lifetime benefits.

11056 (9) The provisions of the policy summary required under Subsection (8) may be  
11057 incorporated into:

11058 (a) a basic illustration; or

11059 (b) the life insurance policy summary required to be delivered in accordance with rule.  
11060 Section 271. Section **31A-23a-501** is amended to read:

11061 **31A-23a-501. Licensee compensation.**

11062 (1) As used in this section:

11063 (a) "Commission compensation" includes funds paid to or credited for the benefit of a  
11064 licensee from:

11065 (i) commission amounts deducted from insurance premiums on insurance sold by or  
11066 placed through the licensee; or

11067 (ii) commission amounts received from an insurer or another licensee as a result of the  
11068 sale or placement of insurance.

11069 (b) (i) "Compensation from an insurer or third party administrator" means  
11070 commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options,  
11071 gifts, prizes, or any other form of valuable consideration:

11072 (A) whether or not payable pursuant to a written agreement; and

11073 (B) received from:

11074 (I) an insurer; or

11075 (II) a third party to the transaction for the sale or placement of insurance.

11076 (ii) "Compensation from an insurer or third party administrator" does not mean  
11077 compensation from a customer that is:

11078 (A) a fee or pass-through costs as provided in Subsection (1)(e); or

11079 (B) a fee or amount collected by or paid to the producer that does not exceed an  
11080 amount established by the commissioner by administrative rule.

11081 (c) (i) "Customer" means:

11082 (A) the person signing the application or submission for insurance; or

11083 (B) the authorized representative of the insured actually negotiating the placement of  
11084 insurance with the producer.

11085 (ii) "Customer" does not mean a person who is a participant or beneficiary of:

11086 (A) an employee benefit plan; or

11087 (B) a group or blanket insurance policy or group annuity contract sold, solicited, or  
11088 negotiated by the producer or affiliate.

11089 (d) (i) "Noncommission compensation" includes all funds paid to or credited for the

- 11090 benefit of a licensee other than commission compensation.
- 11091 (ii) "Noncommission compensation" does not include charges for pass-through costs
- 11092 incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.
- 11093 (e) "Pass-through costs" include:
- 11094 (i) costs for copying documents to be submitted to the insurer; and
- 11095 (ii) bank costs for processing cash or credit card payments.
- 11096 (2) A licensee may receive from an insured or from a person purchasing an insurance
- 11097 policy, noncommission compensation if the noncommission compensation is stated on a
- 11098 separate, written disclosure.
- 11099 (a) The disclosure required by this Subsection (2) shall:
- 11100 (i) include the signature of the insured or prospective insured acknowledging the
- 11101 noncommission compensation;
- 11102 (ii) clearly specify the amount or extent of the noncommission compensation; and
- 11103 (iii) be provided to the insured or prospective insured before the performance of the
- 11104 service.
- 11105 (b) Noncommission compensation shall be:
- 11106 (i) limited to actual or reasonable expenses incurred for services; and
- 11107 (ii) uniformly applied to all insureds or prospective insureds in a class or classes of
- 11108 business or for a specific service or services.
- 11109 (c) A copy of the signed disclosure required by this Subsection (2) ~~must~~ shall be
- 11110 maintained by any licensee who collects or receives the noncommission compensation or any
- 11111 portion of the noncommission compensation.
- 11112 (d) All accounting records relating to noncommission compensation shall be
- 11113 maintained by the person described in Subsection (2)(c) in a manner that facilitates an audit.
- 11114 (3) (a) A licensee may receive noncommission compensation when acting as a
- 11115 producer for the insured in connection with the actual sale or placement of insurance if:
- 11116 (i) the producer and the insured have agreed on the producer's noncommission
- 11117 compensation; and
- 11118 (ii) the producer has disclosed to the insured the existence and source of any other
- 11119 compensation that accrues to the producer as a result of the transaction.
- 11120 (b) The disclosure required by this Subsection (3) shall:

11121 (i) include the signature of the insured or prospective insured acknowledging the  
11122 noncommission compensation;

11123 (ii) clearly specify the amount or extent of the noncommission compensation and the  
11124 existence and source of any other compensation; and

11125 (iii) be provided to the insured or prospective insured before the performance of the  
11126 service.

11127 (c) The following additional noncommission compensation is authorized:

11128 (i) compensation received by a producer of a compensated corporate surety who under  
11129 procedures approved by a rule or order of the commissioner is paid by surety bond principal  
11130 debtors for extra services;

11131 (ii) compensation received by an insurance producer who is also licensed as a public  
11132 adjuster under Section 31A-26-203, for services performed for an insured in connection with a  
11133 claim adjustment, so long as the producer does not receive or is not promised compensation for  
11134 aiding in the claim adjustment prior to the occurrence of the claim;

11135 (iii) compensation received by a consultant as a consulting fee, provided the consultant  
11136 complies with the requirements of Section 31A-23a-401; or

11137 (iv) other compensation arrangements approved by the commissioner after a finding  
11138 that they do not violate Section 31A-23a-401 and are not harmful to the public.

11139 (4) (a) For purposes of this Subsection (4), "producer" includes:

11140 (i) a producer;

11141 (ii) an affiliate of a producer; or

11142 (iii) a consultant.

11143 (b) Beginning January 1, 2010, in addition to any other disclosures required by this  
11144 section, a producer may not accept or receive any compensation from an insurer or third party  
11145 administrator for the placement of a health benefit plan, other than a hospital confinement  
11146 indemnity policy, unless prior to the customer's purchase of the health benefit plan the  
11147 producer:

11148 (i) except as provided in Subsection (4)(c), discloses in writing to the customer that the  
11149 producer will receive compensation from the insurer or third party administrator for the  
11150 placement of insurance, including the amount or type of compensation known to the producer  
11151 at the time of the disclosure; and

- 11152 (ii) except as provided in Subsection (4)(c):
- 11153 (A) obtains the customer's signed acknowledgment that the disclosure under
- 11154 Subsection (4)(b)(i) was made to the customer; or
- 11155 (B) (I) signs a statement that the disclosure required by Subsection (4)(b)(i) was made
- 11156 to the customer; and
- 11157 (II) keeps the signed statement on file in the producer's office while the health benefit
- 11158 plan placed with the customer is in force.
- 11159 (c) If the compensation to the producer from an insurer or third party administrator is
- 11160 for the renewal of a health benefit plan, once the producer has made an initial disclosure that
- 11161 complies with Subsection (4)(b), the producer does not have to disclose compensation received
- 11162 for the subsequent yearly renewals in accordance with Subsection (4)(b) until the renewal
- 11163 period immediately following 36 months after the initial disclosure.
- 11164 (d) (i) A licensee who collects or receives any part of the compensation from an insurer
- 11165 or third party administrator in a manner that facilitates an audit shall, while the health benefit
- 11166 plan placed with the customer is in force, maintain a copy of:
- 11167 (A) the signed acknowledgment described in Subsection (4)(b)(i); or
- 11168 (B) the signed statement described in Subsection (4)(b)(ii).
- 11169 (ii) The standard application developed in accordance with Section 31A-22-635 shall
- 11170 include a place for a producer to provide the disclosure required by this Subsection (4), and if
- 11171 completed, shall satisfy the requirement of Subsection (4)(d)(i).
- 11172 (e) Subsection (4)(b)(ii) does not apply to:
- 11173 (i) a person licensed as a producer who acts only as an intermediary between an insurer
- 11174 and the customer's producer, including a managing general agent; or
- 11175 (ii) the placement of insurance in a secondary or residual market.
- 11176 (5) This section does not alter the right of any licensee to recover from an insured the
- 11177 amount of any premium due for insurance effected by or through that licensee or to charge a
- 11178 reasonable rate of interest upon past-due accounts.
- 11179 (6) This section does not apply to bail bond producers or bail enforcement agents as
- 11180 defined in Section 31A-35-102.
- 11181 Section 272. Section **31A-23a-602** is amended to read:
- 11182 **31A-23a-602. Required contract provisions.**

11183           A person, firm, association, or corporation acting in the capacity of a managing general  
11184 agent may not place business with an insurer unless there is in force a written contract between  
11185 the parties which sets forth the responsibilities of each party, and where both parties share  
11186 responsibility for a particular function, the contract specifies the division of shared  
11187 responsibilities. The written contract shall contain the following minimum provisions:

11188           (1) The insurer may terminate the contract for cause upon written notice to the  
11189 managing general agent. The insurer may suspend the underwriting authority of the managing  
11190 general agent during the pendency of any dispute regarding the cause for termination.

11191           (2) The managing general agent will render accounts to the insurer detailing all  
11192 transactions and remit all funds due under the contract to the insurer at least monthly.

11193           (3) All funds collected for the account of an insurer will be held by the managing  
11194 general agent in a fiduciary capacity in a bank which is insured by the FDIC. This account  
11195 shall be used for all payments on behalf of the insurer. The managing general agent may retain  
11196 no more than three months estimated claims payments and allocated loss adjustment expenses.

11197           (4) Separate records of business written by the managing general agent shall be  
11198 maintained. The insurer shall have access and the right to copy all accounts and records related  
11199 to its business and shall have access to all books, bank accounts, and records of the managing  
11200 general agent. The records shall be retained according to Section 31A-23a-412 and shall be  
11201 kept in a form usable by the insurer and the commissioner.

11202           (5) The contract may not be assigned in whole or part by the managing general agent.

11203           (6) The insurer shall have the right to cancel or nonrenew any policy of insurance  
11204 subject to the applicable laws and rules. The contract shall contain appropriate underwriting  
11205 guidelines including:

11206           (a) the maximum annual premium volume;

11207           (b) the basis of the rates to be charged;

11208           (c) the types of risks which may be written;

11209           (d) maximum limits of liability;

11210           (e) applicable exclusions;

11211           (f) territorial limitations;

11212           (g) policy cancellation provisions; and

11213           (h) the maximum policy period.

- 11214 (7) If the contract permits the managing general agent to settle claims on behalf of the  
11215 insurer:
- 11216 (a) All claims [~~must~~] shall be reported to the company in a timely manner.
- 11217 (b) A copy of the claim file shall be sent to the insurer at its request, or as soon as it  
11218 becomes known that the claim:
- 11219 (i) has the potential to exceed the lesser of an amount determined by the commissioner  
11220 or the limit set by the company;
- 11221 (ii) involves a coverage dispute;
- 11222 (iii) may exceed the managing general agent's claims settlement authority;
- 11223 (iv) is open for more than six months; or
- 11224 (v) is closed by payment the lesser of an amount set by the commissioner or an amount  
11225 set by the company.
- 11226 (c) All claim files will be the joint property of the insurer and managing general agent.  
11227 However, upon an order of liquidation of the insurer, the files become the sole property of the  
11228 insurer or its estate. The managing general agent shall have reasonable access to and the right  
11229 to copy the files on a timely basis.
- 11230 (d) Any settlement authority granted to the managing general agent may be terminated  
11231 for cause upon the insurer's written notice to the managing general agent or upon the  
11232 termination of the contract. The insurer may suspend the settlement authority during the  
11233 pendency of any dispute regarding the cause for termination.
- 11234 (8) Where electronic claims files are in existence, the contract [~~must~~] shall address the  
11235 timely transmission of the data.
- 11236 (9) If the contract provides for a sharing of interim profits by the managing general  
11237 agent, and the managing general agent has the authority to determine the amount of the interim  
11238 profits by establishing loss reserves, controlling claim payments, or in any other manner,  
11239 interim profits may not be paid to the managing general agent until one year after they are  
11240 earned for property insurance business, and five years after they are earned on casualty  
11241 business, but not until the profits have been verified by a review conducted pursuant to Section  
11242 31A-23a-603.
- 11243 (10) The managing general agent may not:
- 11244 (a) bind reinsurance or retrocessions on behalf of the insurer, except that the managing

11245 general agent may bind facultative reinsurance contracts pursuant to obligatory facultative  
11246 agreements if the contract with the insurer contains reinsurance underwriting guidelines  
11247 including, for both reinsurance assumed and ceded, a list of reinsurers with which the  
11248 automatic agreements are in effect, the coverages and amounts or percentages that may be  
11249 reinsured, and commission schedules;

11250 (b) commit the insurer to participate in insurance or reinsurance syndicates;

11251 (c) appoint any producer without assuring that the producer is lawfully licensed to  
11252 transact the type of insurance for which ~~he~~ the producer is appointed;

11253 (d) without prior approval of the insurer, pay or commit the insurer to pay a claim over  
11254 a specified amount, net of reinsurance, which ~~shall not~~ may not exceed 1% of the insurer's  
11255 policyholder's surplus as of December 31 of the last completed calendar year;

11256 (e) collect any payment from a reinsurer or commit the insurer to any claim settlement  
11257 with a reinsurer without prior approval of the insurer; if prior approval is given, a report [~~must~~  
11258 shall] be promptly forwarded to the insurer;

11259 (f) permit its subproducer to serve on the insurer's board of directors;

11260 (g) jointly employ an individual who is employed with the insurer; or

11261 (h) appoint a submanaging general agent.

11262 Section 273. Section **31A-23a-702** is amended to read:

11263 **31A-23a-702. Minimum standards.**

11264 (1) This section applies if, in any calendar year, the aggregate amount of gross written  
11265 premium on business placed with a controlled insurer by a controlling producer is equal to or  
11266 greater than 5% of the admitted assets of the controlled insurer, as reported in the controlled  
11267 insurer's quarterly statement filed as of September 30 of the prior year.

11268 (2) Notwithstanding Subsection (1), this section does not apply if:

11269 (a) the controlling producer places insurance only with the controlled insurer, or only  
11270 with the controlled insurer and members of the controlled insurer's holding company system, or  
11271 with the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based  
11272 upon the amount of premiums written in connection with the insurance placed;

11273 (b) the controlling producer accepts insurance placements only from nonaffiliated  
11274 producers who are not controlling producers, and not directly from insureds; and

11275 (c) the controlled insurer, except for insurance business written through a residual

11276 market facility, accepts insurance business only from a controlling producer, a producer  
11277 controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

11278 (3) A controlled insurer may not accept business from a controlling producer and a  
11279 controlling producer may not place business with a controlled insurer unless there is a written  
11280 contract between the controlling producer and the insurer that specifies the responsibilities of  
11281 each party and that has been approved by the board of directors of the insurer. The contract  
11282 shall contain the following minimum provisions:

11283 (a) The controlled insurer may terminate the contract for cause, upon written notice to  
11284 the controlling producer. The controlled insurer shall suspend the authority of the controlling  
11285 producer to write business during the pendency of any dispute regarding the cause for the  
11286 termination.

11287 (b) The controlling producer shall render accounts to the controlled insurer detailing all  
11288 material transactions, including information necessary to support all commissions, charges, and  
11289 other fees received by, or owing to, the controlling producer.

11290 (c) The controlling producer shall remit all funds due under the terms of the contract to  
11291 the controlled insurer at least monthly. The due date shall be fixed so that premiums or  
11292 premium installments collected shall be remitted no later than 90 days after the effective date  
11293 of any policy placed with the controlled insurer under the contract.

11294 (d) All funds collected for the controlled insurer's account shall be held by the  
11295 controlling producer in a fiduciary capacity, in one or more appropriately identified bank  
11296 accounts in banks that are members of the Federal Reserve System FDIC, in accordance with  
11297 applicable provisions of this title. However, funds of a controlling producer not required to be  
11298 licensed in this state shall be maintained in compliance with the requirements of the controlling  
11299 producer's domiciliary jurisdiction.

11300 (e) The controlling producer shall maintain separately identifiable records of business  
11301 written for the controlled insurer.

11302 (f) The contract may not be assigned in whole or in part by the controlling producer.

11303 (g) The controlled insurer shall provide the controlling producer with its underwriting  
11304 standards, rules, procedures, and manuals setting forth the rates to be charged, and the  
11305 conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the  
11306 standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and

11307 conditions shall be the same as those applicable to comparable business placed with the  
11308 controlled insurer by a producer other than the controlling producer.

11309 (h) The contract shall state the rates and terms of the controlling producer's  
11310 commissions, charges, or other fees and the purposes for those charges or fees. The rates of the  
11311 commissions, charges, and other fees may not be greater than those applicable to comparable  
11312 business and services placed with the controlled insurer by producers other than controlling  
11313 producers. For purposes of Subsections (3)(g) and (h), examples of "comparable business and  
11314 services" include the same lines of insurance, same kinds of insurance, same kinds of risks,  
11315 similar policy limits, and similar quality of business.

11316 (i) If the contract provides that the controlling producer, on insurance business placed  
11317 with the insurer, is to be compensated contingent upon the insurer's profits on that business,  
11318 then the compensation may not be determined and paid until at least five years after the  
11319 premiums on liability insurance are earned, and at least one year after the premiums are earned  
11320 on any other insurance. In no event may the commissions be paid until the adequacy of the  
11321 controlled insurer's reserves on remaining claims has been independently verified pursuant to  
11322 Subsection (5).

11323 (j) The contract shall include a limit on the controlling producer's writings in relation to  
11324 the controlled insurer's surplus and total writings. The insurer may establish a different limit to  
11325 each line or subline of business. The controlled insurer shall notify the controlling producer  
11326 when the applicable limit is approached and ~~shall not~~ may not accept business from the  
11327 controlling producer if the limit is reached. The controlling producer may not place business  
11328 with the controlled insurer if it has been notified by the controlled insurer that the limit has  
11329 been reached.

11330 (k) The controlling producer may negotiate but may not bind reinsurance on behalf of  
11331 the controlled insurer on business the controlling producer places with the controlled insurer.  
11332 However, the controlling producer may bind facultative reinsurance contracts pursuant to  
11333 obligatory facultative agreements if the contract with the controlled insurer contains  
11334 underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers  
11335 with which the automatic agreements are in effect, the coverages and amounts or percentages  
11336 that may be reinsured, and commission schedules.

11337 (4) Each controlled insurer shall have an audit committee of the board of directors.

11338 The audit committee shall annually meet to review the adequacy of the insurer's loss reserves.  
11339 The committee shall meet with management, the insurer's independent certified public  
11340 accountants, and an independent casualty actuary or any other independent loss reserve  
11341 specialists acceptable to the commissioner.

11342 (5) (a) In addition to any other required loss reserve certification, the controlled insurer  
11343 shall file with the commissioner on April 1 of each year an opinion of an independent casualty  
11344 actuary, or any other independent loss reserve specialist acceptable to the commissioner. The  
11345 opinion shall report loss ratios for each line of business written and shall attest to the adequacy  
11346 of loss reserves established for losses incurred and outstanding as of year-end on business  
11347 placed by the producer including losses incurred but not reported.

11348 (b) The controlled insurer shall annually report to the commissioner the amount of  
11349 commissions paid to the producer, the percentage that amount represents of the net premiums  
11350 written, and comparable amounts and percentage paid to noncontrolling producers for  
11351 placements of the same kinds of insurance.

11352 Section 274. Section **31A-23a-806** is amended to read:

11353 **31A-23a-806. Prohibited acts.**

11354 (1) The reinsurance intermediary-manager may not cede retrocessions on behalf of the  
11355 reinsurer, except that the reinsurance intermediary-manager may cede facultative retrocessions  
11356 pursuant to obligatory facultative agreements if the contract with the reinsurer contains  
11357 reinsurance underwriting guidelines for facultative retrocessions. The guidelines shall include  
11358 a list of reinsurers with which automatic agreements are in effect, and for each listed reinsurer,  
11359 the coverages and amounts or percentages that may be reinsured, and commission schedules.

11360 (2) The reinsurance intermediary-manager may not commit the reinsurer to participate  
11361 in reinsurance syndicates.

11362 (3) The reinsurance intermediary-manager may not appoint any producer without  
11363 assuring that the producer is lawfully licensed to transact the type of reinsurance for which [he]  
11364 the producer is appointed.

11365 (4) The reinsurance intermediary-manager may not, without prior approval of the  
11366 reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the  
11367 lesser of an amount specified by the reinsurer or 1% of the reinsurer's policyholder's surplus as  
11368 of December 31 of the last complete calendar year.

11369 (5) The reinsurance intermediary-manager may not collect any payment from a  
11370 retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire,  
11371 without prior approval of the reinsurer. If prior approval is given, a report [~~must~~] shall be  
11372 promptly forwarded to the reinsurer.

11373 (6) The reinsurance intermediary-manager may not jointly employ an individual who is  
11374 employed by the reinsurer unless the reinsurance intermediary-manager is under common  
11375 control with the reinsurer subject to Title 31A, Chapter 16, Insurance Holding Companies.

11376 (7) The reinsurance intermediary-manager may not appoint a subreinsurance  
11377 intermediary-manager.

11378 Section 275. Section **31A-27a-202** is amended to read:

11379 **31A-27a-202. Commencement of formal delinquency proceeding.**

11380 (1) A formal delinquency proceeding against a person shall be commenced by filing a  
11381 petition in the name of the commissioner or department.

11382 (2) (a) The petition required by Subsection (1):

11383 (i) shall state:

11384 (A) the grounds upon which the proceeding is based; and

11385 (B) the relief requested; and

11386 (ii) may include a request for restraining orders and injunctive relief as described in  
11387 Section 31A-27a-108.

11388 (b) Upon the filing of a petition, the commissioner shall forward a notice of the petition  
11389 by first-class mail or electronic communication, as permitted by the receivership court, to the  
11390 commissioners and guaranty associations in states in which the insurer did business.

11391 (3) (a) A petition that requests injunctive relief:

11392 (i) shall be verified by the commissioner or the commissioner's designee; and

11393 (ii) is not required to plead or prove irreparable harm or inadequate remedy at law.

11394 (b) The commissioner shall provide only the notice the receivership court requires.

11395 (4) If a temporary restraining order is requested:

11396 (a) the receivership court may issue an initial order containing the relief requested;

11397 (b) the order shall state the time and date of its issuance;

11398 (c) the receivership court shall set a time and date for the return of summons:

11399 (i) not more than 10 days from the time and date the initial order is issued; and

11400 (ii) at which time the person proceeded against may appear before the receivership  
11401 court for a summary hearing; and

11402 (d) the order may not continue in effect beyond the time and date set for the return of  
11403 summons, unless the receivership court expressly enters one or more orders extending the  
11404 restraining order.

11405 (5) (a) If no temporary restraining order is requested, the receivership court shall cause  
11406 summons to be issued.

11407 (b) The summons shall specify:

11408 (i) a return date not more than 30 days after the day on which the summons is issued;  
11409 and

11410 (ii) that an answer [~~must~~] shall be filed at or before the return date.

11411 Section 276. Section ~~31A-27a-205~~ is amended to read:

11412 **31A-27a-205. Decision and appeals.**

11413 (1) The receivership court shall enter judgment on the petition to commence formal  
11414 delinquency proceeding within 15 days after the day on which the evidence is concluded.

11415 (2) (a) An order entered pursuant to Subsection (1) is final when entered.

11416 (b) An appeal shall be:

11417 (i) handled on an expedited basis; and

11418 (ii) taken within five days of the day on which judgment is entered.

11419 (3) (a) Absent entry of an order staying the order pursuant to Subsection (4), the order  
11420 has full force and effect and the receiver shall carry out the order's terms and this chapter.

11421 (b) A request for reconsideration, review, or appeal, or posting of a bond, may not  
11422 dissolve or stay the judgment.

11423 (4) (a) The following motions [~~must~~] shall first be presented to the receivership court:

11424 (i) a motion for a stay of a judgment;

11425 (ii) a motion for approval of a supersedes bond; or

11426 (iii) a motion for other relief pending appeal.

11427 (b) Except for a grant of a petition for rehabilitation which shall remain in effect  
11428 pending a decision on appeal, during the pendency of an appeal the receivership court may do  
11429 any of the following in accordance with the Utah Rules of Civil Procedure:

11430 (i) suspend an order entered under Subsection (1);

11431 (ii) modify an order entered under Subsection (1); or  
11432 (iii) make any other appropriate order governing the enforceability of an order entered  
11433 under Subsection (1).

11434 (c) The receivership court or an appellate court to which the matter is presented may  
11435 condition any relief it grants under this Subsection (4) on the filing of a bond or other  
11436 appropriate security with the receivership court.

11437 (5) Section 31A-27a-114 applies to all acts taken during the pendency of an appeal  
11438 regardless of the appeal's ultimate disposition.

11439 (6) The reversal or modification on appeal of an order of rehabilitation or liquidation  
11440 does not affect the validity of an act of the receiver pursuant to the order unless the order is  
11441 stayed pending appeal.

11442 Section 277. Section **31A-27a-502** is amended to read:

11443 **31A-27a-502. Recovery from affiliates.**

11444 (1) (a) If a receivership order is entered under this chapter, the receiver appointed under  
11445 the receivership order may recover on behalf of the insurer from an affiliate as defined in  
11446 Subsection 31A-1-301(5) the value received by the affiliate at any time during the five years  
11447 preceding the filing date of the delinquency proceedings.

11448 (b) A person disputing that person's status as an affiliate [~~must~~] shall prove by clear  
11449 and convincing evidence the person's nonaffiliate status.

11450 (c) Recovery from an affiliate is subject to the limitations of Subsections (2) and (6).

11451 (2) If the insurer is a stock corporation, a stock dividend distribution to an affiliate is  
11452 not recoverable if the recipient shows by a preponderance of the evidence that:

11453 (a) when paid, the stock dividend distribution to an affiliate is lawful and reasonable;

11454 (b) the department had notice to and approved the stock dividend; and

11455 (c) the insurer did not know and could not reasonably have known that the stock  
11456 dividend distribution to the affiliate might adversely affect the solvency of the insurer.

11457 (3) The maximum amount recoverable under this section is the amount needed to pay  
11458 all claims under the receivership:

11459 (a) in excess of all other available recoverable assets; and

11460 (b) reduced for each recipient affiliate by any amount that the recipient affiliate pays to  
11461 any receiver under similar laws of other states.

11462 (4) (a) A person who is an affiliate at the time value is received is liable up to the  
11463 amount of value received by the affiliate.

11464 (b) If two or more affiliates are liable regarding the same value received, they are  
11465 jointly and severally liable.

11466 (5) If any affiliate liable under Subsection (4) is insolvent or unable to pay within one  
11467 year, all affiliates at the time the value is received are jointly and severally liable for any  
11468 resulting deficiency in the amount that would have been recovered from the nonpaying  
11469 affiliate.

11470 (6) This section does not enlarge the personal liability of a director under existing law.

11471 (7) An action or proceeding under this section may not be commenced after the earlier  
11472 of:

11473 (a) six years after the day on which a receiver is appointed; or

11474 (b) the day on which the receivership is terminated.

11475 Section 278. Section **31A-27a-701** is amended to read:

11476 **31A-27a-701. Priority of distribution.**

11477 (1) (a) The priority of payment of distributions on unsecured claims shall be in  
11478 accordance with the order in which each class of claim is set forth in this section except as  
11479 provided in Section 31A-27a-702.

11480 (b) All claims in each class shall be paid in full or adequate funds retained for the  
11481 claim's payment before a member of the next class receives payment.

11482 (c) All claims within a class shall be paid substantially the same percentage.

11483 (d) Except as provided in Subsections (2)(a)(i)(E), (2)(k), and (2)(m), subclasses may  
11484 not be established within a class.

11485 (e) A claim by a shareholder, policyholder, or other creditor may not be permitted to  
11486 circumvent the priority classes through the use of equitable remedies.

11487 (2) The order of distribution of claims shall be as follows:

11488 (a) a Class 1 claim, which:

11489 (i) is a cost or expense of administration expressly approved or ratified by the  
11490 liquidator, including the following:

11491 (A) the actual and necessary costs of preserving or recovering the property of the  
11492 insurer;

- 11493 (B) reasonable compensation for all services rendered on behalf of the administrative  
11494 supervisor or receiver;
- 11495 (C) a necessary filing fee;
- 11496 (D) the fees and mileage payable to a witness;
- 11497 (E) an unsecured loan obtained by the receiver, which:
- 11498 (I) unless its terms otherwise provide, has priority over all other costs of  
11499 administration; and
- 11500 (II) absent agreement to the contrary, shares pro rata with all other claims described in  
11501 this Subsection (2)(a)(i)(E); and
- 11502 (F) an expense approved by the rehabilitator of the insurer, if any, incurred in the  
11503 course of the rehabilitation that is unpaid at the time of the entry of the order of liquidation; and
- 11504 (ii) except as expressly approved by the receiver, excludes any expense arising from a  
11505 duty to indemnify a director, officer, or employee of the insurer which expense, if allowed, is a  
11506 Class 7 claim;
- 11507 (b) a Class 2 claim, which:
- 11508 (i) is a reasonable expense of a guaranty association, including overhead, salaries, or  
11509 other general administrative expenses allocable to the receivership such as:
- 11510 (A) an administrative or claims handling expense;
- 11511 (B) an expense in connection with arrangements for ongoing coverage; and
- 11512 (C) in the case of a property and casualty guaranty association, a loss adjustment  
11513 expense, including:
- 11514 (I) an adjusting or other expense; and
- 11515 (II) a defense or cost containment expense; and
- 11516 (ii) excludes an expense incurred in the performance of duties under Section  
11517 31A-28-112 or similar duties under the statute governing a similar organization in another  
11518 state;
- 11519 (c) a Class 3 claim, which:
- 11520 (i) is:
- 11521 (A) a claim under a policy of insurance including a third party claim;
- 11522 (B) a claim under an annuity contract or funding agreement;
- 11523 (C) a claim under a nonassessable policy for unearned premium;

- 11524 (D) a claim of an obligee and, subject to the discretion of the receiver, a completion  
11525 contractor under a surety bond or surety undertaking, except for:
- 11526 (I) a bail bond;
  - 11527 (II) a mortgage guaranty;
  - 11528 (III) a financial guaranty; or
  - 11529 (IV) other form of insurance offering protection against investment risk or warranties;
- 11530 (E) a claim by a principal under a surety bond or surety undertaking for wrongful  
11531 dissipation of collateral by the insurer or its agents;
- 11532 (F) an indemnity payment on:
- 11533 (I) a covered claim;
  - 11534 (II) unearned premium; or
  - 11535 (III) a payment for the continuation of coverage made by an entity responsible for the  
11536 payment of a claim or continuation of coverage of an insolvent health maintenance  
11537 organization;
- 11538 (G) a claim incurred during the extension of coverage provided for in Sections  
11539 31A-27a-402 and 31A-27a-403; or
- 11540 (H) all other claims incurred in fulfilling the statutory obligations of a guaranty  
11541 association not included in Class 2, including:
- 11542 (I) an indemnity payment on covered claims; and
  - 11543 (II) in the case of a life and health guaranty association, a claim:
    - 11544 (Aa) as a creditor of the impaired or insolvent insurer for a payment of and liabilities  
11545 incurred on behalf of a covered claim or covered obligation of the insurer; and
    - 11546 (Bb) for the funds needed to reinsure the obligations described under this Subsection  
11547 (2)(c)(i)(H)(II) with a solvent insurer; and
    - 11548 (ii) notwithstanding any other provision of this chapter, excludes the following which  
11549 shall be paid under Class 7, except as provided in this section:
      - 11550 (A) an obligation of the insolvent insurer arising out of a reinsurance contract;
      - 11551 (B) an obligation that is incurred pursuant to an occurrence policy or reported pursuant  
11552 to a claims made policy after:
        - 11553 (I) the expiration date of the policy;
        - 11554 (II) the policy is replaced by the insured;

- 11555 (III) the policy is canceled at the insured's request; or
- 11556 (IV) the policy is canceled as provided in this chapter;
- 11557 (C) an obligation to an insurer, insurance pool, or underwriting association and the
- 11558 insurer's, insurance pool's, or underwriting association's claim for contribution, indemnity, or
- 11559 subrogation, equitable or otherwise, except for direct claims under a policy where the insurer is
- 11560 the named insured;
- 11561 (D) an amount accrued as punitive or exemplary damages unless expressly covered
- 11562 under the terms of the policy, which shall be paid as a claim in Class 9;
- 11563 (E) a tort claim of any kind against the insurer;
- 11564 (F) a claim against the insurer for bad faith or wrongful settlement practices; and
- 11565 (G) a claim of a guaranty association for assessments not paid by the insurer, which
- 11566 claims shall be paid as claims in Class 7; and
- 11567 (iii) notwithstanding Subsection (2)(c)(ii)(B), does not exclude an unearned premium
- 11568 claim on a policy, other than a reinsurance agreement;
- 11569 (d) a Class 4 claim, which is a claim under a policy for mortgage guaranty, financial
- 11570 guaranty, or other forms of insurance offering protection against investment risk or warranties;
- 11571 (e) a Class 5 claim, which is a claim of the federal government not included in Class 3
- 11572 or 4;
- 11573 (f) a Class 6 claim, which is a debt due an employee for services or benefits:
- 11574 (i) to the extent that the expense:
- 11575 (A) does not exceed the lesser of:
- 11576 (I) \$5,000; or
- 11577 (II) two months' salary; and
- 11578 (B) represents payment for services performed within one year before the day on which
- 11579 the initial order of receivership is issued; and
- 11580 (ii) which priority is in lieu of any other similar priority that may be authorized by law
- 11581 as to wages or compensation of employees;
- 11582 (g) a Class 7 claim, which is a claim of an unsecured creditor not included in Classes 1
- 11583 through 6, including:
- 11584 (i) a claim under a reinsurance contract;
- 11585 (ii) a claim of a guaranty association for an assessment not paid by the insurer; and

11586 (iii) other claims excluded from Class 3 or 4, unless otherwise assigned to Classes 8  
11587 through 13;

11588 (h) subject to Subsection (3), a Class 8 claim, which is:

11589 (i) a claim of a state or local government, except a claim specifically classified  
11590 elsewhere in this section; or

11591 (ii) a claim for services rendered and expenses incurred in opposing a formal  
11592 delinquency proceeding;

11593 (i) a Class 9 claim, which is a claim for penalties, punitive damages, or forfeitures,  
11594 unless expressly covered under the terms of a policy of insurance;

11595 (j) a Class 10 claim, which is, except as provided in Subsections 31A-27a-601(2) and  
11596 31A-27a-601(3), a late filed claim that would otherwise be classified in Classes 3 through 9;

11597 (k) subject to Subsection (4), a Class 11 claim, which is:

11598 (i) a surplus note;

11599 (ii) a capital note;

11600 (iii) a contribution note;

11601 (iv) a similar obligation;

11602 (v) a premium refund on an assessable policy; or

11603 (vi) any other claim specifically assigned to this class;

11604 (l) a Class 12 claim, which is a claim for interest on an allowed claim of Classes 1  
11605 through 11, according to the terms of a plan to pay interest on allowed claims proposed by the  
11606 liquidator and approved by the receivership court; and

11607 (m) subject to Subsection (4), a Class 13 claim, which is a claim of a shareholder or  
11608 other owner arising out of:

11609 (i) the shareholder's or owner's capacity as shareholder or owner or any other capacity;  
11610 and

11611 (ii) except as the claim may be qualified in Class 3, 4, 7, or 12.

11612 (3) To prove a claim described in Class 8, the claimant [~~must~~] shall show that:

11613 (a) the insurer that is the subject of the delinquency proceeding incurred the fee or  
11614 expense on the basis of the insurer's best knowledge, information, and belief:

11615 (i) formed after reasonable inquiry indicating opposition is in the best interests of the  
11616 insurer;

11617 (ii) that is well grounded in fact; and

11618 (iii) is warranted by existing law or a good faith argument for the extension,

11619 modification, or reversal of existing law; and

11620 (b) opposition is not pursued for any improper purpose, such as to harass, to cause

11621 unnecessary delay, or to cause needless increase in the cost of the litigation.

11622 (4) (a) A claim in Class 11 is subject to a subordination agreement related to other

11623 claims in Class 11 that exist before the entry of a liquidation order.

11624 (b) A claim in Class 13 is subject to a subordination agreement, related to other claims

11625 in Class 13 that exist before the entry of a liquidation order.

11626 Section 279. Section **31A-30-107.3** is amended to read:

11627 **31A-30-107.3. Discontinuance and nonrenewal limitations and conditions.**

11628 (1) (a) A carrier that elects to discontinue offering a health benefit plan under

11629 Subsection 31A-30-107(3)(e) or 31A-30-107.1(3)(e) is prohibited from writing new business:

11630 (i) in the small employer and individual market in this state; and

11631 (ii) for a period of five years beginning on the date of discontinuation of the last

11632 coverage that is discontinued.

11633 (b) The prohibition described in Subsection (1)(a) may be waived if the commissioner

11634 finds that waiver is in the public interest:

11635 (i) to promote competition; or

11636 (ii) to resolve inequity in the marketplace.

11637 (2) (a) If the Comprehensive Health Insurance Pool as set forth under Title 31A,

11638 Chapter 29, Comprehensive Health Insurance Pool Act, is dissolved or discontinued, or if

11639 enrollment is capped or suspended, an individual carrier:

11640 (i) may elect to discontinue offering new individual health benefit plans, except to

11641 HIPAA eligibles, but [~~must~~] shall keep existing individual health benefit plans in effect, except

11642 those individual plans that are not renewed under the provisions of Subsection 31A-30-107(2)

11643 or 31A-30-107.1(2);

11644 (ii) may elect to continue to offer new individual and small employer health benefit

11645 plans; or

11646 (iii) may elect to discontinue all of the covered carrier's health benefit plans in the

11647 individual or small group market under the provisions of Subsection 31A-30-107(3)(e) or

11648 31A-30-107.1(3)(e).

11649 (b) A carrier that makes an election under Subsection (2)(a)(i):

11650 (i) is prohibited from writing new business:

11651 (A) in the individual market in this state; and

11652 (B) for a period of five years beginning on the date of discontinuation;

11653 (ii) may continue to write new business in the small employer market; and

11654 (iii) [~~must~~] shall provide written notice of the election under Subsection (2)(a)(i) within  
11655 two calendar days of the election to the Utah Insurance Department.

11656 (c) The prohibition described in Subsection (2)(b)(i) may be waived if the  
11657 commissioner finds that waiver is in the public interest:

11658 (i) to promote competition; or

11659 (ii) to resolve inequity in the marketplace.

11660 (d) A carrier that makes an election under Subsection (2)(a)(iii) is subject to the  
11661 provisions of Subsection (1).

11662 (3) If a carrier is doing business in one established geographic service area of the state,  
11663 Sections 31A-30-107 and 31A-30-107.1 apply only to the carrier's operations in that  
11664 geographic service area.

11665 (4) If a small employer employs less than two eligible employees, a carrier may not  
11666 discontinue or not renew the health benefit plan until the first renewal date following the  
11667 beginning of a new plan year, even if the carrier knows as of the beginning of the plan year that  
11668 the employer no longer has at least two current employees.

11669 Section 280. Section **31A-30-107.5** is amended to read:

11670 **31A-30-107.5. Preexisting condition exclusion -- Condition-specific exclusion**  
11671 **riders -- Limitation periods.**

11672 (1) A health benefit plan may impose a preexisting condition exclusion only if the  
11673 provision complies with Subsection 31A-22-605.1(4).

11674 (2) (a) In accordance with Subsection (2)(b), an individual carrier:

11675 (i) may, when the individual carrier and the insured mutually agree in writing to a  
11676 condition-specific exclusion rider, offer to issue an individual policy that excludes all treatment  
11677 and prescription drugs related to:

11678 (A) a specific physical condition;

- 11679 (B) a specific disease or disorder; and
- 11680 (C) any specific or class of prescription drugs; and
- 11681 (ii) may offer an individual policy that may establish separate cost sharing
- 11682 requirements including, deductibles and maximum limits that are specific to covered services
- 11683 and supplies, including drugs, when utilized for the treatment and care of the conditions,
- 11684 diseases, or disorders listed in Subsection (2)(b).
- 11685 (b) (i) Except as provided in Section 31A-22-630 and Subsection (2)(b)(ii), the
- 11686 following may be the subject of a condition-specific exclusion rider:
- 11687 (A) conditions, diseases, and disorders of the bones or joints of the ankle, arm, elbow,
- 11688 fingers, foot, hand, hip, knee, leg, mandible, mastoid, wrist, shoulder, spine, and toes, including
- 11689 bone spurs, bunions, carpal tunnel syndrome, club foot, cubital tunnel syndrome, hammertoe,
- 11690 syndactylism, and treatment and prosthetic devices related to amputation;
- 11691 (B) anal fistula, anal fissure, anal stricture, breast implants, breast reduction, chronic
- 11692 cystitis, chronic prostatitis, cystocele, rectocele, enuresis, hemorrhoids, hydrocele, hypospadias,
- 11693 interstitial cystitis, kidney stones, uterine leiomyoma, varicocele, spermatocele, endometriosis;
- 11694 (C) allergic rhinitis, nonallergic rhinitis, hay fever, dust allergies, pollen allergies,
- 11695 deviated nasal septum, and sinus related conditions, diseases, and disorders;
- 11696 (D) hemangioma, keloids, scar revisions, and other skin related conditions, diseases,
- 11697 and disorders;
- 11698 (E) goiter and other thyroid related conditions, diseases, or disorders;
- 11699 (F) cataracts, cornea transplant, detached retina, glaucoma, keratoconus, macular
- 11700 degeneration, strabismus and other eye related conditions, diseases, and disorders;
- 11701 (G) otitis media, cholesteatoma, otosclerosis, and other internal/external ear conditions,
- 11702 diseases, and disorders;
- 11703 (H) Baker's cyst, ganglion cyst;
- 11704 (I) abdominoplasty, esophageal reflux, hernia, Meniere's disease, migraines, TIC
- 11705 Doulourex, varicose veins, vestibular disorders;
- 11706 (J) sleep disorders and speech disorders; and
- 11707 (K) any specific or class of prescription drugs.
- 11708 (ii) Subsection (2)(b)(i) does not apply:
- 11709 (A) for the treatment of asthma; or

- 11710 (B) when the condition is due to cancer.
- 11711 (iii) A condition-specific exclusion rider:
- 11712 (A) shall be limited to the excluded condition, disease, or disorder and any
- 11713 complications from that condition, disease, or disorder;
- 11714 (B) may not extend to any secondary medical condition; and
- 11715 (C) ~~must~~ shall include the following informed consent paragraph: "I agree by signing
- 11716 below, to the terms of this rider, which excludes coverage for all treatment, including
- 11717 medications, related to the specific condition(s), disease(s), and/or disorder(s) stated herein and
- 11718 that if treatment or medications are received that I have the responsibility for payment for those
- 11719 services and items. I further understand that this rider does not extend to any secondary
- 11720 medical condition, disease, or disorder."
- 11721 (c) If an individual carrier issues a condition-specific exclusion rider, the
- 11722 condition-specific exclusion rider shall remain in effect for the duration of the policy at the
- 11723 individual carrier's option.
- 11724 (d) An individual policy issued in accordance with this Subsection (2) is not subject to
- 11725 Subsection 31A-26-301.6(7).
- 11726 (3) Notwithstanding the other provisions of this section, a health benefit plan may
- 11727 impose a limitation period if:
- 11728 (a) each policy that imposes a limitation period under the health benefit plan specifies
- 11729 the physical condition, disease, or disorder that is excluded from coverage during the limitation
- 11730 period;
- 11731 (b) the limitation period does not exceed 12 months;
- 11732 (c) the limitation period is applied uniformly; and
- 11733 (d) the limitation period is reduced in compliance with Subsections
- 11734 31A-22-605.1(4)(a) and (4)(b).
- 11735 Section 281. Section **31A-30-110** is amended to read:
- 11736 **31A-30-110. Individual enrollment cap.**
- 11737 (1) The commissioner shall set the individual enrollment cap at .5% on July 1, 1997.
- 11738 (2) The commissioner shall raise the individual enrollment cap by .5% at the later of
- 11739 the following dates:
- 11740 (a) six months from the last increase in the individual enrollment cap; or

11741 (b) the date when CCI/TI is greater than .90, where:  
11742 (i) "CCI" is the total individual coverage count for all carriers certifying that their  
11743 uninsurable percentage has reached the individual enrollment cap; and  
11744 (ii) "TI" is the total individual coverage count for all carriers.  
11745 (3) The commissioner may establish a minimum number of uninsurable individuals  
11746 that a carrier entering the market who is subject to this chapter [~~must~~] shall accept under the  
11747 individual enrollment provisions of this chapter.  
11748 (4) Beginning July 1, 1997, an individual carrier may decline to accept individuals  
11749 applying for individual enrollment under Subsection 31A-30-108(3), other than individuals  
11750 applying for coverage as set forth in P.L. 104-191, 110 Stat. 1979, Sec. 2741 (a)-(b), if:  
11751 (a) the uninsurable percentage for that carrier equals or exceeds the cap established in  
11752 Subsection (1); and  
11753 (b) the covered carrier has certified on forms provided by the commissioner that its  
11754 uninsurable percentage equals or exceeds the individual enrollment cap.  
11755 (5) The department may audit a carrier's records to verify whether the carrier's  
11756 uninsurable classification meets industry standards for underwriting criteria as established by  
11757 the commissioner in accordance with Subsection 31A-30-106(1)(i).  
11758 (6) (a) If the commissioner determines that individual enrollment is causing a  
11759 substantial adverse effect on premiums, enrollment, or experience, the commissioner may  
11760 suspend, limit, or delay further individual enrollment for up to 12 months.  
11761 (b) The commissioner shall adopt rules to establish a uniform methodology for  
11762 calculating and reporting loss ratios for individual policies for determining whether the  
11763 individual enrollment provisions of Section 31A-30-108 should be waived for an individual  
11764 carrier experiencing significant and adverse financial impact as a result of complying with  
11765 those provisions.  
11766 Section 282. Section **31A-30-206** is amended to read:  
11767 **31A-30-206. Minimum participation and contribution levels -- Premium**  
11768 **payments.**  
11769 An insurer who offers a health benefit plan for which an employer has established a  
11770 defined contribution arrangement under the provisions of this part:  
11771 (1) [~~shall not~~] may not:

- 11772 (a) establish an employer minimum contribution level for the health benefit plan  
11773 premium under Section 31A-30-112, or any other law; or
- 11774 (b) discontinue or non-renew a policy under Subsection 31A-30-107(4) for failure to  
11775 maintain a minimum employer contribution level;
- 11776 (2) shall accept premium payments for an enrollee from multiple sources through the  
11777 Internet portal, including:
- 11778 (a) government assistance programs;
- 11779 (b) contributions from a Section 125 Cafeteria plan, a health reimbursement  
11780 arrangement, or other qualified mechanism for pre-tax payments established by any employer  
11781 of the enrollee;
- 11782 (c) contributions from a Section 125 Cafeteria plan, a health reimbursement  
11783 arrangement, or other qualified mechanism for pre-tax payments established by an employer of  
11784 a spouse or dependent of the enrollee; and
- 11785 (d) contributions from private sources of premium assistance; and
- 11786 (3) may require, as a condition of coverage, a minimum participation level for eligible  
11787 employees of an employer, which for purposes of the defined contribution arrangement market  
11788 may not exceed 75% participation.
- 11789 Section 283. Section **31A-34-104** is amended to read:
- 11790 **31A-34-104. Alliance -- Required license.**
- 11791 (1) A person [~~must~~] shall be licensed as an alliance pursuant to this chapter to directly  
11792 or indirectly make available or otherwise arrange for health insurance through multiple  
11793 unaffiliated insurers through the use of coordinated actuarial models, coordinated underwriting,  
11794 or coordinated marketing methodologies.
- 11795 (2) (a) A person may not hold itself out as a health insurance purchasing alliance,  
11796 purchasing alliance, health insurance purchasing cooperative, purchasing cooperative, or  
11797 otherwise use a similar name unless licensed by the commissioner as an alliance.
- 11798 (b) Notwithstanding Subsection (2)(a), a person may hold itself out as a voluntary  
11799 health insurance purchasing association without being licensed by the commissioner as  
11800 provided in Section 31A-34-105.
- 11801 (3) To apply for licensure as an alliance, a person shall complete an application in a  
11802 form designated by the commissioner and file it with the commissioner, together with the

11803 applicable filing fees determined by the commissioner under Section 63J-1-504.

11804 Section 284. Section **31A-34-107** is amended to read:

11805 **31A-34-107. Directors, trustees, and officers.**

11806 (1) To ensure representation of consumer interests, at least 25% of the board [~~must~~]  
11807 shall be enrollees, chosen under a plan proposed by the alliance and approved by the  
11808 commissioner.

11809 (2) Those who sit as directors or trustees on the board or as officers or principals of the  
11810 corporation or trust [~~must~~] shall be trustworthy and collectively have the competence and  
11811 experience to carry out the activities of the alliance.

11812 Section 285. Section **31A-36-107** is amended to read:

11813 **31A-36-107. Examinations and retention of records.**

11814 (1) The commissioner may conduct an examination of a life settlement provider or life  
11815 settlement producer in accordance with Sections 31A-2-203, 31A-2-203.5, 31A-2-204, and  
11816 31A-2-205.

11817 (2) A life settlement provider or life settlement producer shall retain for five years  
11818 copies of:

11819 (a) the following records, whether proposed, offered, or executed, from the later of the  
11820 date of the proposal, offer, or execution:

11821 (i) contracts;

11822 (ii) purchase agreements;

11823 (iii) underwriting documents;

11824 (iv) policy forms; and

11825 (v) applications;

11826 (b) checks, drafts, and other evidence or documentation relating to the payment,  
11827 transfer, or release of money, from the date of the transaction; and

11828 (c) records and documents related to the requirements of this chapter.

11829 (3) This section does not relieve a person of the obligation to produce a document  
11830 described in Subsection (2) to the commissioner after the expiration of the relevant period if  
11831 the person has retained the document.

11832 (4) A record required by this section to be retained:

11833 (a) [~~must~~] shall be legible and complete; and

11834 (b) may be retained in any form or by any process that accurately reproduces or is a  
11835 durable medium for the reproduction of the record.

11836 (5) An examiner may not be appointed by the commissioner if the examiner, either  
11837 directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a  
11838 pecuniary interest in a person subject to examination under this chapter. This Subsection (5)  
11839 does not automatically preclude an examiner from being:

11840 (a) an owner;

11841 (b) an insured in a settled policy; or

11842 (c) a beneficiary in a policy that is proposed to be settled.

11843 (6) (a) An examinee under this section shall reimburse the cost of an examination to the  
11844 department consistent with Section 31A-2-205.

11845 (b) Notwithstanding Subsection (6)(a), an individual life settlement producer is not  
11846 subject to Section 31A-2-205.

11847 Section 286. Section **31A-36-109** is amended to read:

11848 **31A-36-109. General requirements.**

11849 (1) If a life settlement provider transfers ownership or changes the beneficiary of a  
11850 settled policy, the life settlement provider shall inform the insured of the transfer or change  
11851 within 20 calendar days.

11852 (2) A life settlement provider that enters a life settlement shall first obtain:

11853 (a) if the owner is the insured, a written statement from a licensed attending physician  
11854 that the owner is of sound mind and under no constraint or undue influence to enter a life  
11855 settlement;

11856 (b) a witnessed document in which the owner represents that:

11857 (i) the owner has a full and complete understanding of the life settlement and the  
11858 benefits of the policy;

11859 (ii) the owner has entered the life settlement freely and voluntarily; and

11860 (iii) if applicable, the insured is terminally ill or chronically ill and that the illness was  
11861 diagnosed after the policy was issued; and

11862 (c) a document in which the insured consents to the release of the insured's medical  
11863 records to:

11864 (i) a life settlement provider;

11865 (ii) a life settlement producer; and  
11866 (iii) the insurer that issued the policy covering the insured.  
11867 (3) Within 20 calendar days after an owner executes documents necessary to transfer  
11868 rights under a policy, or enters into an agreement in any form, express or implied, to settle the  
11869 policy, the life settlement provider shall give written notice to the issuer of the policy that the  
11870 policy has or will become settled. The notice [~~must~~] shall be accompanied by a copy of the  
11871 documents required by Subsection (4).  
11872 (4) The life settlement provider shall deliver a copy of the following to the insurer that  
11873 issued the policy that is the subject of the life settlement:  
11874 (a) the medical release required under Subsection (2)(c);  
11875 (b) a copy of the owner's application for the life settlement; and  
11876 (c) the notice required under Subsection (3).  
11877 (5) (a) An insurer shall complete and return a request for verification of coverage not  
11878 later than 30 calendar days after the day on which the request is received. In its response, the  
11879 insurer shall indicate whether the insurer intends to pursue an investigation regarding the  
11880 validity of the insurance contract.  
11881 (b) An insurer may not require that a person making a request under Subsection (5)(a)  
11882 provide the insurer additional information in order for the insurer to comply with Subsection  
11883 (5)(a), if the person provides the insurer:  
11884 (i) a request for verification of coverage made on an original, facsimile, or electronic  
11885 copy of a verification of coverage for a policy document adopted by the commissioner by rule  
11886 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and  
11887 (ii) an authorization that accompanies the verification described in Subsection (5)(b)(i)  
11888 signed by the owner.  
11889 (6) Medical information solicited or obtained by a life settlement provider or life  
11890 settlement producer is subject to:  
11891 (a) other laws of this state relating to the confidentiality of the information; and  
11892 (b) a rule relating to privacy of medical or personal information promulgated by the  
11893 commissioner under Title V, Section 505 of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C.  
11894 Sec. 6805.  
11895 (7) (a) (i) A life settlement entered into in this state [~~must~~] shall reserve to the owner

11896 an unconditional right to rescind the life settlement within the rescission period provided for in  
11897 this Subsection (7).

11898 (ii) The rescission period ends 15 calendar days after the day on which the owner  
11899 receives the proceeds of the life settlement.

11900 (iii) Rescission by an owner may be conditioned on the owner giving notice and  
11901 repaying to the life settlement provider within the rescission period all proceeds of the life  
11902 settlement and any premium, loan, or loan interest paid by or on behalf of the life settlement  
11903 provider in connection with or as a consequence of the life settlement.

11904 (b) If the insured dies during the rescission period, the life settlement is considered to  
11905 be rescinded if the proceeds, premiums, loans, and loan interest paid by the life settlement  
11906 provider or life settlement purchaser are repaid within 60 calendar days of the day on which the  
11907 insured dies.

11908 (8) (a) Contact with an insured to determine the health status of the insured after a life  
11909 settlement may be made only by a life settlement provider or life settlement producer that is  
11910 licensed in this state, or its authorized representative, and no more than:

11911 (i) once every three months if the insured has a life expectancy of one year or more; or

11912 (ii) once every month if the insured has a life expectancy of less than one year.

11913 (b) A life settlement provider or life settlement producer shall explain the procedure for  
11914 the contacts allowed under this Subsection (8) to the owner when the application for the life  
11915 settlement is signed by all participants in the life settlement.

11916 (c) The limitations of this Subsection (8) do not apply to contacts for purposes other  
11917 than determining health status.

11918 (d) A life settlement provider or life settlement producer is responsible for the acts of  
11919 its authorized representative in violation of this Subsection (8).

11920 (9) The trustee of a related provider trust [~~must~~] shall agree in writing with the life  
11921 settlement provider that:

11922 (a) the life settlement provider is responsible for ensuring compliance with all statutory  
11923 and regulatory requirements; and

11924 (b) the trustee will make all records and files related to life settlements available to the  
11925 commissioner as if those records and files were maintained directly by the life settlement  
11926 provider.

11927 (10) Regardless of the method of compensation, a life settlement producer:  
11928 (a) represents only the owner; and  
11929 (b) owes a fiduciary duty to the owner to act according to the owner's instructions and  
11930 in the best interest of the owner.

11931 Section 287. Section **31A-36-110** is amended to read:

11932 **31A-36-110. Payment and document requirements.**

11933 (1) (a) A life settlement provider shall instruct the owner to send the executed  
11934 documents required to effect the change in ownership or assignment or change of beneficiary  
11935 of the affected policy to a designated independent escrow agent.

11936 (b) Within three business days after the day on which the escrow agent receives the  
11937 documents, or within three business days after the day on which the life settlement provider  
11938 receives the documents if by mistake they are sent directly to the life settlement provider, the  
11939 life settlement provider shall deposit the proceeds of the life settlement into an escrow or trust  
11940 account of the escrow agent in a federally insured depository institution.

11941 (2) (a) Upon completion of the requirements of Subsection (1), the escrow agent shall  
11942 deliver the original documents executed by the owner to:

11943 (i) the life settlement provider; or

11944 (ii) a related provider trust or other designated representative of the life settlement  
11945 provider.

11946 (b) Upon the life settlement provider's receipt from the insurer of an acknowledgment  
11947 of the change in ownership or assignment or change of beneficiary of the affected policy, the  
11948 life settlement provider shall instruct the escrow agent to pay the proceeds of the life settlement  
11949 to the owner.

11950 (3) Payment to the owner [~~must~~] shall be made within three business days after the day  
11951 on which the life settlement provider receives the acknowledgment from the insurer. Failure to  
11952 make the payment within that time makes the life settlement voidable by the owner for lack of  
11953 consideration until payment is tendered to and accepted by the owner.

11954 Section 288. Section **31A-36-112** is amended to read:

11955 **31A-36-112. Advertising regulations.**

11956 (1) (a) A life settlement provider or life settlement producer shall establish and  
11957 continuously maintain a system of control over the content, form, and method of dissemination

11958 of advertisements of the life settlement provider's or life settlement producer's contracts and  
11959 services.

11960 (b) An advertisement is the responsibility of the life settlement provider or life  
11961 settlement producer as well as the person that creates or presents the advertisement.

11962 (c) A system of control [~~must~~] shall include at least annual notification to persons  
11963 authorized by the life settlement provider or life settlement producer that disseminate  
11964 advertisements of the requirements and procedures for approval before use of any  
11965 advertisements not furnished by the life settlement provider or life settlement producer.

11966 (2) An advertisement [~~must~~] shall be truthful and not misleading in fact or by  
11967 implication, as determined by the commissioner from the overall impression it may reasonably  
11968 be expected to create upon a person of average education or intelligence in the segment of the  
11969 public to which it is directed.

11970 (3) A false or misleading statement is not remedied by:

11971 (a) making a life settlement available for inspection before it is consummated; or

11972 (b) offering to refund payment if the owner is not satisfied within the period prescribed  
11973 in Subsection 31A-36-109(7).

11974 Section 289. Section **31A-36-114** is amended to read:

11975 **31A-36-114. Reporting of fraud and immunity.**

11976 (1) A person engaged in the business of life settlements that knows or reasonably  
11977 suspects that a violation of Section 31A-36-113 is being, has been, or will be committed shall  
11978 provide to the commissioner the information required by, and in a manner prescribed by, the  
11979 commissioner.

11980 (2) A person not engaged in the business of life settlements that knows or reasonably  
11981 believes that a violation of Section 31A-36-113 is being, has been, or will be committed may  
11982 furnish to the commissioner the information required by, and in a manner prescribed by, the  
11983 commissioner.

11984 (3) Except as provided in Subsection (4), a person furnishing information of the kind  
11985 described in this section is immune from liability and civil action if the information is  
11986 furnished to or received from:

11987 (a) the commissioner or the commissioner's employees, agents, or representatives;

11988 (b) federal, state, or local law enforcement or regulatory officials or their employees,

11989 agents, or representatives;

11990 (c) another person involved in the prevention or detection of violations of Section

11991 31A-36-113 or that person's employees, agents, or representatives;

11992 (d) the following organizations or their employees, agents, or representatives:

11993 (i) the National Association of Insurance Commissioners;

11994 (ii) the Financial Industry Regulatory Authority;

11995 (iii) the North American Securities Administrators Association; or

11996 (iv) another regulatory body overseeing life insurance, life settlements, securities, or

11997 investment fraud; or

11998 (e) the insurer that issued the policy concerned in the information.

11999 (4) The immunity provided in Subsection (3) does not extend to a statement made with

12000 actual malice. In an action brought against a person for filing a report or furnishing other

12001 information concerning a violation of this section, the plaintiff [~~must~~] shall plead specifically

12002 that the defendant acted with actual malice.

12003 (5) A person furnishing information as identified in Subsection (3) is entitled to an

12004 award of attorney fees and costs if:

12005 (a) the person is the prevailing party in a civil cause of action for libel, slander, or

12006 another relevant tort arising out of activities in carrying out the provisions of this chapter; and

12007 (b) the action did not have a reasonable basis in law or fact at the time it was initiated.

12008 (6) This section does not supplant or modify any other privilege or immunity at

12009 common law or under another statute.

12010 Section 290. Section **31A-37-105** is amended to read:

12011 **31A-37-105. Operation of a branch captive insurance company.**

12012 Except as otherwise provided in this chapter, a branch captive insurance company

12013 [~~must~~] shall be a pure captive insurance company with respect to operations in this state, unless

12014 otherwise permitted by the commissioner under Section 31A-37-106.

12015 Section 291. Section **31A-37-106** is amended to read:

12016 **31A-37-106. Authority to make rules -- Authority to issue orders.**

12017 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

12018 commissioner may adopt rules to:

12019 (a) determine circumstances under which a branch captive insurance company is not

- 12020 required to be a pure captive insurance company;
- 12021 (b) require a statement, document, or information that a captive insurance company
- 12022 [~~must~~] shall provide to the commissioner to obtain a certificate of authority;
- 12023 (c) determine a factor a captive insurance company shall provide evidence of under
- 12024 Subsection 31A-37-202(4)(c);
- 12025 (d) prescribe one or more capital requirements for a captive insurance company in
- 12026 addition to those required under Section 31A-37-204 based on the type, volume, and nature of
- 12027 insurance business transacted by the captive insurance company;
- 12028 (e) establish:
- 12029 (i) the amount of capital or surplus required to be retained under Subsection
- 12030 31A-37-205(4) at the payment of a dividend or other distribution by a captive insurance
- 12031 company; or
- 12032 (ii) a formula to determine the amount described in Subsection 31A-37-205(4);
- 12033 (f) waive or modify a requirement for public notice and hearing for the following by a
- 12034 captive insurance company:
- 12035 (i) merger;
- 12036 (ii) consolidation;
- 12037 (iii) conversion;
- 12038 (iv) mutualization; or
- 12039 (v) redomestication;
- 12040 (g) approve the use of one or more reliable methods of valuation and rating for:
- 12041 (i) an association captive insurance company;
- 12042 (ii) a sponsored captive insurance company; or
- 12043 (iii) an industrial insured group;
- 12044 (h) prohibit or limit an investment that threatens the solvency or liquidity of:
- 12045 (i) a pure captive insurance company; or
- 12046 (ii) an industrial insured captive insurance company;
- 12047 (i) determine the financial reports a sponsored captive insurance company shall
- 12048 annually file with the commissioner;
- 12049 (j) prescribe the required forms and reports under Section 31A-37-501; and
- 12050 (k) establish one or more standards to ensure that:

12051 (i) one of the following is able to exercise control of the risk management function of a  
12052 controlled unaffiliated business to be insured by a pure captive insurance company:

12053 (A) a parent; or

12054 (B) an affiliated company of a parent; or

12055 (ii) one of the following is able to exercise control of the risk management function of  
12056 a controlled unaffiliated business to be insured by an industrial insured captive insurance  
12057 company:

12058 (A) an industrial insured; or

12059 (B) an affiliated company of the industrial insured.

12060 (2) Notwithstanding Subsection (1)(k), until the commissioner adopts the rules  
12061 authorized under Subsection (1)(k), the commissioner may by temporary order grant authority  
12062 to insure risks to:

12063 (a) a pure captive insurance company; or

12064 (b) an industrial insured captive insurance company.

12065 (3) The commissioner may issue prohibitory, mandatory, and other orders relating to a  
12066 captive insurance company as necessary to enable the commissioner to secure compliance with  
12067 this chapter.

12068 Section 292. Section **31A-37-202** is amended to read:

12069 **31A-37-202. Permissive areas of insurance.**

12070 (1) (a) Except as provided in Subsection (1)(b), when permitted by its articles of  
12071 incorporation or charter, a captive insurance company may apply to the commissioner for a  
12072 certificate of authority to do all insurance authorized by this title except workers' compensation  
12073 insurance.

12074 (b) Notwithstanding Subsection (1)(a):

12075 (i) a pure captive insurance company may not insure a risk other than a risk of:

12076 (A) its parent or affiliate;

12077 (B) a controlled unaffiliated business; or

12078 (C) a combination of Subsections (1)(b)(i)(A) and (B);

12079 (ii) an association captive insurance company may not insure a risk other than a risk of:

12080 (A) an affiliate;

12081 (B) a member organization of its association; and

- 12082 (C) an affiliate of a member organization of its association;
- 12083 (iii) an industrial insured captive insurance company may not insure a risk other than a
- 12084 risk of:
- 12085 (A) an industrial insured that is part of the industrial insured group;
- 12086 (B) an affiliate of an industrial insured that is part of the industrial insured group; and
- 12087 (C) a controlled unaffiliated business of:
- 12088 (I) an industrial insured that is part of the industrial insured group; or
- 12089 (II) an affiliate of an industrial insured that is part of the industrial insured group;
- 12090 (iv) a special purpose captive insurance company may only insure a risk of its parent;
- 12091 (v) a captive insurance company may not provide:
- 12092 (A) personal motor vehicle insurance coverage;
- 12093 (B) homeowner's insurance coverage; or
- 12094 (C) a component of a coverage described in this Subsection (1)(b)(v); and
- 12095 (vi) a captive insurance company may not accept or cede reinsurance except as
- 12096 provided in Section 31A-37-303.
- 12097 (c) Notwithstanding Subsection (1)(b)(iv), for a risk approved by the commissioner a
- 12098 special purpose captive insurance company may provide:
- 12099 (i) insurance;
- 12100 (ii) reinsurance; or
- 12101 (iii) both insurance and reinsurance.
- 12102 (2) To conduct insurance business in this state a captive insurance company shall:
- 12103 (a) obtain from the commissioner a certificate of authority authorizing it to conduct
- 12104 insurance business in this state;
- 12105 (b) hold at least once each year in this state:
- 12106 (i) a board of directors meeting; or
- 12107 (ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting;
- 12108 (c) maintain in this state:
- 12109 (i) the principal place of business of the captive insurance company; or
- 12110 (ii) in the case of a branch captive insurance company, the principal place of business
- 12111 for the branch operations of the branch captive insurance company; and
- 12112 (d) except as provided in Subsection (3), appoint a resident registered agent to accept

12113 service of process and to otherwise act on behalf of the captive insurance company in this state.

12114 (3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company  
12115 formed as a corporation or a reciprocal insurer, if the registered agent cannot with reasonable  
12116 diligence be found at the registered office of the captive insurance company, the commissioner  
12117 is the agent of the captive insurance company upon whom process, notice, or demand may be  
12118 served.

12119 (4) (a) Before receiving a certificate of authority, a captive insurance company:

12120 (i) formed as a corporation shall file with the commissioner:

12121 (A) a certified copy of:

12122 (I) articles of incorporation or the charter of the corporation; and

12123 (II) bylaws of the corporation;

12124 (B) a statement under oath of the president and secretary of the corporation showing  
12125 the financial condition of the corporation; and

12126 (C) any other statement or document required by the commissioner under Section  
12127 31A-37-106;

12128 (ii) formed as a reciprocal shall:

12129 (A) file with the commissioner:

12130 (I) a certified copy of the power of attorney of the attorney-in-fact of the reciprocal;

12131 (II) a certified copy of the subscribers' agreement of the reciprocal;

12132 (III) a statement under oath of the attorney-in-fact of the reciprocal showing the  
12133 financial condition of the reciprocal; and

12134 (IV) any other statement or document required by the commissioner under Section  
12135 31A-37-106; and

12136 (B) submit to the commissioner for approval a description of the:

12137 (I) coverages;

12138 (II) deductibles;

12139 (III) coverage limits;

12140 (IV) rates; and

12141 (V) any other information the commissioner requires under Section 31A-37-106.

12142 (b) (i) If there is a subsequent material change in an item in the description required  
12143 under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal

12144 captive insurance company shall submit to the commissioner for approval an appropriate  
12145 revision to the description required under Subsection (4)(a)(ii)(B).

12146 (ii) A reciprocal captive insurance company that is required to submit a revision under  
12147 Subsection (4)(b)(i) may not offer any additional types of insurance until the commissioner  
12148 approves a revision of the description.

12149 (iii) A reciprocal captive insurance company shall inform the commissioner of a  
12150 material change in a rate within 30 days of the adoption of the change.

12151 (c) In addition to the information required by Subsection (4)(a), an applicant captive  
12152 insurance company shall file with the commissioner evidence of:

12153 (i) the amount and liquidity of the assets of the applicant captive insurance company  
12154 relative to the risks to be assumed by the applicant captive insurance company;

12155 (ii) the adequacy of the expertise, experience, and character of the person who will  
12156 manage the applicant captive insurance company;

12157 (iii) the overall soundness of the plan of operation of the applicant captive insurance  
12158 company;

12159 (iv) the adequacy of the loss prevention programs for the following of the applicant  
12160 captive insurance company:

12161 (A) a parent;

12162 (B) a member organization; or

12163 (C) an industrial insured; and

12164 (v) any other factor the commissioner:

12165 (A) adopts by rule under Section 31A-37-106; and

12166 (B) considers relevant in ascertaining whether the applicant captive insurance company  
12167 will be able to meet the policy obligations of the applicant captive insurance company.

12168 (d) In addition to the information required by Subsections (4)(a), (b), and (c), an  
12169 applicant sponsored captive insurance company shall file with the commissioner:

12170 (i) a business plan at the level of detail required by the commissioner under Section  
12171 31A-37-106 demonstrating:

12172 (A) the manner in which the applicant sponsored captive insurance company will  
12173 account for the losses and expenses of each protected cell; and

12174 (B) the manner in which the applicant sponsored captive insurance company will report

12175 to the commissioner the financial history, including losses and expenses, of each protected cell;

12176 (ii) a statement acknowledging that the applicant sponsored captive insurance company  
12177 will make all financial records of the applicant sponsored captive insurance company,  
12178 including records pertaining to a protected cell, available for inspection or examination by the  
12179 commissioner;

12180 (iii) a contract or sample contract between the applicant sponsored captive insurance  
12181 company and a participant; and

12182 (iv) evidence that expenses will be allocated to each protected cell in an equitable  
12183 manner.

12184 (5) (a) Information submitted pursuant to Subsection (4) is classified as a protected  
12185 record under Title 63G, Chapter 2, Government Records Access and Management Act.

12186 (b) Notwithstanding Title 63G, Chapter 2, Government Records Access and  
12187 Management Act, the commissioner may disclose information submitted pursuant to  
12188 Subsection (4) to a public official having jurisdiction over the regulation of insurance in  
12189 another state if:

12190 (i) the public official receiving the information agrees in writing to maintain the  
12191 confidentiality of the information; and

12192 (ii) the laws of the state in which the public official serves require the information to be  
12193 confidential.

12194 (c) This Subsection (5) does not apply to information provided by an industrial insured  
12195 captive insurance company insuring the risks of an industrial insured group.

12196 (6) (a) A captive insurance company shall pay to the department the following  
12197 nonrefundable fees established by the department under Sections 31A-3-103 and 63J-1-504:

12198 (i) a fee for examining, investigating, and processing, by a department employee, of an  
12199 application for a certificate of authority made by a captive insurance company;

12200 (ii) a fee for obtaining a certificate of authority for the year the captive insurance  
12201 company is issued a certificate of authority by the department; and

12202 (iii) a certificate of authority renewal fee.

12203 (b) The commissioner may:

12204 (i) retain legal, financial, and examination services from outside the department to  
12205 perform the services described in:

- 12206 (A) Subsection (6)(a); and
- 12207 (B) Section 31A-37-502; and
- 12208 (ii) charge the reasonable cost of services described in Subsection (6)(b)(i) to the
- 12209 applicant captive insurance company.
- 12210 (7) If the commissioner is satisfied that the documents and statements filed by the
- 12211 applicant captive insurance company comply with this chapter, the commissioner may grant a
- 12212 certificate of authority authorizing the company to do insurance business in this state.
- 12213 (8) A certificate of authority granted under this section expires annually and [~~must~~]
- 12214 shall be renewed by July 1 of each year.
- 12215 Section 293. Section **31A-37-301** is amended to read:
- 12216 **31A-37-301. Incorporation.**
- 12217 (1) A pure captive insurance company or a sponsored captive insurance company shall
- 12218 be incorporated as a stock insurer with the capital of the pure captive insurance company or
- 12219 sponsored captive insurance company:
- 12220 (a) divided into shares; and
- 12221 (b) held by the stockholders of the pure captive insurance company or sponsored
- 12222 captive insurance company.
- 12223 (2) An association captive insurance company or an industrial insured captive
- 12224 insurance company may be:
- 12225 (a) incorporated as a stock insurer with the capital of the association captive insurance
- 12226 company or industrial insured captive insurance company:
- 12227 (i) divided into shares; and
- 12228 (ii) held by the stockholders of the association captive insurance company or industrial
- 12229 insured captive insurance company;
- 12230 (b) incorporated as a mutual insurer without capital stock, with a governing body
- 12231 elected by the member organizations of the association captive insurance company or industrial
- 12232 insured captive insurance company; or
- 12233 (c) organized as a reciprocal.
- 12234 (3) A captive insurance company may not have fewer than three incorporators of whom
- 12235 not fewer than two [~~must~~] shall be residents of this state.
- 12236 (4) (a) Before a captive insurance company formed as a corporation files the

12237 corporation's articles of incorporation with the Division of Corporations and Commercial  
12238 Code, the incorporators shall obtain from the commissioner a certificate finding that the  
12239 establishment and maintenance of the proposed corporation will promote the general good of  
12240 the state.

12241 (b) In considering a request for a certificate under Subsection (4)(a), the commissioner  
12242 shall consider:

12243 (i) the character, reputation, financial standing, and purposes of the incorporators;

12244 (ii) the character, reputation, financial responsibility, insurance experience, business  
12245 qualifications of the officers and directors;

12246 (iii) any information in:

12247 (A) the application for a certificate of authority; or

12248 (B) the department's files; and

12249 (iv) other aspects the commissioner considers advisable.

12250 (5) (a) A captive insurance company formed as a corporation shall file with the  
12251 Division of Corporations and Commercial Code:

12252 (i) the captive insurance company's articles of incorporation;

12253 (ii) the certificate issued pursuant to Subsection (4); and

12254 (iii) the fees required by the Division of Corporations and Commercial Code.

12255 (b) The Division of Corporations and Commercial Code shall file both the articles of  
12256 incorporation and the certificate described in Subsection (4) for a captive insurance company  
12257 that complies with this section.

12258 (6) (a) The organizers of a captive insurance company formed as a reciprocal insurer  
12259 shall obtain from the commissioner a certificate finding that the establishment and maintenance  
12260 of the proposed association will promote the general good of the state.

12261 (b) In considering a request for a certificate under Subsection (6)(a), the commissioner  
12262 shall consider:

12263 (i) the character, reputation, financial standing, and purposes of the incorporators;

12264 (ii) the character, reputation, financial responsibility, insurance experience, and  
12265 business qualifications of the officers and directors;

12266 (iii) any information in:

12267 (A) the application for a certificate of authority; or

- 12268 (B) the department's files; and  
12269 (iv) other aspects the commissioner considers advisable.
- 12270 (7) (a) An alien captive insurance company that has received a certificate of authority  
12271 to act as a branch captive insurance company shall obtain from the commissioner a certificate  
12272 finding that:
- 12273 (i) the home state of the alien captive insurance company imposes statutory or  
12274 regulatory standards in a form acceptable to the commissioner on companies transacting the  
12275 business of insurance in that state; and
- 12276 (ii) after considering the character, reputation, financial responsibility, insurance  
12277 experience, and business qualifications of the officers and directors of the alien captive  
12278 insurance company, and other relevant information, the establishment and maintenance of the  
12279 branch operations will promote the general good of the state.
- 12280 (b) After the commissioner issues a certificate under Subsection (7)(a) to an alien  
12281 captive insurance company, the alien captive insurance company may register to do business in  
12282 this state.
- 12283 (8) The capital stock of a captive insurance company incorporated as a stock insurer  
12284 may not be issued at less than par value.
- 12285 (9) At least one of the members of the board of directors of a captive insurance  
12286 company formed as a corporation shall be a resident of this state.
- 12287 (10) At least one of the members of the subscribers' advisory committee of a captive  
12288 insurance company formed as a reciprocal insurer shall be a resident of this state.
- 12289 (11) (a) A captive insurance company formed as a corporation under this chapter has  
12290 the privileges and is subject to the provisions of the general corporation law as well as the  
12291 applicable provisions contained in this chapter.
- 12292 (b) If a conflict exists between a provision of the general corporation law and a  
12293 provision of this chapter, this chapter shall control.
- 12294 (c) Except as provided in Subsection (11)(d), the provisions of this title pertaining to a  
12295 merger, consolidation, conversion, mutualization, and redomestication apply in determining the  
12296 procedures to be followed by a captive insurance company in carrying out any of the  
12297 transactions described in those provisions.
- 12298 (d) Notwithstanding Subsection (11)(c), the commissioner may waive or modify the

12299 requirements for public notice and hearing in accordance with rules adopted under Section  
12300 31A-37-106.

12301 (e) If a notice of public hearing is required, but no one requests a hearing, the  
12302 commissioner may cancel the public hearing.

12303 (12) (a) A captive insurance company formed as a reciprocal insurer under this chapter  
12304 has the powers set forth in Section 31A-4-114 in addition to the applicable provisions of this  
12305 chapter.

12306 (b) If a conflict exists between the provisions of Section 31A-4-114 and the provisions  
12307 of this chapter with respect to a captive insurance company, this chapter shall control.

12308 (c) To the extent a reciprocal insurer is made subject to other provisions of this title  
12309 pursuant to Section 31A-14-208, the provisions are not applicable to a reciprocal insurer  
12310 formed under this chapter unless the provisions are expressly made applicable to a captive  
12311 insurance company under this chapter.

12312 (d) In addition to the provisions of this Subsection (12), a captive insurance company  
12313 organized as a reciprocal insurer that is an industrial insured group has the privileges of Section  
12314 31A-4-114 in addition to applicable provisions of this title.

12315 (13) The articles of incorporation or bylaws of a captive insurance company may not  
12316 authorize a quorum of a board of directors to consist of fewer than [~~1/3~~] one-third of the fixed  
12317 or prescribed number of directors as provided in Section 16-10a-824.

12318 Section 294. Section **31A-37-302** is amended to read:

12319 **31A-37-302. Investment requirements.**

12320 (1) (a) Except as provided in Subsection (1)(b), an association captive insurance  
12321 company, a sponsored captive insurance company, and an industrial insured group shall  
12322 comply with the investment requirements contained in this title.

12323 (b) Notwithstanding Subsection (1)(a) and any other provision of this title, the  
12324 commissioner may approve the use of alternative reliable methods of valuation and rating  
12325 under Section 31A-37-106 for:

- 12326 (i) an association captive insurance company;
- 12327 (ii) a sponsored captive insurance company; or
- 12328 (iii) an industrial insured group.

12329 (2) (a) Except as provided in Subsection (2)(b), a pure captive insurance company or

12330 industrial insured captive insurance company is not subject to any restrictions on allowable  
12331 investments contained in this title.

12332 (b) Notwithstanding Subsection (2)(a), the commissioner may, under Section  
12333 31A-37-106, prohibit or limit an investment that threatens the solvency or liquidity of:

- 12334 (i) a pure captive insurance company; or
- 12335 (ii) an industrial insured captive insurance company.

12336 (3) (a) (i) Except as provided in Subsection (3)(a)(ii), a captive insurance company may  
12337 not make loans to:

- 12338 (A) the parent company of the captive insurance company; or
- 12339 (B) an affiliate of the captive insurance company.

12340 (ii) Notwithstanding Subsection (3)(a)(i), a pure captive insurance company may make  
12341 loans to:

- 12342 (A) the parent company of the pure captive insurance company; or
- 12343 (B) an affiliate of the pure captive insurance company.

12344 (b) A loan under Subsection (3)(a):

- 12345 (i) may be made only on the prior written approval of the commissioner; and
- 12346 (ii) [~~must~~] shall be evidenced by a note in a form approved by the commissioner.

12347 (c) A pure captive insurance company may not make a loan from:

- 12348 (i) the paid-in capital required under Subsection 31A-37-204(1); or
- 12349 (ii) the free surplus required under Subsection 31A-37-205(1).

12350 Section 295. Section **31A-37-306** is amended to read:

12351 **31A-37-306. Conversion or merger.**

12352 (1) An association captive insurance company or industrial insured group formed as a  
12353 stock or mutual corporation may be:

- 12354 (a) converted to a reciprocal insurer in accordance with a plan and this section; or
- 12355 (b) merged with and into a reciprocal insurer in accordance with a plan and this

12356 section.

12357 (2) A plan for a conversion or merger under this section:

12358 (a) shall be fair and equitable to:

- 12359 (i) the shareholders, in the case of a stock insurer; or
- 12360 (ii) the policyholders, in the case of a mutual insurer; and

12361 (b) shall provide for the purchase of:

12362 (i) the shares of any nonconsenting shareholder of a stock insurer in substantially the  
12363 same manner and subject to the same rights and conditions as are provided a dissenting  
12364 shareholder; or

12365 (ii) the policyholder interest of any nonconsenting policyholder of a mutual insurer in  
12366 substantially the same manner and subject to the same rights and conditions as are provided a  
12367 dissenting policyholder.

12368 (3) In the case of a conversion authorized under Subsection (1):

12369 (a) the conversion [~~must~~] shall be accomplished under a reasonable plan and procedure  
12370 that are approved by the commissioner;

12371 (b) the commissioner may not approve the plan of conversion under this section unless  
12372 the plan:

12373 (i) satisfies Subsections (2) and (6);

12374 (ii) provides for the conversion of existing stockholder or policyholder interests into  
12375 subscriber interests in the resulting reciprocal insurer, proportionate to stockholder or  
12376 policyholder interests in the stock or mutual insurer; and

12377 (iii) is approved:

12378 (A) in the case of a stock insurer, by a majority of the shares entitled to vote  
12379 represented in person or by proxy at a duly called regular or special meeting at which a quorum  
12380 is present; or

12381 (B) in the case of a mutual insurer, by a majority of the voting interests of  
12382 policyholders represented in person or by proxy at a duly called regular or special meeting at  
12383 which a quorum is present;

12384 (c) the commissioner shall approve a plan of conversion if the commissioner finds that  
12385 the conversion will promote the general good of the state in conformity with the standards  
12386 under Subsection 31A-37-301(4);

12387 (d) if the commissioner approves a plan of conversion, the commissioner shall amend  
12388 the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and  
12389 issue the amended certificate of authority to the company's attorney-in-fact;

12390 (e) upon issuance of an amended certificate of authority of a reciprocal insurer by the  
12391 commissioner, the conversion is effective; and

- 12392 (f) upon the effectiveness of the conversion:
- 12393 (i) the corporate existence of the converting insurer shall cease; and
- 12394 (ii) the resulting reciprocal insurer shall notify the Division of Corporations and
- 12395 Commercial Code of the conversion.
- 12396 (4) A merger authorized under Subsection (1) shall be accomplished substantially in
- 12397 accordance with the procedures set forth in this title except that, solely for purposes of the
- 12398 merger:
- 12399 (a) the plan or merger shall satisfy Subsection (2);
- 12400 (b) the subscribers' advisory committee of a reciprocal insurer shall be equivalent to the
- 12401 board of directors of a stock or mutual insurance company;
- 12402 (c) the subscribers of a reciprocal insurer shall be the equivalent of the policyholders of
- 12403 a mutual insurance company;
- 12404 (d) if a subscribers' advisory committee does not have a president or secretary, the
- 12405 officers of the committee having substantially equivalent duties are the president and secretary
- 12406 of the committee;
- 12407 (e) the commissioner shall approve the articles of merger if the commissioner finds that
- 12408 the merger will promote the general good of the state in conformity with the standards under
- 12409 Subsection 31A-37-301(4);
- 12410 (f) notwithstanding Sections 31A-37-204 and 31A-37-205, the commissioner may
- 12411 permit the formation, without capital and surplus, of a captive insurance company organized as
- 12412 a reciprocal insurer, into which an existing captive insurance company may be merged to
- 12413 facilitate a transaction under this section, if there is no more than one authorized insurance
- 12414 company surviving the merger; and
- 12415 (g) an alien insurer may be a party to a merger authorized under Subsection (1) if:
- 12416 (i) the requirements for the merger between a domestic and a foreign insurer under
- 12417 Chapter 16, Insurance Holding Companies, are applied to the merger; and
- 12418 (ii) the alien insurer is treated as a foreign insurer under Chapter 16, Insurance Holding
- 12419 Companies.
- 12420 (5) If the commissioner approves the articles of merger under this section:
- 12421 (a) the commissioner shall endorse the commissioner's approval on the articles; and
- 12422 (b) the surviving insurer shall present the name to the Division of Corporations and

12423 Commercial Code.

12424 (6) (a) Except as provided in Subsection (6)(b), a conversion authorized under  
12425 Subsection (1) [~~must~~] shall provide for a hearing, of which notice has been given to the insurer,  
12426 its directors, officers and stockholders, in the case of a stock insurer, or policyholders, in the  
12427 case of a mutual insurer, all of whom have the right to appear at the hearing.

12428 (b) Notwithstanding Subsection (6)(a), the commissioner may waive or modify the  
12429 requirements for the hearing.

12430 (c) If a notice of hearing is required, but no hearing is requested, after notice has been  
12431 given under Subsection (6)(a), the commissioner may cancel the hearing.

12432 Section 296. Section **31A-37-402** is amended to read:

12433 **31A-37-402. Sponsored captive insurance companies -- Certificate of authority**  
12434 **mandatory.**

12435 (1) A sponsor of a sponsored captive insurance company shall be:

12436 (a) an insurer authorized or approved under the laws of a state;

12437 (b) a reinsurer authorized or approved under the laws of a state;

12438 (c) a captive insurance company holding a certificate of authority under this chapter;

12439 (d) an insurance holding company that:

12440 (i) controls an insurer licensed pursuant to the laws of a state; and

12441 (ii) is subject to registration pursuant to the holding company system of laws of the  
12442 state of domicile of the insurer described in Subsection (1)(d)(i); or

12443 (e) another person approved by the commissioner after finding that the approval of the  
12444 person as a sponsor is not inconsistent with the purposes of this chapter.

12445 (2) (a) The business written by a sponsored captive insurance company with respect to  
12446 a protected cell shall be fronted by an insurer that is:

12447 (i) authorized or approved:

12448 (A) under the laws of a state; or

12449 (B) under any jurisdiction if the insurance company is a wholly owned subsidiary of an  
12450 insurance company licensed pursuant to the laws of a state;

12451 (ii) reinsured by a reinsurer authorized or approved by this state; or

12452 (iii) subject to Subsection (2)(b), secured by a trust fund:

12453 (A) in the United States;

- 12454 (B) for the benefit of policyholders and claimants; and  
12455 (C) funded by an irrevocable letter of credit or other asset acceptable to the  
12456 commissioner.
- 12457 (b) (i) The amount of security provided by the trust fund described in Subsection  
12458 (2)(a)(iii) may not be less than the reserves associated with the liabilities of the trust fund,  
12459 including:
- 12460 (A) reserves for losses;  
12461 (B) allocated loss adjustment expenses;  
12462 (C) incurred but unreported losses; and  
12463 (D) unearned premiums for business written through the participant's protected cell.
- 12464 (ii) The commissioner may require the sponsored captive insurance company to  
12465 increase the funding of a trust established pursuant to this Subsection (2).
- 12466 (iii) If the form of security in the trust described in Subsection (2)(a)(iii) is a letter of  
12467 credit, the letter of credit [must] shall be established, issued, or confirmed by a bank that is:
- 12468 (A) chartered in this state;  
12469 (B) a member of the federal reserve system; or  
12470 (C) chartered by another state if that state-chartered bank is acceptable to the  
12471 commissioner.
- 12472 (iv) A trust and trust instrument maintained pursuant to this Subsection (2) shall be in a  
12473 form and upon terms approved by the commissioner.
- 12474 (3) A risk retention group may not be either a sponsor or a participant of a sponsored  
12475 captive insurance company.
- 12476 Section 297. Section **31A-37-601** is amended to read:
- 12477 **31A-37-601. Incorporation of a captive reinsurance company.**
- 12478 (1) A captive reinsurance company shall be incorporated as a stock insurer with its  
12479 capital:
- 12480 (a) divided into shares; and  
12481 (b) held by the captive reinsurance company's shareholders.
- 12482 (2) (a) A captive reinsurance company may not have fewer than three incorporators.  
12483 (b) At least two of the incorporators of a captive reinsurance company [must] shall be  
12484 residents of this state.

12485 (3) (a) Before the articles of incorporation are filed with the Division of Corporations  
12486 and Commercial Code, the incorporators shall obtain from the commissioner a certificate of  
12487 finding that the establishment and maintenance of the proposed corporation promotes the  
12488 general good of this state.

12489 (b) In considering a request for a certificate under Subsection (3)(a), the commissioner  
12490 shall consider:

12491 (i) the character, reputation, financial standing, and purposes of the incorporators;

12492 (ii) the character, reputation, financial responsibility, insurance experience, and  
12493 business qualifications of the officers and directors; and

12494 (iii) other factors the commissioner considers advisable.

12495 (4) The capital stock of a captive reinsurance company [~~must~~] shall be issued at par  
12496 value or greater.

12497 (5) At least one of the members of the board of directors of a captive reinsurance  
12498 company incorporated in this state [~~must~~] shall be a resident of this state.

12499 Section 298. Section **31A-37a-205** is amended to read:

12500 **31A-37a-205. Sponsored captives.**

12501 In addition to the other provisions of this chapter, this section applies to a sponsored  
12502 captive insurance company under Chapter 37, Captive Insurance Companies Act, that has a  
12503 certificate of authority as a special purpose financial captive insurance company pursuant to  
12504 this chapter.

12505 (1) A sponsored captive insurance company may have a certificate of authority as a  
12506 special purpose financial captive insurance company under this chapter.

12507 (2) (a) For purposes of a sponsored captive insurance company having a certificate of  
12508 authority as a special purpose financial captive insurance company, "general account" means  
12509 the assets and liabilities of the sponsored captive insurance company not attributable to a  
12510 protected cell.

12511 (b) For purposes of applying Chapter 27a, Insurer Receivership Act, to a sponsored  
12512 captive insurance company having a certificate of authority as a special purpose financial  
12513 captive insurance company, the definition of "insolvency" and "insolvent" in Section  
12514 31A-37a-102 shall be applied separately to:

12515 (i) each protected cell; and

- 12516 (ii) the special purpose financial captive insurance company's general account.
- 12517 (3) (a) A participant in a sponsored captive insurance company having a certificate of  
12518 authority as a special purpose financial captive insurance company [~~must~~] shall be a ceding  
12519 insurer, unless approved by the commissioner before a person becomes a participant.
- 12520 (b) A change in a participant in a sponsored captive insurance company having a  
12521 certificate of authority as a special purpose financial captive insurance company is subject to  
12522 prior approval by the commissioner.
- 12523 (4) Notwithstanding Section 31A-37-401, a special purpose financial captive insurance  
12524 company that is a sponsored captive insurance company may issue a security to a person not  
12525 described in Section 31A-37-401 if the issuance to that person is approved by the  
12526 commissioner before the issuance of the security.
- 12527 (5) Notwithstanding Section 31A-37a-302, a sponsored captive insurance company  
12528 having a certificate of authority as a special purpose financial captive insurance company shall:
- 12529 (a) at the time of initial application for a certificate of authority as a special purpose  
12530 financial captive insurance company, possess unimpaired paid-in capital and surplus of not less  
12531 than \$500,000; and
- 12532 (b) maintain at least \$500,000 of unimpaired paid-in capital and surplus of not less  
12533 than \$500,000 during the time that it holds a certificate of authority under this chapter.
- 12534 (6) (a) For purposes of a sponsored captive insurance company having a certificate of  
12535 authority as a special purpose financial captive insurance company, this Subsection (6) applies  
12536 to:
- 12537 (i) a security issued by the special purpose financial captive insurance company with  
12538 respect to a protected cell; or
- 12539 (ii) a contract or obligation of the special purpose financial captive insurance company  
12540 with respect to a protected cell.
- 12541 (b) A sponsored captive insurance company having a certificate of authority as a  
12542 special purpose financial captive insurance company shall include with a security, contract, or  
12543 obligation described in Subsection (6)(a):
- 12544 (i) the designation of the protected cell; and
- 12545 (ii) a disclosure in a form and content satisfactory to the commissioner to the effect that  
12546 the holder of the security or a counterparty to the contract or obligation has no right or recourse

12547 against the special purpose financial captive insurance company and its assets other than  
12548 against an asset properly attributable to the protected cell.

12549 (c) Notwithstanding the requirements of this Subsection (6) and subject to other  
12550 statutes or rules including this chapter and Chapter 37, Captive Insurance Companies Act, a  
12551 creditor, ceding insurer, or another person may not use a failure to include a disclosure  
12552 described in Subsection (6)(b), in whole or part, as the sole basis to have recourse against:

12553 (i) the general account of the special purpose financial captive insurance company; or

12554 (ii) the assets of another protected cell of the special financial captive insurance  
12555 company.

12556 (7) In addition to Section 31A-37-401, a sponsored captive insurance company having  
12557 a certificate of authority as a special purpose financial captive insurance company is subject to  
12558 the following with respect to a protected cell:

12559 (a) (i) A sponsored captive insurance company having a certificate of authority as a  
12560 special purpose financial captive insurance company shall establish a protected cell only for the  
12561 purpose of insuring or reinsuring risks of one or more reinsurance contracts with a ceding  
12562 insurer with the intent of facilitating an insurance securitization.

12563 (ii) Subject to Subsection (7)(a)(iii), a sponsored captive insurance company having a  
12564 certificate of authority as a special purpose financial captive insurance company shall establish  
12565 a separate protected cell with respect to a ceding insurer described in Subsection (7)(a)(i).

12566 (iii) A sponsored captive insurance company having a certificate of authority as a  
12567 special purpose financial captive insurance company shall establish a separate protected cell  
12568 with respect to each reinsurance contract that is funded in whole or in part by a separate  
12569 insurance securitization transaction.

12570 (b) A sponsored captive insurance company having a certificate of authority as a  
12571 special purpose financial captive insurance company may not sale, exchange, or transfer an  
12572 asset by, between, or among any of its protected cells without the prior approval of the  
12573 commissioner.

12574 (8) (a) A sponsored captive insurance company having a certificate of authority as a  
12575 special purpose financial captive insurance company shall attribute an asset or liability to a  
12576 protected cell and to the general account in accordance with the plan of operation approved by  
12577 the commissioner.

12578 (b) Except as provided by Subsection (8)(a), a sponsored captive insurance company  
12579 having a certificate of authority as a special purpose financial captive insurance company may  
12580 not attribute an asset or liability between:

12581 (i) its general account and a protected cell; or

12582 (ii) its protected cells.

12583 (c) A sponsored captive insurance company having a certificate of authority as a  
12584 special purpose financial captive insurance company shall attribute:

12585 (i) an insurance obligation, asset, or liability relating to a reinsurance contract entered  
12586 into with respect to a protected cell; and

12587 (ii) an insurance securitization transaction related to the obligation, asset, or liability  
12588 described in Subsection (8)(c)(i), including a security issued by the special purpose financial  
12589 captive insurance company as part of the insurance securitization, to the protected cell.

12590 (d) The following shall reflect an insurance obligation, asset, or liability relating to a  
12591 reinsurance contract and the insurance securitization transaction that are attributed to a  
12592 protected cell:

12593 (i) a right, benefit, obligation, or a liability of a security attributable to a protected cell  
12594 described in Subsection (8)(c);

12595 (ii) the performance under a reinsurance contract and the related insurance  
12596 securitization transaction; and

12597 (iii) a tax benefit, loss, refund, or credit allocated pursuant to a tax allocation  
12598 agreement to which the special purpose financial captive insurance company is a party,  
12599 including a payment made by or due to be made to the special purpose financial captive  
12600 insurance company pursuant to the terms of the tax allocation agreement.

12601 (9) In addition to Section 31A-37a-502:

12602 (a) Chapter 27a, Insurer Receivership Act, applies to each protected cell of a sponsored  
12603 captive insurance company having a certificate of authority as a special purpose financial  
12604 captive insurance company.

12605 (b) A proceeding or action taken by the commissioner pursuant to Chapter 27a, Insurer  
12606 Receivership Act, with respect to a protected cell of a sponsored captive insurance company  
12607 having a certificate of authority as a special purpose financial captive insurance company may  
12608 not be the sole basis for a proceeding pursuant to Chapter 27a, Insurer Receivership Act, with

12609 respect to:

12610 (i) another protected cell of the special purpose financial captive insurance company;

12611 or

12612 (ii) the special purpose financial captive insurance company's general account.

12613 (c) (i) Except as provided in Subsection (9)(c)(ii), the receiver of a special purpose  
12614 financial captive insurance company shall ensure that the assets attributable to one protected  
12615 cell are not applied to the liabilities attributable to:

12616 (A) another protected cell; or

12617 (B) the special purpose financial captive insurance company's general account.

12618 (ii) Notwithstanding Subsection (9)(c)(i), if an asset or liability is attributable to more  
12619 than one protected cell, the receiver shall deal with the asset or liability in accordance with the  
12620 terms of a relevant governing instrument or contract.

12621 (d) The insolvency of a protected cell of a sponsored captive insurance company  
12622 having a certificate of authority as a special purpose financial captive insurance company may  
12623 not be the sole basis for the commissioner to prohibit:

12624 (i) a payment by the special purpose financial captive insurance company made  
12625 pursuant to a special purpose financial captive insurance company security or reinsurance  
12626 contract with respect to another protected cell; or

12627 (ii) an action required to make a payment described in Subsection (9)(d)(i).

12628 Section 299. Section **32B-1-407 (Effective 07/01/11)** is amended to read:

12629 **32B-1-407 (Effective 07/01/11). Verification of proof of age by applicable**  
12630 **licensees.**

12631 (1) Notwithstanding any other provision of this part, an applicable licensee shall  
12632 require that an authorized person under the applicable licensee verify proof of age as provided  
12633 in this section.

12634 (2) An authorized person is required to verify proof of age under this section before an  
12635 individual who appears to be 35 years of age or younger:

12636 (a) gains admittance to the premises of a social club licensee; or

12637 (b) procures an alcoholic product on the premises of a dining club licensee.

12638 (3) To comply with Subsection (2), an authorized person shall:

12639 (a) request the individual present proof of age; and

12640 (b) (i) verify the validity of the proof of age electronically under the verification  
12641 program created in Subsection (4); or  
12642 (ii) if the proof of age cannot be electronically verified as provided in Subsection  
12643 (3)(b)(i), request that the individual comply with a process established by the commission by  
12644 rule.  
12645 (4) The commission shall establish by rule an electronic verification program that  
12646 includes the following:  
12647 (a) the specifications for the technology used by the applicable licensee to  
12648 electronically verify proof of age, including that the technology display to the person described  
12649 in Subsection (1) no more than the following for the individual who presents the proof of age:  
12650 (i) the name;  
12651 (ii) the age;  
12652 (iii) the number assigned to the individual's proof of age by the issuing authority;  
12653 (iv) the birth date;  
12654 (v) the gender; and  
12655 (vi) the status and expiration date of the individual's proof of age; and  
12656 (b) the security measures that [~~must~~] shall be used by an applicable licensee to ensure  
12657 that information obtained under this section is:  
12658 (i) used by the applicable licensee only for purposes of verifying proof of age in  
12659 accordance with this section; and  
12660 (ii) retained by the applicable licensee for seven days after the day on which the  
12661 applicable licensee obtains the information.  
12662 (5) (a) An applicable licensee may not disclose information obtained under this section  
12663 except as provided under this title.  
12664 (b) Information obtained under this section is considered a record for any purpose  
12665 under Chapter 5, Part 3, Retail Licensee Operational Requirements.  
12666 Section 300. Section **32B-1-505 (Effective 07/01/11)** is amended to read:  
12667 **32B-1-505 (Effective 07/01/11). Sexually oriented entertainer.**  
12668 (1) Subject to the requirements of this part, live entertainment is permitted on premises  
12669 or at an event regulated by the commission.  
12670 (2) Notwithstanding Subsection (1), a retail licensee or permittee may not permit a

- 12671 person to:
- 12672 (a) appear or perform in a state of nudity;
  - 12673 (b) perform or simulate an act of:
    - 12674 (i) sexual intercourse;
    - 12675 (ii) masturbation;
    - 12676 (iii) sodomy;
    - 12677 (iv) bestiality;
    - 12678 (v) oral copulation;
    - 12679 (vi) flagellation; or
    - 12680 (vii) a sexual act that is prohibited by Utah law; or
  - 12681 (c) touch, caress, or fondle the breast, buttocks, anus, or genitals.
- 12682 (3) A sexually oriented entertainer may perform in a state of seminudity:
- 12683 (a) only in:
    - 12684 (i) a tavern; or
    - 12685 (ii) a social club license premises; and
  - 12686 (b) only if:
    - 12687 (i) the windows, doors, and other apertures to the premises are darkened or otherwise
    - 12688 constructed to prevent anyone outside the premises from seeing the performance; and
    - 12689 (ii) the outside entrance doors of the premises remain unlocked.
  - 12690 (4) A sexually oriented entertainer may perform only upon a stage or in a designated
  - 12691 performance area that is:
    - 12692 (a) approved by the commission in accordance with rules made by the commission;
    - 12693 (b) configured so as to preclude a patron from:
      - 12694 (i) touching the sexually oriented entertainer; or
      - 12695 (ii) placing any money or object on or within the performance attire or the person of the
      - 12696 sexually oriented entertainer; and
    - 12697 (c) configured so as to preclude the sexually oriented entertainer from touching a
    - 12698 patron.
  - 12699 (5) A sexually oriented entertainer may not touch a patron:
    - 12700 (a) during the sexually oriented entertainer's performance; or
    - 12701 (b) while the sexually oriented entertainer is dressed in performance attire.

12702 (6) A sexually oriented entertainer, while in the portion of the premises used by  
12703 patrons, ~~[must]~~ shall be dressed in opaque clothing which covers and conceals the sexually  
12704 oriented entertainer's performance attire from the top of the breast to the knee.

12705 (7) A patron may not be on the stage or in the performance area while a sexually  
12706 oriented entertainer is appearing or performing on the stage or in the performance area.

12707 (8) A patron may not:

12708 (a) touch a sexually oriented entertainer:

12709 (i) during the sexually oriented entertainer's performance; or

12710 (ii) while the sexually oriented entertainer is dressed in performance attire; or

12711 (b) place money or any other object on or within the performance attire or the person of  
12712 the sexually oriented entertainer.

12713 (9) A minor may not be on premises described in Subsection (3).

12714 (10) A person who appears or performs for the entertainment of patrons on premises or  
12715 at an event regulated by the commission that is not a tavern or social club licensee:

12716 (a) may not appear or perform in a state of nudity or a state of seminudity; and

12717 (b) may appear or perform in opaque clothing that completely covers the person's  
12718 genitals, pubic area, and anus if the covering:

12719 (i) is not less than the following at its widest point:

12720 (A) four inches coverage width in the front of the human body; and

12721 (B) five inches coverage width in the back of the human body;

12722 (ii) does not taper to less than one inch wide at the narrowest point; and

12723 (iii) if covering a female, completely covers the breast below the top of the areola.

12724 Section 301. Section **32B-6-407 (Effective 07/01/11)** is amended to read:

12725 **32B-6-407 (Effective 07/01/11). Specific operational requirements for equity club**  
12726 **license or fraternal club license.**

12727 (1) For purposes of this section only:

12728 (a) "Club licensee" means an equity club licensee or fraternal club licensee.

12729 (b) "Club licensee" does not include a dining club licensee or social club licensee.

12730 (2) (a) A club licensee shall have a governing body that:

12731 (i) consists of three or more members of the club; and

12732 (ii) holds regular meetings to:

- 12733 (A) review membership applications; and
- 12734 (B) conduct other business as required by the bylaws or house rules of the club.
- 12735 (b) (i) A club licensee shall maintain a minute book that is posted currently by the club
- 12736 licensee.
- 12737 (ii) The minute book required by this Subsection (2) shall contain the minutes of a
- 12738 regular or special meeting of the governing body.
- 12739 (3) A club licensee may admit an individual as a member only on written application
- 12740 signed by the person, subject to:
- 12741 (a) the person paying an application fee; and
- 12742 (b) investigation, vote, and approval of a quorum of the governing body.
- 12743 (4) A club licensee shall:
- 12744 (a) record an admission of a member in the official minutes of a regular meeting of the
- 12745 governing body; and
- 12746 (b) whether approved or disapproved, file an application as a part of the official records
- 12747 of the club licensee.
- 12748 (5) The spouse of a member of a club licensee has the rights and privileges of the
- 12749 member:
- 12750 (a) to the extent permitted by the bylaws or house rules of the club licensee; and
- 12751 (b) except to the extent restricted by this title.
- 12752 (6) A minor child of a member of a club licensee has the rights and privileges of the
- 12753 member:
- 12754 (a) to the extent permitted by the bylaws or house rules of the club licensee; and
- 12755 (b) except to the extent restricted by this title.
- 12756 (7) A club licensee shall maintain:
- 12757 (a) a current and complete membership record showing:
- 12758 (i) the date of application of a proposed member;
- 12759 (ii) a member's address;
- 12760 (iii) the date the governing body approved a member's admission;
- 12761 (iv) the date initiation fees and dues are assessed and paid; and
- 12762 (v) the serial number of the membership card issued to a member;
- 12763 (b) a membership list; and

- 12764 (c) a current record indicating when a member is removed as a member or resigns.
- 12765 (8) (a) A club licensee shall have bylaws or house rules that include provisions
- 12766 respecting the following:
- 12767 (i) standards of eligibility for members;
- 12768 (ii) limitation of members, consistent with the nature and purpose of the club;
- 12769 (iii) the period for which dues are paid, and the date upon which the period expires;
- 12770 (iv) provisions for removing a member from the club membership for the nonpayment
- 12771 of dues or other cause;
- 12772 (v) provisions for guests; and
- 12773 (vi) application fees and membership dues.
- 12774 (b) A club licensee shall maintain a current copy of the club licensee's current bylaws
- 12775 and current house rules.
- 12776 (c) A club licensee shall maintain its bylaws or house rules, and any amendments to
- 12777 those records, on file with the department at all times.
- 12778 (9) A club licensee may, in its discretion, allow an individual to be admitted to or use
- 12779 the club licensed premises as a guest subject to the following conditions:
- 12780 (a) the individual is allowed to use the club licensee premises only to the extent
- 12781 permitted by the club licensee's bylaws or house rules;
- 12782 (b) the individual [~~must~~] shall be previously authorized by a member of the club who
- 12783 agrees to host the individual as a guest into the club;
- 12784 (c) the individual has only those privileges derived from the individual's host for the
- 12785 duration of the individual's visit to the club licensee premises; and
- 12786 (d) a club licensee or staff of the club licensee may not enter into an agreement or
- 12787 arrangement with a club member to indiscriminately host a member of the general public into
- 12788 the club licensee premises as a guest.
- 12789 (10) Notwithstanding Subsection (9), an individual may be allowed as a guest in a club
- 12790 licensed premises without a host if:
- 12791 (a) (i) the club licensee is an equity club licensee; and
- 12792 (ii) the individual is a member of an equity club licensee that has reciprocal guest
- 12793 privileges with the equity club licensee for which the individual is a guest; or
- 12794 (b) (i) the club licensee is a fraternal club licensee; and

12795 (ii) the individual is a member of the same fraternal organization as the fraternal club  
12796 licensee for which the individual is a guest.

12797 (11) Unless the patron is a member or guest, a club licensee may not:

12798 (a) sell, offer for sale, or furnish an alcoholic product to the patron; or

12799 (b) allow the patron to be admitted to or use the licensed premises.

12800 (12) A minor may not be a member, officer, director, or trustee of a club licensee.

12801 (13) Public advertising related to a club licensee by the following shall clearly identify  
12802 a club as being "a club for members":

12803 (a) the club licensee;

12804 (b) staff of the club licensee; or

12805 (c) a person under a contract or agreement with the club licensee.

12806 Section 302. Section **32B-8-304 (Effective 07/01/11)** is amended to read:

12807 **32B-8-304 (Effective 07/01/11). Specific operational requirements for resort spa**  
12808 **sublicense.**

12809 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational  
12810 Requirements, a resort licensee, staff of the resort licensee, or a person otherwise related to a  
12811 resort spa sublicense shall comply with this section.

12812 (b) Subject to Section 32B-8-502, failure to comply as provided in Subsection (1)(a)  
12813 may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and  
12814 Enforcement Act, against:

12815 (i) a retail licensee;

12816 (ii) staff of the retail licensee;

12817 (iii) a person otherwise related to a resort spa sublicense; or

12818 (iv) any combination of the persons listed in this Subsection (1)(b).

12819 (2) A person operating under a resort spa sublicense shall display in a prominent place  
12820 in the resort spa a list of the types and brand names of liquor being furnished through its  
12821 calibrated metered dispensing system.

12822 (3) (a) For purposes of the resort spa sublicense, the resort licensee shall ensure that a  
12823 record required by this title is maintained, and a record is maintained or used for the resort spa  
12824 sublicense:

12825 (i) as the department requires; and

- 12826 (ii) for a minimum period of three years.
- 12827 (b) A record is subject to inspection by an authorized representative of the commission  
12828 and the department.
- 12829 (c) A resort licensee shall allow the department, through an auditor or examiner of the  
12830 department, to audit the records for a resort spa sublicense at the times the department  
12831 considers advisable.
- 12832 (d) The department shall audit the records for a resort spa sublicense at least once  
12833 annually.
- 12834 (e) Section 32B-1-205 applies to a record required to be made, maintained, or used in  
12835 accordance with this Subsection (3).
- 12836 (4) (a) A person operating under a resort spa sublicense may not sell, offer for sale, or  
12837 furnish liquor at a resort spa during a period that:
- 12838 (i) begins at 1 a.m.; and  
12839 (ii) ends at 9:59 a.m.
- 12840 (b) A person operating under a resort spa sublicense may sell, offer for sale, or furnish  
12841 beer during the hours specified in Chapter 6, Part 7, On-premise Beer Retailer License, for an  
12842 on-premise beer retailer.
- 12843 (c) (i) Notwithstanding Subsections (4)(a) and (b), a resort spa shall remain open for  
12844 one hour after the resort spa ceases the sale and furnishing of an alcoholic product during  
12845 which time a person at the resort spa may finish consuming:
- 12846 (A) a single drink containing spirituous liquor;  
12847 (B) a single serving of wine not exceeding five ounces;  
12848 (C) a single serving of heavy beer;  
12849 (D) a single serving of beer not exceeding 26 ounces; or  
12850 (E) a single serving of a flavored malt beverage.
- 12851 (ii) A resort spa is not required to remain open:
- 12852 (A) after all persons have vacated the resort spa sublicense premises; or  
12853 (B) during an emergency.
- 12854 (d) A person operating under a resort spa sublicense may not allow a person to remain  
12855 on the resort spa sublicense premises to consume an alcoholic product on the resort spa  
12856 sublicense premises during a period that:

- 12857 (i) begins at 2 a.m.; and
- 12858 (ii) ends at 9:59 a.m.
- 12859 (5) A minor may not be admitted into, use, or be on:
- 12860 (a) the sublicense premises of a resort spa unless accompanied by a person 21 years of
- 12861 age or older; or
- 12862 (b) a lounge or bar area of the resort spa sublicense premises.
- 12863 (6) A resort spa shall have food available at all times when an alcoholic product is sold,
- 12864 offered for sale, furnished, or consumed on the resort spa sublicense premises.
- 12865 (7) (a) Subject to the other provisions of this Subsection (7), a patron may not have
- 12866 more than two alcoholic products of any kind at a time before the patron.
- 12867 (b) A resort spa patron may not have two spirituous liquor drinks before the resort spa
- 12868 patron if one of the spirituous liquor drinks consists only of the primary spirituous liquor for
- 12869 the other spirituous liquor drink.
- 12870 (c) An individual portion of wine is considered to be one alcoholic product under this
- 12871 Subsection (7).
- 12872 (8) (a) An alcoholic product may only be consumed at a table or counter.
- 12873 (b) An alcoholic product may not be served to or consumed by a patron at a bar.
- 12874 (9) (a) A person operating under a resort spa sublicense shall have available on the
- 12875 resort spa sublicense premises for a patron to review at the time that the patron requests it, a
- 12876 written alcoholic product price list or a menu containing the price of an alcoholic product sold
- 12877 or furnished by the resort spa including:
- 12878 (i) a set-up charge;
- 12879 (ii) a service charge; or
- 12880 (iii) a chilling fee.
- 12881 (b) A charge or fee made in connection with the sale, service, or consumption of liquor
- 12882 may be stated in food or alcoholic product menus including:
- 12883 (i) a set-up charge;
- 12884 (ii) a service charge; or
- 12885 (iii) a chilling fee.
- 12886 (10) (a) A resort licensee shall own or lease premises suitable for the resort spa's
- 12887 activities.

12888 (b) A resort licensee may not maintain premises in a manner that barricades or conceals  
12889 the resort spa sublicense's operation.

12890 (11) Subject to the other provisions of this section, a person operating under a resort  
12891 spa sublicense may not sell an alcoholic product to or allow a person to be admitted to or use  
12892 the resort spa sublicense premises other than:

12893 (a) a resident;

12894 (b) a public customer who holds a valid customer card issued under Subsection (13); or

12895 (c) an invitee.

12896 (12) A person operating under a resort spa sublicense may allow an individual to be  
12897 admitted to or use the resort spa sublicense premises as an invitee subject to the following  
12898 conditions:

12899 (a) the individual [~~must~~] shall be previously authorized by one of the following who  
12900 agrees to host the individual as an invitee into the resort spa:

12901 (i) a resident; or

12902 (ii) a public customer as described in Subsection (11);

12903 (b) the individual has only those privileges derived from the individual's host for the  
12904 duration of the invitee's visit to the resort spa; and

12905 (c) a resort licensee, resort spa, or staff of the resort licensee or resort spa may not enter  
12906 into an agreement or arrangement with a resident or public customer to indiscriminately host a  
12907 member of the general public into the resort spa as an invitee.

12908 (13) A person operating under a resort spa sublicense may issue a customer card to  
12909 allow an individual to enter and use the resort spa sublicense premises on a temporary basis  
12910 under the following conditions:

12911 (a) the resort spa may not issue a customer card for a time period that exceeds three  
12912 weeks;

12913 (b) the resort spa shall assess a fee to a public customer for a customer card;

12914 (c) the resort spa may not issue a customer card to a minor; and

12915 (d) a public customer may not host more than seven invitees at one time.

12916 Section 303. Section **34-19-1** is amended to read:

12917 **34-19-1. Declaration of policy.**

12918 In the interpretation and application of this chapter, the public policy of this state is

12919 declared as follows:

12920 (1) It [~~shall not be~~] is not unlawful for employees to organize themselves into or carry  
12921 on labor unions for the purpose of lessening hours of labor, increasing wages, bettering the  
12922 conditions of members, or carrying out the legitimate purposes of such organizations as freely  
12923 as they could do if acting singly.

12924 (2) The labor of a human being is not a commodity or article of commerce. Nothing  
12925 contained in the antitrust laws shall be construed to forbid the existence and operation of labor,  
12926 agricultural or horticultural organizations, instituted for the purpose of mutual help and not  
12927 having capital stock or conducted for profit, or to forbid or restrain individual members of such  
12928 organizations from lawfully carrying out the legitimate object thereof; nor shall such  
12929 organizations or membership in them be held to be illegal combinations or conspiracies in  
12930 restraint of trade under the antitrust laws.

12931 (3) Negotiations of terms and conditions of labor should result from voluntary  
12932 agreement between employer and employee. Governmental authority has permitted and  
12933 encouraged employers to organize in the corporate and other forms of capital control. In  
12934 dealing with such employers the individual unorganized worker is helpless to exercise actual  
12935 liberty of contract and to protect [~~his~~] the individual unorganized worker's freedom of labor and  
12936 thereby to obtain acceptable terms and conditions of employment. Therefore, it is necessary  
12937 that the individual employee have full freedom of association, self-organization, and  
12938 designation of representatives of [~~his~~] the individual employee's own choosing to negotiate the  
12939 terms and conditions of [~~his~~] the individual employee's employment, and that [~~he~~] the  
12940 individual employee shall be free from the interference, restraint or coercion of employers of  
12941 labor, or their agents, in the designation of such representatives or in self-organization or in  
12942 other concerted activities for the purpose of collective bargaining or their mutual aid or  
12943 protection.

12944 Section 304. Section **34-19-9** is amended to read:

12945 **34-19-9. Injunctive relief -- Contempt -- Rights of accused.**

12946 In all cases where a person shall be charged with indirect criminal contempt for  
12947 violation of a restraining order or injunction issued by a court, or judge or judges of it, the  
12948 accused shall enjoy:

12949 (1) the rights as to admission to bail that are accorded to persons accused of crime;

12950 (2) the right to be notified of the accusation and a reasonable time to make a defense,  
12951 provided the alleged contempt is not committed in the immediate view of or in the presence of  
12952 the court;

12953 (3) upon demand, the right to a speedy and public trial by an impartial jury of the  
12954 judicial district in which the contempt shall have been committed. This requirement [~~shall not~~  
12955 may not] be construed to apply to contempts committed in the presence of the court or so near to  
12956 it as to interfere directly with the administration of justice or to apply to the misbehavior,  
12957 misconduct, or disobedience of any officer of the court in respect to the writs, orders or process  
12958 of the court; and

12959 (4) the right to file with the court a demand for the retirement of the judge sitting in the  
12960 proceeding, if the contempt arises from an attack upon the character or conduct of such judge  
12961 and if the attack occurred otherwise than in open court. Upon the filing of any such demand the  
12962 judge shall proceed no further, but another judge shall be designated by the presiding judge of  
12963 the court. The demand shall be filed prior to the hearing in the contempt proceeding.

12964 Section 305. Section **34-19-10** is amended to read:

12965 **34-19-10. Injunctive relief -- Contempt -- Penalty.**

12966 Punishment for a contempt, specified in Section 34-19-9, may be by fine, not exceeding  
12967 \$100, or by imprisonment not exceeding 15 days in the jail of the county where the court is  
12968 sitting, or both, in the discretion of the court. Where a person is committed to jail for the  
12969 nonpayment of such a fine, [~~he must~~] the person shall be discharged at the expiration of 15  
12970 days; but [~~where he~~] if the person is also committed for a definite time, the 15 days [~~must~~] shall  
12971 be computed from the expiration of the definite time.

12972 Section 306. Section **34-19-13** is amended to read:

12973 **34-19-13. Agreements against public policy.**

12974 [~~Every undertaking or promise~~] Each of the following undertakings or promises  
12975 hereafter made, whether written or oral, express or implied, between any employee or  
12976 prospective employee and [~~his~~] the employee's or prospective employee's employer,  
12977 prospective employer, or any other individual, firm, company, association, or corporation,  
12978 [~~whereby~~] is contrary to public policy and may not be a basis for the granting of legal or  
12979 equitable relief by any court against a party to the undertaking or promise, or against any other  
12980 person who may advise, urge, or induce, without fraud, violence or threat of violence, either

12981 party to act in disregard of the undertaking or promise:

12982 (1) [~~either party thereto undertakes or promises~~] an undertaking or promise by either  
 12983 party to join or to remain a member of some specific labor organization or organizations or to  
 12984 join or remain a member of some specific employer organization or any employer organization  
 12985 or organizations; [~~and/or~~]

12986 (2) [~~either party thereto undertakes or promises not to~~] an undertaking or promise by  
 12987 either party to not join or not [~~to~~] remain a member of some specific labor organization or any  
 12988 labor organization or organizations, or of some specific employer organization or any employer  
 12989 organization or organizations; [~~and/or~~] or

12990 (3) [~~either party thereto undertakes or promises that he will~~] an undertaking or promise  
 12991 by either party to withdraw from an employment relation in the event that [~~he~~] the party joins  
 12992 or remains a member of some specific labor organization or any labor organization or  
 12993 organizations, or of some specific employer organization or any employer organization or  
 12994 organizations[; is hereby declared to be contrary to public policy and shall not afford any basis  
 12995 for the granting of legal or equitable relief by any court against a party to such undertaking or  
 12996 promise, or against any other persons who may advise, urge or induce, without fraud, violence  
 12997 or threat thereof, either party thereto to act in disregard of such undertaking or promise].

12998 Section 307. Section **34-20-3** is amended to read:

12999 **34-20-3. Labor relations board.**

13000 (1) (a) There is created the Labor Relations Board consisting of the following:

13001 (i) the commissioner of the Labor Commission;

13002 (ii) two members appointed by the governor with the consent of the Senate consisting  
 13003 of:

13004 (A) a representative of employers, in making this appointment the governor shall  
 13005 consider nominations from employer organizations; and

13006 (B) a representative of employees, in making this appointment the governor shall  
 13007 consider nominations from employee organizations.

13008 (b) (i) Except as provided in Subsection (1)(b)(ii), as terms of members appointed  
 13009 under Subsection (1)(a)(ii) expire, the governor shall appoint each new member or reappointed  
 13010 member to a four-year term.

13011 (ii) Notwithstanding the requirements of Subsection (1)(b)(i), the governor shall, at the

13012 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
13013 members appointed under Subsection (1)(a)(ii) are staggered so one member is appointed every  
13014 two years.

13015 (c) The commissioner shall serve as chair of the board.

13016 (d) A vacancy occurring on the board for any cause of the members appointed under  
13017 Subsection (1)(a)(ii) shall be filled by the governor with the consent of the Senate pursuant to  
13018 this section for the unexpired term of the vacating member.

13019 (e) The governor may at any time remove a member appointed under Subsection  
13020 (1)(a)(ii) but only for inefficiency, neglect of duty, malfeasance or malfeasance in office, or for  
13021 cause upon a hearing.

13022 (f) A member of the board appointed under Subsection (1)(a)(ii) may not hold any  
13023 other office in the government of the United States, this state or any other state, or of any  
13024 county government or municipal corporation within a state.

13025 (g) A member appointed under Subsection (1)(a)(ii) may not receive compensation or  
13026 benefits for the member's service, but may receive per diem and travel expenses in accordance  
13027 with:

13028 (i) Section 63A-3-106;

13029 (ii) Section 63A-3-107; and

13030 (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
13031 63A-3-107.

13032 (2) A meeting of the board may be called:

13033 (a) by the chair; or

13034 (b) jointly by the members appointed under Subsection (1)(a)(ii).

13035 (3) The chair may provide staff and administrative support as necessary from the Labor  
13036 Commission.

13037 (4) A vacancy in the board [~~shall not~~] does not impair the right of the remaining  
13038 members to exercise all the powers of the board, and two members of the board shall at all  
13039 times constitute a quorum.

13040 (5) The board shall have an official seal which shall be judicially noticed.

13041 Section 308. Section **34-20-5** is amended to read:

13042 **34-20-5. Labor relations board -- Offices -- Jurisdiction -- Member's**

13043 **participation in case.**

13044           The principal office of the board shall be at the state capitol, but it may meet and  
13045 exercise any or all of its powers at any other place. The board may, by one or more of its  
13046 members or by [~~such~~] the agents or agencies [~~as~~] it may designate, prosecute any inquiry  
13047 necessary to its functions in any part of the state. A member who participates in [~~such~~] the  
13048 inquiry [~~shall not~~] may not be disqualified from subsequently participating in a decision of the  
13049 board in the same case.

13050           Section 309. Section **34-20-8** is amended to read:

13051           **34-20-8. Unfair labor practices.**

13052           (1) It shall be an unfair labor practice for an employer, individually or in concert with  
13053 others:

13054           (a) To interfere with, restrain or coerce employees in the exercise of the rights  
13055 guaranteed in Section 34-20-7.

13056           (b) To dominate or interfere with the formation or administration of any labor  
13057 organization or contribute financial or other support to it; provided, that subject to rules and  
13058 regulations made and published by the board pursuant to Section 34-20-6, an employer [~~shall~~  
13059 ~~not be~~] is not prohibited from permitting employees to confer with [~~him~~] the employer during  
13060 working hours without loss of time or pay.

13061           (c) By discrimination in regard to hire or tenure of employment or any term of  
13062 condition of employment to encourage or discourage membership in any labor organization;  
13063 provided, that nothing in this act shall preclude an employer from making an agreement with a  
13064 labor organization (not established, maintained or assisted by any action defined in this act as  
13065 an unfair labor practice) to require as a condition of employment, membership therein, if such  
13066 labor organization is the representative of the employees as provided in Subsection 34-20-9(1)  
13067 in the appropriate collective bargaining unit covered by such agreement when made.

13068           (d) To refuse to bargain collectively with the representative of a majority of [~~his~~] the  
13069 employer's employees in any collective bargaining unit; provided, that, when two or more labor  
13070 organizations claim to represent a majority of the employees in the bargaining unit, the  
13071 employer shall be free to file with the board a petition for investigation of certification of  
13072 representatives and during the pendency of [~~such~~] the proceedings the employer [~~shall not~~] may  
13073 not be [~~deemed~~] considered to have refused to bargain.

13074 (e) To bargain collectively with the representatives of less than a majority of ~~[his]~~ the  
13075 employer's employees in a collective bargaining unit.

13076 (f) To discharge or otherwise discriminate against an employee because ~~[he]~~ the  
13077 employee has filed charges or given testimony under this ~~[act]~~ chapter.

13078 (2) It shall be an unfair labor practice for an employee individually or in concert with  
13079 others:

13080 (a) To coerce or intimidate an employee in the enjoyment of ~~[his]~~ the employee's legal  
13081 rights, including those guaranteed in Section 34-20-7, or to intimidate ~~[his]~~ the employee's  
13082 family, picket ~~[his]~~ the employee's domicile, or injure the person or property of ~~[such]~~ the  
13083 employee or ~~[his]~~ the employee's family.

13084 (b) To coerce, intimidate or induce an employer to interfere with any of ~~[his]~~ the  
13085 employer's employees in the enjoyment of their legal rights, including those guaranteed in  
13086 Section 34-20-7, or to engage in any practice with regard to ~~[his]~~ the employer's employees  
13087 which would constitute an unfair labor practice if undertaken by ~~[him or his]~~ the employer on  
13088 the employer's own initiative.

13089 (c) To co-operate in engaging in, promoting, or inducing picketing (not constituting an  
13090 exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant  
13091 of a strike unless a majority in a collective bargaining unit of the employees of an employer  
13092 against whom such acts are primarily directed have voted by secret ballot to call a strike.

13093 (d) To hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of  
13094 any kind the pursuit of any lawful work or employment, or to obstruct or interfere with  
13095 entrance to or egress from any place of employment, or to obstruct or interfere with free and  
13096 uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel  
13097 or conveyance.

13098 (e) To engage in a secondary boycott; or to hinder or prevent, by threats, intimidation,  
13099 force, coercion, or sabotage, the obtaining, use or disposition of materials, equipment, or  
13100 services; or to combine or conspire to hinder or prevent the obtaining, use or disposition of  
13101 materials, equipment or services, provided, however, that nothing herein shall prevent  
13102 sympathetic strikes in support of those in similar occupations working for other employers in  
13103 the same craft.

13104 (f) To take unauthorized possession of property of the employer.

13105 (3) It shall be an unfair labor practice for any person to do or cause to be done on  
13106 behalf of or in the interest of employers or employees, or in connection with or to influence the  
13107 outcome of any controversy as to employment relations, any act prohibited by Subsections (1)  
13108 and (2) of this section.

13109 Section 310. Section **34-23-208** is amended to read:

13110 **34-23-208. Exceptions.**

13111 The provisions of this chapter [~~shall not~~] do not apply to a person who is 16 years of  
13112 age or older and for whom employment would not endanger [~~his~~] the person's health and safety  
13113 if that person:

- 13114 (1) has received a high school diploma;
- 13115 (2) has received a school release certificate;
- 13116 (3) is legally married; or
- 13117 (4) is head of a household.

13118 Section 311. Section **34-25-2** is amended to read:

13119 **34-25-2. "Fellow servant" defined.**

13120 All persons who are engaged in the service of any employer and who while so engaged  
13121 are in the same grade of service and are working together at the same time and place and to a  
13122 common purpose, neither of such persons being entrusted by such employer with any  
13123 superintendence or control over [~~his~~] the person's fellow employees, are fellow servants with  
13124 each other; but nothing herein contained shall be so construed as to make the employees of  
13125 such employer fellow servants with other employees engaged in any other department of  
13126 service of such employer. Employees who do not come within the provisions of this section  
13127 [~~shall not~~] may not be considered fellow servants.

13128 Section 312. Section **34-28-5** is amended to read:

13129 **34-28-5. Separation from payroll -- Resignation -- Cessation because of industrial**  
13130 **dispute.**

13131 (1) (a) Whenever an employer separates an employee from the employer's payroll the  
13132 unpaid wages of the employee become due immediately, and the employer shall pay the wages  
13133 to the employee within 24 hours of the time of separation at the specified place of payment.

13134 (b) (i) In case of failure to pay wages due an employee within 24 hours of written  
13135 demand, the wages of the employee shall continue from the date of demand until paid, but in

13136 no event to exceed 60 days, at the same rate that the employee received at the time of  
13137 separation.

13138 (ii) The employee may recover the penalty thus accruing to the employee in a civil  
13139 action. This action ~~[must]~~ shall be commenced within 60 days from the date of separation.

13140 (iii) An employee who has not made a written demand for payment is not entitled to  
13141 any penalty under Subsection (1)(b).

13142 (2) If an employee does not have a written contract for a definite period and resigns  
13143 the employee's employment, the wages earned and unpaid together with any deposit held by the  
13144 employer and properly belonging to the resigned employee for the performance of the  
13145 employee's employment duties become due and payable on the next regular payday.

13146 (3) If work ceases as the result of an industrial dispute, the wages earned and unpaid at  
13147 the time of this cessation become due and payable at the next regular payday, as provided in  
13148 Section 34-28-3, including, without abatement or reduction, all amounts due all persons whose  
13149 work has been suspended as a result of the industrial dispute, together with any deposit or other  
13150 guaranty held by the employer for the faithful performance of the duties of the employment.

13151 (4) This section does not apply to the earnings of a sales agent employed on a  
13152 commission basis who has custody of accounts, money, or goods of the sales agent's principal  
13153 if the net amount due the agent is determined only after an audit or verification of sales,  
13154 accounts, funds, or stocks.

13155 Section 313. Section **34-28-6** is amended to read:

13156 **34-28-6. Dispute over wages -- Notice and payment.**

13157 (1) In case of a dispute over wages, the employer shall give written notice to the  
13158 employee of the amount of wages ~~[which he]~~ that the employer concedes to be due and shall  
13159 pay such amount without condition within the time set by this chapter~~[-; but acceptance by the~~  
13160 ~~employee of any such payment made shall not].~~

13161 (2) Acceptance by an employee of a payment described in Subsection (1) does not  
13162 constitute a release as to the balance of ~~[his]~~ the employee's claim.

13163 Section 314. Section **34-28-14** is amended to read:

13164 **34-28-14. Actions by division as assignee -- Costs need not be advanced.**

13165 (1) In all actions brought by the division as assignee under Section 34-28-13, no court  
13166 costs of any nature shall be required to be advanced nor shall any bond or other security be

13167 required from the division in connection with the same.

13168 (2) Any sheriff, constable, or other officer requested by the division to serve summons,  
13169 writs, complaints, orders, including any garnishment papers, and all necessary and legal papers  
13170 within his jurisdiction shall do so without requiring the division to advance the fees or furnish  
13171 any security or bond.

13172 (3) Whenever the division shall require the sheriff, constable, or other officer whose  
13173 duty it is to seize property or levy thereon in any attachment proceedings to satisfy any wage  
13174 claim judgment to perform any such duty, this officer shall do so without requiring the division  
13175 to furnish any security or bond in the action.

13176 (4) The officer in carrying out the provisions of this Subsection (4) ~~[shall not be]~~ is not  
13177 responsible in damages for any wrongful seizure made in good faith.

13178 (5) Whenever anyone other than the defendant claims the right of possession or  
13179 ownership to such seized property, then in such case the officer may permit such claimant to  
13180 have the custody of such property pending a determination of the court as to who has right of  
13181 possession or ownership of such property.

13182 (6) Any garnishee defendant shall be required to appear and make answer in any such  
13183 action, as required by law, without having paid to ~~[him]~~ the garnishee defendant in advance  
13184 witness fees, but such witness fees shall be included as part of the taxable costs of such action.  
13185 Out of any recovery on a judgment in such a suit, there shall be paid the following: first, the  
13186 witness fees to the garnishee defendant; second, the wage claims involved; third, the sheriff's or  
13187 constable's fees; and fourth, the court costs.

13188 Section 315. Section **34-29-1** is amended to read:

13189 **34-29-1. License required -- Agencies for teachers excepted.**

13190 It shall be unlawful for any person to open and establish in any city or town, or  
13191 elsewhere within the limits of this state, any intelligence or employment office for the purpose  
13192 of procuring or obtaining for money or other valuable consideration, either directly or  
13193 indirectly, any work or employment for persons seeking the same, or to otherwise engage in  
13194 such business, or in any way to act as a broker or go-between between employers and persons  
13195 seeking work, without first having obtained a license so to do from the city, town, or, if not  
13196 within any city or town, from the county where such intelligence or employment office is to be  
13197 opened or such business is to be carried on. Any person performing any of these services shall

13198 be deemed to be an employment agent within the meaning of this chapter, but the provisions of  
13199 Section 34-29-10 [~~shall not~~] do not apply to any person operating agencies for schoolteachers;  
13200 but it shall be a misdemeanor for any schoolteachers' employment agency to receive as  
13201 commission for information or assistance such as is described herein any consideration in value  
13202 in excess of 5% of the amount of the first year's salary of the person to whom such information  
13203 is furnished.

13204 Section 316. Section **34-32-4** is amended to read:

13205 **34-32-4. Exceptions from chapter.**

13206 (1) The provisions of this chapter [~~shall not~~] do not apply to carriers as that term is  
13207 defined in the Railway Labor Act passed by the Congress of the United States, June 21, 1934.  
13208 48 Stat. 1189, U.S. Code, Title 45, Section 151.

13209 (2) Nothing in this chapter is intended to, or may be construed to, preempt any  
13210 requirement of federal law.

13211 Section 317. Section **34-34-2** is amended to read:

13212 **34-34-2. Public policy.**

13213 It is hereby declared to be the public policy of the state [~~of Utah~~] that the right of  
13214 persons to work, whether in private employment or for the state, its counties, cities, school  
13215 districts, or other political subdivisions, [~~shall not~~] may not be denied or abridged on account  
13216 of membership or nonmembership in any labor union, labor organization or any other type of  
13217 association; and further, that the right to live includes the right to work. The exercise of the  
13218 right to work [~~must~~] shall be protected and maintained free from undue restraints and coercion.

13219 Section 318. Section **34-34-15** is amended to read:

13220 **34-34-15. Existing contracts -- Chapter applicable upon renewal or extension.**

13221 The provisions of this chapter [~~shall not~~] do not apply to any lawful contract in force on  
13222 the effective date of this act, but they shall apply in all respects to contracts entered into after  
13223 such date and to any renewal or extension of any existing contract.

13224 Section 319. Section **34-36-3** is amended to read:

13225 **34-36-3. Carriers and vehicles of United States exempt.**

13226 This chapter [~~shall not~~] does not apply to motor carriers or to motor vehicles owned and  
13227 operated by the United States.

13228 Section 320. Section **34-41-106** is amended to read:

13229           **34-41-106. Employee not disabled.**

13230           An employee, volunteer, prospective employee, or prospective volunteer whose drug  
13231 test results are verified or confirmed as positive in accordance with the provisions of this  
13232 chapter ~~[shall not]~~ may not, by virtue of those results alone, be defined as disabled for purposes  
13233 of:

13234           (1) Title 34A, Chapter 5, Utah Antidiscrimination Act; or

13235           (2) the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213.

13236           Section 321. Section **34A-1-408** is amended to read:

13237           **34A-1-408. Investigations through representatives.**

13238           (1) For the purpose of making any investigation necessary for the implementation of  
13239 this title with regard to any employment or place of employment, the commission may appoint,  
13240 in writing, any competent person who is a resident of the state, as an agent, whose duties shall  
13241 be prescribed in the written appointment.

13242           (2) In the discharge of the agent's duties, the agent shall have:

13243           (a) every power of investigation granted in this title to the commission; and

13244           (b) the same powers as a referee appointed by a district court with regard to taking  
13245 evidence.

13246           (3) The commission may:

13247           (a) conduct any number of the investigations contemporaneously through different  
13248 agents; and

13249           (b) delegate to the agents the taking of evidence bearing upon any investigation or  
13250 hearing.

13251           (4) The recommendations made by the agents shall be advisory only and ~~[shall not]~~ do  
13252 not preclude the taking of further evidence or further investigation if the commission so orders.

13253           Section 322. Section **34A-1-409** is amended to read:

13254           **34A-1-409. Partial invalidity -- Saving clause.**

13255           Should any section or provision of this title be decided by the courts to be  
13256 unconstitutional or invalid the same ~~[shall not]~~ does not affect the validity of the title as a  
13257 whole or any part of the title other than the part so decided to be unconstitutional.

13258           Section 323. Section **34A-2-413** is amended to read:

13259           **34A-2-413. Permanent total disability -- Amount of payments -- Rehabilitation.**

13260 (1) (a) In the case of a permanent total disability resulting from an industrial accident  
13261 or occupational disease, the employee shall receive compensation as outlined in this section.

13262 (b) To establish entitlement to permanent total disability compensation, the employee  
13263 [~~must~~] shall prove by a preponderance of evidence that:

13264 (i) the employee sustained a significant impairment or combination of impairments as a  
13265 result of the industrial accident or occupational disease that gives rise to the permanent total  
13266 disability entitlement;

13267 (ii) the employee is permanently totally disabled; and

13268 (iii) the industrial accident or occupational disease is the direct cause of the employee's  
13269 permanent total disability.

13270 (c) To establish that an employee is permanently totally disabled the employee [~~must~~]  
13271 shall prove by a preponderance of the evidence that:

13272 (i) the employee is not gainfully employed;

13273 (ii) the employee has an impairment or combination of impairments that limit the  
13274 employee's ability to do basic work activities;

13275 (iii) the industrial or occupationally caused impairment or combination of impairments  
13276 prevent the employee from performing the essential functions of the work activities for which  
13277 the employee has been qualified until the time of the industrial accident or occupational disease  
13278 that is the basis for the employee's permanent total disability claim; and

13279 (iv) the employee cannot perform other work reasonably available, taking into  
13280 consideration the employee's:

13281 (A) age;

13282 (B) education;

13283 (C) past work experience;

13284 (D) medical capacity; and

13285 (E) residual functional capacity.

13286 (d) Evidence of an employee's entitlement to disability benefits other than those  
13287 provided under this chapter and Chapter 3, Utah Occupational Disease Act, if relevant:

13288 (i) may be presented to the commission;

13289 (ii) is not binding; and

13290 (iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah

13291 Occupational Disease Act.

13292 (e) In determining under Subsections (1)(b) and (c) whether an employee cannot  
13293 perform other work reasonably available, the following may not be considered:

13294 (i) whether the employee is incarcerated in a facility operated by or contracting with a  
13295 federal, state, county, or municipal government to house a criminal offender in either a secure  
13296 or nonsecure setting; or

13297 (ii) whether the employee is not legally eligible to be employed because of a reason  
13298 unrelated to the impairment or combination of impairments.

13299 (2) For permanent total disability compensation during the initial 312-week  
13300 entitlement, compensation is 66-2/3% of the employee's average weekly wage at the time of the  
13301 injury, limited as follows:

13302 (a) compensation per week may not be more than 85% of the state average weekly  
13303 wage at the time of the injury;

13304 (b) (i) subject to Subsection (2)(b)(ii), compensation per week may not be less than the  
13305 sum of \$45 per week and:

13306 (A) \$5 for a dependent spouse; and

13307 (B) \$5 for each dependent child under the age of 18 years, up to a maximum of four  
13308 dependent minor children; and

13309 (ii) the amount calculated under Subsection (2)(b)(i) may not exceed:

13310 (A) the maximum established in Subsection (2)(a); or

13311 (B) the average weekly wage of the employee at the time of the injury; and

13312 (c) after the initial 312 weeks, the minimum weekly compensation rate under  
13313 Subsection (2)(b) is 36% of the current state average weekly wage, rounded to the nearest  
13314 dollar.

13315 (3) This Subsection (3) applies to claims resulting from an accident or disease arising  
13316 out of and in the course of the employee's employment on or before June 30, 1994.

13317 (a) The employer or its insurance carrier is liable for the initial 312 weeks of permanent  
13318 total disability compensation except as outlined in Section 34A-2-703 as in effect on the date  
13319 of injury.

13320 (b) The employer or its insurance carrier may not be required to pay compensation for  
13321 any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410

13322 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation  
13323 payable over the initial 312 weeks at the applicable permanent total disability compensation  
13324 rate under Subsection (2).

13325 (c) The Employers' Reinsurance Fund shall for an overpayment of compensation  
13326 described in Subsection (3)(b), reimburse the overpayment:

13327 (i) to the employer or its insurance carrier; and

13328 (ii) out of the Employers' Reinsurance Fund's liability to the employee.

13329 (d) After an employee receives compensation from the employee's employer, its  
13330 insurance carrier, or the Employers' Reinsurance Fund for any combination of disabilities  
13331 amounting to 312 weeks of compensation at the applicable permanent total disability  
13332 compensation rate, the Employers' Reinsurance Fund shall pay all remaining permanent total  
13333 disability compensation.

13334 (e) Employers' Reinsurance Fund payments shall commence immediately after the  
13335 employer or its insurance carrier satisfies its liability under this Subsection (3) or Section  
13336 34A-2-703.

13337 (4) This Subsection (4) applies to claims resulting from an accident or disease arising  
13338 out of and in the course of the employee's employment on or after July 1, 1994.

13339 (a) The employer or its insurance carrier is liable for permanent total disability  
13340 compensation.

13341 (b) The employer or its insurance carrier may not be required to pay compensation for  
13342 any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410  
13343 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation  
13344 payable over the initial 312 weeks at the applicable permanent total disability compensation  
13345 rate under Subsection (2).

13346 (c) The employer or its insurance carrier may recoup the overpayment of compensation  
13347 described in Subsection (4) by reasonably offsetting the overpayment against future liability  
13348 paid before or after the initial 312 weeks.

13349 (5) (a) A finding by the commission of permanent total disability is not final, unless  
13350 otherwise agreed to by the parties, until:

13351 (i) an administrative law judge reviews a summary of reemployment activities  
13352 undertaken pursuant to Chapter 8a, Utah Injured Worker Reemployment Act;

- 13353 (ii) the employer or its insurance carrier submits to the administrative law judge:
- 13354 (A) a reemployment plan as prepared by a qualified rehabilitation provider reasonably
- 13355 designed to return the employee to gainful employment; or
- 13356 (B) notice that the employer or its insurance carrier will not submit a plan; and
- 13357 (iii) the administrative law judge, after notice to the parties, holds a hearing, unless
- 13358 otherwise stipulated, to:
- 13359 (A) consider evidence regarding rehabilitation; and
- 13360 (B) review any reemployment plan submitted by the employer or its insurance carrier
- 13361 under Subsection (5)(a)(ii).
- 13362 (b) Before commencing the procedure required by Subsection (5)(a), the administrative
- 13363 law judge shall order:
- 13364 (i) the initiation of permanent total disability compensation payments to provide for the
- 13365 employee's subsistence; and
- 13366 (ii) the payment of any undisputed disability or medical benefits due the employee.
- 13367 (c) Notwithstanding Subsection (5)(a), an order for payment of benefits described in
- 13368 Subsection (5)(b) is considered a final order for purposes of Section 34A-2-212.
- 13369 (d) The employer or its insurance carrier shall be given credit for any disability
- 13370 payments made under Subsection (5)(b) against its ultimate disability compensation liability
- 13371 under this chapter or Chapter 3, Utah Occupational Disease Act.
- 13372 (e) An employer or its insurance carrier may not be ordered to submit a reemployment
- 13373 plan. If the employer or its insurance carrier voluntarily submits a plan, the plan is subject to
- 13374 Subsections (5)(e)(i) through (iii).
- 13375 (i) The plan may include, but not require an employee to pay for:
- 13376 (A) retraining;
- 13377 (B) education;
- 13378 (C) medical and disability compensation benefits;
- 13379 (D) job placement services; or
- 13380 (E) incentives calculated to facilitate reemployment.
- 13381 (ii) The plan shall include payment of reasonable disability compensation to provide
- 13382 for the employee's subsistence during the rehabilitation process.
- 13383 (iii) The employer or its insurance carrier shall diligently pursue the reemployment

13384 plan. The employer's or insurance carrier's failure to diligently pursue the reemployment plan  
13385 is cause for the administrative law judge on the administrative law judge's own motion to make  
13386 a final decision of permanent total disability.

13387 (f) If a preponderance of the evidence shows that successful rehabilitation is not  
13388 possible, the administrative law judge shall order that the employee be paid weekly permanent  
13389 total disability compensation benefits.

13390 (g) If a preponderance of the evidence shows that pursuant to a reemployment plan, as  
13391 prepared by a qualified rehabilitation provider and presented under Subsection (5)(e), an  
13392 employee could immediately or without unreasonable delay return to work but for the  
13393 following, an administrative law judge shall order that the employee be denied the payment of  
13394 weekly permanent total disability compensation benefits:

13395 (i) incarceration in a facility operated by or contracting with a federal, state, county, or  
13396 municipal government to house a criminal offender in either a secure or nonsecure setting; or

13397 (ii) not being legally eligible to be employed because of a reason unrelated to the  
13398 impairment or combination of impairments.

13399 (6) (a) The period of benefits commences on the date the employee became  
13400 permanently totally disabled, as determined by a final order of the commission based on the  
13401 facts and evidence, and ends:

13402 (i) with the death of the employee; or

13403 (ii) when the employee is capable of returning to regular, steady work.

13404 (b) An employer or its insurance carrier may provide or locate for a permanently totally  
13405 disabled employee reasonable, medically appropriate, part-time work in a job earning at least  
13406 minimum wage, except that the employee may not be required to accept the work to the extent  
13407 that it would disqualify the employee from Social Security disability benefits.

13408 (c) An employee shall:

13409 (i) fully cooperate in the placement and employment process; and

13410 (ii) accept the reasonable, medically appropriate, part-time work.

13411 (d) In a consecutive four-week period when an employee's gross income from the work  
13412 provided under Subsection (6)(b) exceeds \$500, the employer or insurance carrier may reduce  
13413 the employee's permanent total disability compensation by 50% of the employee's income in  
13414 excess of \$500.

13415 (e) If a work opportunity is not provided by the employer or its insurance carrier, a  
13416 permanently totally disabled employee may obtain medically appropriate, part-time work  
13417 subject to the offset provisions of Subsection (6)(d).

13418 (f) (i) The commission shall establish rules regarding the part-time work and offset.

13419 (ii) The adjudication of disputes arising under this Subsection (6) is governed by Part  
13420 8, Adjudication.

13421 (g) The employer or its insurance carrier has the burden of proof to show that  
13422 medically appropriate part-time work is available.

13423 (h) The administrative law judge may:

13424 (i) excuse an employee from participation in any work:

13425 (A) that would require the employee to undertake work exceeding the employee's:

13426 (I) medical capacity; or

13427 (II) residual functional capacity; or

13428 (B) for good cause; or

13429 (ii) allow the employer or its insurance carrier to reduce permanent total disability  
13430 benefits as provided in Subsection (6)(d) when reasonable, medically appropriate, part-time  
13431 work is offered, but the employee fails to fully cooperate.

13432 (7) When an employee is rehabilitated or the employee's rehabilitation is possible but  
13433 the employee has some loss of bodily function, the award shall be for permanent partial  
13434 disability.

13435 (8) As determined by an administrative law judge, an employee is not entitled to  
13436 disability compensation, unless the employee fully cooperates with any evaluation or  
13437 reemployment plan under this chapter or Chapter 3, Utah Occupational Disease Act. The  
13438 administrative law judge shall dismiss without prejudice the claim for benefits of an employee  
13439 if the administrative law judge finds that the employee fails to fully cooperate, unless the  
13440 administrative law judge states specific findings on the record justifying dismissal with  
13441 prejudice.

13442 (9) (a) The loss or permanent and complete loss of the use of the following constitutes  
13443 total and permanent disability that is compensated according to this section:

13444 (i) both hands;

13445 (ii) both arms;

- 13446 (iii) both feet;
- 13447 (iv) both legs;
- 13448 (v) both eyes; or
- 13449 (vi) any combination of two body members described in this Subsection (9)(a).
- 13450 (b) A finding of permanent total disability pursuant to Subsection (9)(a) is final.
- 13451 (10) (a) An insurer or self-insured employer may periodically reexamine a permanent
- 13452 total disability claim, except those based on Subsection (9), for which the insurer or
- 13453 self-insured employer had or has payment responsibility to determine whether the employee
- 13454 remains permanently totally disabled.
- 13455 (b) Reexamination may be conducted no more than once every three years after an
- 13456 award is final, unless good cause is shown by the employer or its insurance carrier to allow
- 13457 more frequent reexaminations.
- 13458 (c) The reexamination may include:
- 13459 (i) the review of medical records;
- 13460 (ii) employee submission to one or more reasonable medical evaluations;
- 13461 (iii) employee submission to one or more reasonable rehabilitation evaluations and
- 13462 retraining efforts;
- 13463 (iv) employee disclosure of Federal Income Tax Returns;
- 13464 (v) employee certification of compliance with Section 34A-2-110; and
- 13465 (vi) employee completion of one or more sworn affidavits or questionnaires approved
- 13466 by the division.
- 13467 (d) The insurer or self-insured employer shall pay for the cost of a reexamination with
- 13468 appropriate employee reimbursement pursuant to rule for reasonable travel allowance and per
- 13469 diem as well as reasonable expert witness fees incurred by the employee in supporting the
- 13470 employee's claim for permanent total disability benefits at the time of reexamination.
- 13471 (e) If an employee fails to fully cooperate in the reasonable reexamination of a
- 13472 permanent total disability finding, an administrative law judge may order the suspension of the
- 13473 employee's permanent total disability benefits until the employee cooperates with the
- 13474 reexamination.
- 13475 (f) (i) If the reexamination of a permanent total disability finding reveals evidence that
- 13476 reasonably raises the issue of an employee's continued entitlement to permanent total disability

13477 compensation benefits, an insurer or self-insured employer may petition the Division of  
13478 Adjudication for a rehearing on that issue. The insurer or self-insured employer shall include  
13479 with the petition, documentation supporting the insurer's or self-insured employer's belief that  
13480 the employee is no longer permanently totally disabled.

13481 (ii) If the petition under Subsection (10)(f)(i) demonstrates good cause, as determined  
13482 by the Division of Adjudication, an administrative law judge shall adjudicate the issue at a  
13483 hearing.

13484 (iii) Evidence of an employee's participation in medically appropriate, part-time work  
13485 may not be the sole basis for termination of an employee's permanent total disability  
13486 entitlement, but the evidence of the employee's participation in medically appropriate, part-time  
13487 work under Subsection (6) may be considered in the reexamination or hearing with other  
13488 evidence relating to the employee's status and condition.

13489 (g) In accordance with Section 34A-1-309, the administrative law judge may award  
13490 reasonable attorney fees to an attorney retained by an employee to represent the employee's  
13491 interests with respect to reexamination of the permanent total disability finding, except if the  
13492 employee does not prevail, the attorney fees shall be set at \$1,000. The attorney fees awarded  
13493 shall be paid by the employer or its insurance carrier in addition to the permanent total  
13494 disability compensation benefits due.

13495 (h) During the period of reexamination or adjudication, if the employee fully  
13496 cooperates, each insurer, self-insured employer, or the Employers' Reinsurance Fund shall  
13497 continue to pay the permanent total disability compensation benefits due the employee.

13498 (11) If any provision of this section, or the application of any provision to any person  
13499 or circumstance, is held invalid, the remainder of this section is given effect without the invalid  
13500 provision or application.

13501 Section 324. Section **34A-2-802** is amended to read:

13502 **34A-2-802. Rules of evidence and procedure before commission -- Admissible**  
13503 **evidence.**

13504 (1) The commission, the commissioner, an administrative law judge, or the Appeals  
13505 Board, is not bound by the usual common law or statutory rules of evidence, or by any  
13506 technical or formal rules or procedure, other than as provided in this section or as adopted by  
13507 the commission pursuant to this chapter and Chapter 3, Utah Occupational Disease Act. The

13508 commission may make its investigation in such manner as in its judgment is best calculated to  
13509 ascertain the substantial rights of the parties and to carry out justly the spirit of the chapter.

13510 (2) The commission may receive as evidence and use as proof of any fact in dispute all  
13511 evidence [~~deemed~~] considered material and relevant including[~~, but not limited to~~] the  
13512 following:

- 13513 (a) depositions and sworn testimony presented in open hearings;
- 13514 (b) reports of attending or examining physicians, or of pathologists;
- 13515 (c) reports of investigators appointed by the commission;
- 13516 (d) reports of employers, including copies of time sheets, book accounts, or other  
13517 records; or
- 13518 (e) hospital records in the case of an injured or diseased employee.

13519 Section 325. Section **34A-3-104** is amended to read:

13520 **34A-3-104. Employer liability for compensation.**

13521 (1) Every employer is liable for the payment of disability and medical benefits to every  
13522 employee who becomes disabled, or death benefits to the dependents of any employee who  
13523 dies, by reason of an occupational disease under the terms of this chapter.

13524 (2) Compensation [~~shall not~~] may not be paid when the last day of injurious exposure  
13525 of the employee to the hazards of the occupational disease occurred prior to 1941.

13526 Section 326. Section **34A-6-108** is amended to read:

13527 **34A-6-108. Collection, compilation, and analysis of statistics.**

13528 (1) The division shall develop and maintain an effective program of collection,  
13529 compilation, and analysis of occupational safety and health statistics. The program may cover  
13530 all employments whether subject to this chapter but [~~shall not~~] may not cover employments  
13531 excluded by Subsection 34A-6-104(2). The division shall compile accurate statistics on work  
13532 injuries and occupational diseases.

13533 (2) The division may use the functions imposed by Subsection (1) to:

- 13534 (a) promote, encourage, or directly engage in programs of studies, information, and  
13535 communication concerning occupational safety and health statistics;
- 13536 (b) assist agencies or political subdivisions in developing and administering programs  
13537 dealing with occupational safety and health statistics; and
- 13538 (c) arrange, through assistance, for the conduct of research and investigations which

13539 give promise of furthering the objectives of this section.

13540 (3) The division may, with the consent of any state agency or political subdivision of  
13541 the state, accept and use the services, facilities, and employees of state agencies or political  
13542 subdivisions of the state, with or without reimbursement, to assist it in carrying out its  
13543 functions under this section.

13544 (4) On the basis of the records made and kept under Subsection 34A-6-301(3),  
13545 employers shall file reports with the division in the form and manner prescribed by the  
13546 division.

13547 (5) Agreements between the United States Department of Labor and Utah pertaining to  
13548 the collection of occupational safety and health statistics already in effect on July 1, 1973,  
13549 remain in effect until superseded.

13550 Section 327. Section **34A-6-202** is amended to read:

13551 **34A-6-202. Standards -- Procedure for issuance, modification, or revocation by**  
13552 **division -- Emergency temporary standard -- Variances from standards -- Statement of**  
13553 **reasons for administrator's actions -- Judicial review -- Priority for establishing**  
13554 **standards.**

13555 (1) (a) The division, as soon as practicable, shall issue as standards any national  
13556 consensus standard, any adopted federal standard, or any adopted Utah standard, unless it  
13557 determines that issuance of the standard would not result in improved safety or health.

13558 (b) All codes, standards, and rules adopted under Subsection (1)(a) shall take effect 30  
13559 days after publication unless otherwise specified.

13560 (c) If any conflict exists between standards, the division shall issue the standard that  
13561 assures the greatest protection of safety or health for affected employees.

13562 (2) The division may issue, modify, or revoke any standard as follows:

13563 (a) (i) Whenever the administrator determines upon the basis of information submitted  
13564 in writing by an interested person, a representative of any organization of employers or  
13565 employees, a nationally recognized standards-producing organization, the Department of  
13566 Health, or a state agency or political subdivision, or on information developed by the division  
13567 or otherwise available, that a rule should be promulgated to promote the objectives of this  
13568 chapter, the administrator may request recommendations from the advisory council.

13569 (ii) The administrator shall provide the advisory council with proposals, together with

13570 all pertinent factual information developed by the division, or otherwise available, including  
13571 the results of research, demonstrations, and experiments.

13572 (iii) The advisory council shall submit to the administrator its recommendations  
13573 regarding the rule to be promulgated within a period as prescribed by the administrator.

13574 (b) The division shall publish a proposed rule issuing, modifying, or revoking an  
13575 occupational safety or health standard and shall afford interested parties an opportunity to  
13576 submit written data or comments as prescribed by Title 63G, Chapter 3, Utah Administrative  
13577 Rulemaking Act. When the administrator determines that a rule should be issued, the division  
13578 shall publish the proposed rule after the submission of the advisory council's recommendations  
13579 or the expiration of the period prescribed by the administrator for submission.

13580 (c) The administrator, in issuing standards for toxic materials or harmful physical  
13581 agents under this subsection, shall set the standard which most adequately assures, to the extent  
13582 feasible, on the basis of the best available evidence, that no employee will suffer material  
13583 impairment of health or functional capacity even if the employee has regular exposure to the  
13584 hazard during an employee's working life. Development of standards under this subsection  
13585 shall be based upon research, demonstrations, experiments, and other information deemed  
13586 appropriate. In addition to the attainment of the highest degree of health and safety protection  
13587 for the employee, other considerations shall be the latest available scientific data in the field,  
13588 the feasibility of the standards, and experience under this and other health and safety laws.  
13589 Whenever practicable, the standard shall be expressed in terms of objective criteria and of the  
13590 performance desired.

13591 (d) (i) Any employer may apply to the administrator for a temporary order granting a  
13592 variance from a standard issued under this section. Temporary orders shall be granted only if  
13593 the employer:

13594 (A) files an application which meets the requirements of Subsection (2)(d)(iv);

13595 (B) establishes that the employer is unable to comply with a standard by its effective  
13596 date because of unavailability of professional or technical personnel or of materials and  
13597 equipment needed for compliance with the standard or because necessary construction or  
13598 alteration of facilities cannot be completed by the effective date;

13599 (C) establishes that the employer is taking all available steps to safeguard the  
13600 employer's employees against hazards; and

13601 (D) establishes that the employer has an effective program for compliance as quickly as  
13602 practicable.

13603 (ii) Any temporary order shall prescribe the practices, means, methods, operations, and  
13604 processes which the employer [~~must~~] shall adopt and use while the order is in effect and state  
13605 in detail the employer's program for compliance with the standard. A temporary order may be  
13606 granted only after notice to employees and an opportunity for a public hearing; provided, that  
13607 the administrator may issue one interim order effective until a decision is made after public  
13608 hearing.

13609 (iii) A temporary order may not be in effect longer than the period reasonably required  
13610 by the employer to achieve compliance. In no case shall the period of a temporary order  
13611 exceed one year.

13612 (iv) An application for a temporary order under Subsection (2)(d) shall contain:

13613 (A) a specification of the standard or part from which the employer seeks a variance;

13614 (B) a representation by the employer, supported by representations from qualified  
13615 persons having first-hand knowledge of the facts represented, that the employer is unable to  
13616 comply with the standard or some part of the standard;

13617 (C) a detailed statement of the reasons the employer is unable to comply;

13618 (D) a statement of the measures taken and anticipated with specific dates, to protect  
13619 employees against the hazard;

13620 (E) a statement of when the employer expects to comply with the standard and what  
13621 measures the employer has taken and those anticipated, giving specific dates for compliance;  
13622 and

13623 (F) a certification that the employer has informed the employer's employees of the  
13624 application by:

13625 (I) giving a copy to their authorized representative;

13626 (II) posting a statement giving a summary of the application and specifying where a  
13627 copy may be examined at the place or places where notices to employees are normally posted;  
13628 and

13629 (III) by other appropriate means.

13630 (v) The certification required under Subsection (2)(d)(iv) shall contain a description of  
13631 how employees have been informed.

13632 (vi) The information to employees required under Subsection (2)(d)(v) shall inform the  
13633 employees of their right to petition the division for a hearing.

13634 (vii) The administrator is authorized to grant a variance from any standard or some part  
13635 of the standard when the administrator determines that it is necessary to permit an employer to  
13636 participate in a research and development project approved by the administrator to demonstrate  
13637 or validate new and improved techniques to safeguard the health or safety of workers.

13638 (e) (i) Any standard issued under this subsection shall prescribe the use of labels or  
13639 other forms of warning necessary to ensure that employees are apprised of all hazards, relevant  
13640 symptoms and emergency treatment, and proper conditions and precautions of safe use or  
13641 exposure. When appropriate, a standard shall prescribe suitable protective equipment and  
13642 control or technological procedures for use in connection with such hazards and provide for  
13643 monitoring or measuring employee exposure at such locations and intervals, and in a manner  
13644 necessary for the protection of employees. In addition, any such standard shall prescribe the  
13645 type and frequency of medical examinations or other tests which shall be made available by the  
13646 employer, or at the employer's cost, to employees exposed to hazards in order to most  
13647 effectively determine whether the health of employees is adversely affected by exposure. If  
13648 medical examinations are in the nature of research as determined by the division, the  
13649 examinations may be furnished at division expense. The results of such examinations or tests  
13650 shall be furnished only to the division; and, at the request of the employee, to the employee's  
13651 physician.

13652 (ii) The administrator may by rule make appropriate modifications in requirements for  
13653 the use of labels or other forms of warning, monitoring or measuring, and medical  
13654 examinations warranted by experience, information, or medical or technological developments  
13655 acquired subsequent to the promulgation of the relevant standard.

13656 (f) Whenever a rule issued by the administrator differs substantially from an existing  
13657 national consensus standard, the division shall publish a statement of the reasons why the rule  
13658 as adopted will better effectuate the purposes of this chapter than the national consensus  
13659 standard.

13660 (g) Whenever a rule, standard, or national consensus standard is modified by the  
13661 secretary so as to make less restrictive the federal Williams-Steiger Occupational Safety and  
13662 Health Act of 1970, the less restrictive modification shall be immediately applicable to this

13663 chapter and shall be immediately implemented by the division.

13664 (3) (a) The administrator shall provide an emergency temporary standard to take  
13665 immediate effect upon publication if the administrator determines that:

13666 (i) employees are exposed to grave danger from exposure to substances or agents  
13667 determined to be toxic or physically harmful or from new hazards; and

13668 (ii) that the standard is necessary to protect employees from danger.

13669 (b) An emergency standard shall be effective until superseded by a standard issued in  
13670 accordance with the procedures prescribed in Subsection (3)(c).

13671 (c) Upon publication of an emergency standard the division shall commence a  
13672 proceeding in accordance with Subsection (2) and the standard as published shall serve as a  
13673 proposed rule for the proceedings. The division shall issue a standard under Subsection (3) no  
13674 later than 120 days after publication of the emergency standard.

13675 (4) (a) Any affected employer may apply to the division for a rule or order for a  
13676 variance from a standard issued under this section. Affected employees shall be given notice of  
13677 each application and may participate in a hearing. The administrator shall issue a rule or order  
13678 if the administrator determines on the record, after opportunity for an inspection where  
13679 appropriate and a hearing, that the proponent of the variance has demonstrated by a  
13680 preponderance of the evidence that the conditions, practices, means, methods, operations, or  
13681 processes used or proposed to be used by an employer will provide employment and a  
13682 workplace to the employer's employees that are as safe and healthful as those which would  
13683 prevail if the employer complied with the standard.

13684 (b) The rule or order issued under Subsection (4)(a) shall prescribe the conditions the  
13685 employer must maintain, and the practices, means, methods, operations and processes that the  
13686 employer must adopt and use to the extent they differ from the standard in question.

13687 (c) A rule or order issued under Subsection (4)(a) may be modified or revoked upon  
13688 application by an employer, employees, or by the administrator on its own motion, in the  
13689 manner prescribed for its issuance under Subsection (4) at any time after six months from its  
13690 issuance.

13691 (5) The administrator shall include a statement of reasons for the administrator's actions  
13692 when the administrator:

13693 (a) issues any code, standard, rule, or order;

13694 (b) grants any exemption or extension of time; or

13695 (c) compromises, mitigates, or settles any penalty assessed under this chapter.

13696 (6) Any person adversely affected by a standard issued under this section, at any time  
13697 prior to 60 days after a standard is issued, may file a petition challenging its validity with the  
13698 district court having jurisdiction for judicial review. A copy of the petition shall be served  
13699 upon the division by the petitioner. The filing of a petition [~~shall not~~] may not, unless  
13700 otherwise ordered by the court, operate as a stay of the standard. The determinations of the  
13701 division shall be conclusive if supported by substantial evidence on the record as a whole.

13702 (7) In determining the priority for establishing standards under this section, the division  
13703 shall give due regard to the urgency of the need for mandatory safety and health standards for  
13704 particular industries, trades, crafts, occupations, businesses, workplaces or work environments.  
13705 The administrator shall also give due regard to the recommendations of the Department of  
13706 Health about the need for mandatory standards in determining the priority for establishing the  
13707 standards.

13708 Section 328. Section **34A-6-301** is amended to read:

13709 **34A-6-301. Inspection and investigation of workplace, worker injury, illness, or**  
13710 **complaint -- Warrants -- Attendance of witnesses -- Recordkeeping by employers --**  
13711 **Employer and employee representatives -- Request for inspection -- Compilation and**  
13712 **publication of reports and information -- Rules.**

13713 (1) (a) The division or its representatives, upon presenting appropriate credentials to  
13714 the owner, operator, or agent in charge, may:

13715 (i) enter without delay at reasonable times any workplace where work is performed by  
13716 an employee of an employer;

13717 (ii) inspect and investigate during regular working hours and at other reasonable times  
13718 in a reasonable manner, any workplace, worker injury, occupational disease, or complaint and  
13719 all pertinent methods, operations, processes, conditions, structures, machines, apparatus,  
13720 devices, equipment, and materials in the workplace; and

13721 (iii) question privately any such employer, owner, operator, agent, or employee.

13722 (b) The division, upon an employer's refusal to permit an inspection, may seek a  
13723 warrant pursuant to the Utah Rules of Criminal Procedure.

13724 (2) (a) The division or its representatives may require the attendance and testimony of

13725 witnesses and the production of evidence under oath.

13726 (b) Witnesses shall receive fees and mileage in accordance with Section 78B-1-119.

13727 (c) (i) If any person fails or refuses to obey an order of the division to appear, any

13728 district court within the jurisdiction of which such person is found, or resides or transacts

13729 business, upon the application by the division, shall have jurisdiction to issue to any person an

13730 order requiring that person to:

13731 (A) appear to produce evidence if, as, and when so ordered; and

13732 (B) give testimony relating to the matter under investigation or in question.

13733 (ii) Any failure to obey an order of the court described in this Subsection (2)(c) may be

13734 punished by the court as a contempt.

13735 (3) (a) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah

13736 Administrative Rulemaking Act, requiring employers:

13737 (i) to keep records regarding activities related to this chapter considered necessary for

13738 enforcement or for the development of information about the causes and prevention of

13739 occupational accidents and diseases; and

13740 (ii) through posting of notices or other means, to inform employees of their rights and

13741 obligations under this chapter including applicable standards.

13742 (b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah

13743 Administrative Rulemaking Act, requiring employers to keep records regarding any

13744 work-related death and injury and any occupational disease as provided in this Subsection

13745 (3)(b).

13746 (i) Each employer shall investigate or cause to be investigated all work-related injuries

13747 and occupational diseases and any sudden or unusual occurrence or change of conditions that

13748 pose an unsafe or unhealthful exposure to employees.

13749 (ii) Each employer shall, within eight hours of occurrence, notify the division of any:

13750 (A) work-related fatality;

13751 (B) disabling, serious, or significant injury; or

13752 (C) occupational disease incident.

13753 (iii) (A) Each employer shall file a report with the Division of Industrial Accidents

13754 within seven days after the occurrence of an injury or occupational disease, after the employer's

13755 first knowledge of the occurrence, or after the employee's notification of the same, in the form

- 13756 prescribed by the Division of Industrial Accidents, of any work-related fatality or any  
13757 work-related injury or occupational disease resulting in:
- 13758 (I) medical treatment;
  - 13759 (II) loss of consciousness;
  - 13760 (III) loss of work;
  - 13761 (IV) restriction of work; or
  - 13762 (V) transfer to another job.
- 13763 (B) (I) Each employer shall file a subsequent report with the Division of Industrial  
13764 Accidents of any previously reported injury or occupational disease that later resulted in death.
- 13765 (II) The subsequent report shall be filed with the Division of Industrial Accidents  
13766 within seven days following the death or the employer's first knowledge or notification of the  
13767 death.
- 13768 (iv) A report is not required for minor injuries, such as cuts or scratches that require  
13769 first-aid treatment only, unless a treating physician files, or is required to file, the Physician's  
13770 Initial Report of Work Injury or Occupational Disease with the Division of Industrial  
13771 Accidents.
- 13772 (v) A report is not required:
- 13773 (A) for occupational diseases that manifest after the employee is no longer employed  
13774 by the employer with which the exposure occurred; or
  - 13775 (B) where the employer is not aware of an exposure occasioned by the employment  
13776 which results in a compensable occupational disease as defined by Section 34A-3-103.
- 13777 (vi) Each employer shall provide the employee with:
- 13778 (A) a copy of the report submitted to the Division of Industrial Accidents; and
  - 13779 (B) a statement, as prepared by the Division of Industrial Accidents, of the employee's  
13780 rights and responsibilities related to the industrial injury or occupational disease.
- 13781 (vii) Each employer shall maintain a record in a manner prescribed by the commission  
13782 of all work-related fatalities or work-related injuries and of all occupational diseases resulting  
13783 in:
- 13784 (A) medical treatment;
  - 13785 (B) loss of consciousness;
  - 13786 (C) loss of work;

13787 (D) restriction of work; or

13788 (E) transfer to another job.

13789 (viii) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah  
13790 Administrative Rulemaking Act, to implement this Subsection (3)(b) consistent with nationally  
13791 recognized rules or standards on the reporting and recording of work-related injuries and  
13792 occupational diseases.

13793 (c) (i) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah  
13794 Administrative Rulemaking Act, requiring employers to keep records regarding exposures to  
13795 potentially toxic materials or harmful physical agents required to be measured or monitored  
13796 under Section 34A-6-202.

13797 (ii) (A) The rules made under Subsection (3)(c)(i) shall provide for employees or their  
13798 representatives:

13799 (I) to observe the measuring or monitoring; and

13800 (II) to have access to the records of the measuring or monitoring, and to records that  
13801 indicate their exposure to toxic materials or harmful agents.

13802 (B) Each employer shall promptly notify employees being exposed to toxic materials or  
13803 harmful agents in concentrations that exceed prescribed levels and inform any such employee  
13804 of the corrective action being taken.

13805 (4) Information obtained by the division shall be obtained with a minimum burden  
13806 upon employers, especially those operating small businesses.

13807 (5) A representative of the employer and a representative authorized by employees  
13808 shall be given an opportunity to accompany the division's authorized representative during the  
13809 physical inspection of any workplace. If there is no authorized employee representative, the  
13810 division's authorized representative shall consult with a reasonable number of employees  
13811 concerning matters of health and safety in the workplace.

13812 (6) (a) (i) (A) Any employee or representative of employees who believes that a  
13813 violation of an adopted safety or health standard exists that threatens physical harm, or that an  
13814 imminent danger exists, may request an inspection by giving notice to the division's authorized  
13815 representative of the violation or danger. The notice shall be:

13816 (I) in writing, setting forth with reasonable particularity the grounds for notice; and

13817 (II) signed by the employee or representative of employees.

13818 (B) A copy of the notice shall be provided the employer or the employer's agent no  
13819 later than at the time of inspection.

13820 (C) Upon request of the person giving notice, the person's name and the names of  
13821 individual employees referred to in the notice [~~shall not~~] may not appear in the copy or on any  
13822 record published, released, or made available pursuant to Subsection (7).

13823 (ii) (A) If upon receipt of the notice the division's authorized representative determines  
13824 there are reasonable grounds to believe that a violation or danger exists, the authorized  
13825 representative shall make a special inspection in accordance with this section as soon as  
13826 practicable to determine if a violation or danger exists.

13827 (B) If the division's authorized representative determines there are no reasonable  
13828 grounds to believe that a violation or danger exists, the authorized representative shall notify  
13829 the employee or representative of the employees in writing of that determination.

13830 (b) (i) Prior to or during any inspection of a workplace, any employee or representative  
13831 of employees employed in the workplace may notify the division or its representative of any  
13832 violation of a standard that they have reason to believe exists in the workplace.

13833 (ii) The division shall:

13834 (A) by rule, establish procedures for informal review of any refusal by a representative  
13835 of the division to issue a citation with respect to any alleged violation; and

13836 (B) furnish the employees or representative of employees requesting review a written  
13837 statement of the reasons for the division's final disposition of the case.

13838 (7) (a) The division may compile, analyze, and publish, either in summary or detailed  
13839 form, all reports or information obtained under this section, subject to the limitations set forth  
13840 in Section 34A-6-306.

13841 (b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah  
13842 Administrative Rulemaking Act, necessary to carry out its responsibilities under this chapter,  
13843 including rules for information obtained under this section, subject to the limitations set forth  
13844 in Section 34A-6-306.

13845 (8) Any employer who refuses or neglects to make reports, to maintain records, or to  
13846 file reports with the commission as required by this section is guilty of a class C misdemeanor  
13847 and subject to citation under Section 34A-6-302 and a civil assessment as provided under  
13848 Section 34A-6-307, unless the commission finds that the employer has shown good cause for

13849 submitting a report later than required by this section.

13850 Section 329. Section **34A-7-102** is amended to read:

13851 **34A-7-102. Standards for construction and design -- Special approved designs --**  
13852 **Maintenance requirements.**

13853 (1) For the purposes of this part, the standards for the design and construction of a new  
13854 boiler and new pressure vessel shall be the latest applicable provisions of the Boiler and  
13855 Pressure Vessel Code published by the American Society of Mechanical Engineers.

13856 (2) This part [~~shall not~~] may not be construed as preventing the construction and use of  
13857 a boiler or pressure vessel of special design:

13858 (a) subject to approval of the Division of Boiler and Elevator Safety; and

13859 (b) if the special design provides a level of safety equivalent to that contemplated by  
13860 the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers.

13861 (3) A boiler and pressure vessel, including an existing boiler and pressure vessel, shall  
13862 be maintained in safe operating condition for the service involved.

13863 Section 330. Section **35A-3-106** is amended to read:

13864 **35A-3-106. Residency requirements.**

13865 To be eligible for public assistance under this chapter, an applicant [~~must~~] shall be  
13866 living in Utah voluntarily with the intention of making this state the applicant's place of  
13867 residence, and not for a temporary purpose.

13868 Section 331. Section **35A-3-108** is amended to read:

13869 **35A-3-108. Assignment of support.**

13870 (1) (a) The division shall obtain an assignment of support from each applicant or client  
13871 regardless of whether the payment is court ordered.

13872 (b) Upon the receipt of assistance, any right to receive support from another person  
13873 passes to the state, even if the client has not executed and delivered an assignment to the  
13874 division as required by Subsection (1)(a).

13875 (c) The right to support described in Subsection (1)(b) includes a right to support in the  
13876 applicant's or client's own behalf or in behalf of any family member for whom the applicant or  
13877 client is applying for or receiving assistance.

13878 (2) An assignment of support or a passing of rights under Subsection (1)(b) includes  
13879 payments ordered, decreed, or adjudged by any court within this state, any other state, or

13880 territory of the United States and is not in lieu of, and [~~shall not~~] does not supersede or alter,  
13881 any other court order, decree, or judgment.

13882 (3) When an assignment is executed or the right to support passes to the department  
13883 under Subsection (1)(b), the applicant or client is eligible to regular monthly assistance and the  
13884 support paid to the division is a refund.

13885 (4) All sums refunded, except any amount which is required to be credited to the  
13886 federal government, shall be deposited into the General Fund.

13887 (5) On and after the date a family stops receiving cash assistance, an assignment of  
13888 support under Subsection (1) [~~shall not~~] does not apply to any support that accrued before the  
13889 family received such assistance if the department has not collected the support by the date the  
13890 family stops receiving cash assistance, if the assignment is executed on or after October 1,  
13891 1998.

13892 (6) The department shall distribute arrearages to families in accordance with the Social  
13893 Security Act, 42 U.S.C. Sec. 657.

13894 (7) The total amount of child support assigned to the department and collected under  
13895 this section may not exceed the total amount of cash assistance received by the recipient.

13896 Section 332. Section **35A-3-304** is amended to read:

13897 **35A-3-304. Assessment -- Participation requirements and limitations -- Mentors.**

13898 (1) (a) Within 20 business days of the date of enrollment, a parent client shall:

13899 (i) be assigned an employment counselor; and

13900 (ii) complete an assessment provided by the division regarding the parent client's:

13901 (A) family circumstances;

13902 (B) education;

13903 (C) work history;

13904 (D) skills; and

13905 (E) ability to become self-sufficient.

13906 (b) The assessment provided under Subsection (1)(a)(ii) shall include a survey to be  
13907 completed by the parent client with the assistance of the division.

13908 (2) (a) Within 15 business days of a parent client completing an assessment, the  
13909 division and the parent client shall enter into an employment plan.

13910 (b) The employment plan shall have a target date for entry into employment.

- 13911 (c) The division shall provide a copy of the employment plan to the parent client.
- 13912 (d) As to the parent client, the plan may include:
- 13913 (i) job searching requirements;
- 13914 (ii) if the parent client does not have a high school diploma, participation in an
- 13915 educational program to obtain a high school diploma, or its equivalent;
- 13916 (iii) education or training necessary to obtain employment;
- 13917 (iv) a combination of work and education or training;
- 13918 (v) assisting the Office of Recovery Services in good faith to:
- 13919 (A) establish the paternity of a minor child; and
- 13920 (B) establish or enforce a child support order; and
- 13921 (vi) if the parent client is a drug dependent person as defined in Section 58-37-2,
- 13922 participation in available treatment for drug dependency and progress toward overcoming that
- 13923 dependency.
- 13924 (e) As to the division, the plan may include:
- 13925 (i) providing cash and other types of public and employment assistance, including child
- 13926 care;
- 13927 (ii) assisting the parent client to obtain education or training necessary for employment;
- 13928 (iii) assisting the parent client to set up and follow a household budget; and
- 13929 (iv) assisting the parent client to obtain employment.
- 13930 (f) The division may amend the employment plan to reflect new information or
- 13931 changed circumstances.
- 13932 (g) If immediate employment is an activity contained in the employment plan the
- 13933 parent client shall:
- 13934 (i) promptly commence a search for a specified number of hours each week for
- 13935 employment; and
- 13936 (ii) regularly submit a report to the division on:
- 13937 (A) how time was spent in search for a job;
- 13938 (B) the number of job applications completed;
- 13939 (C) the interviews attended;
- 13940 (D) the offers of employment extended; and
- 13941 (E) other related information required by the division.

13942 (h) (i) If full-time education or training to secure employment is an activity contained  
13943 in an employment plan, the parent client shall promptly undertake a full-time education or  
13944 training program.

13945 (ii) The employment plan may describe courses, education or training goals, and  
13946 classroom hours.

13947 (i) (i) As a condition of receiving cash assistance under this part, a parent client shall  
13948 agree to make a good faith effort to comply with the employment plan.

13949 (ii) If a parent client consistently fails to show good faith in complying with the  
13950 employment plan, the division may seek under Subsection (2)(i)(iii) to terminate all or part of  
13951 the cash assistance services provided under this part.

13952 (iii) The division shall establish a process to reconcile disputes between a client and the  
13953 division as to whether:

13954 (A) the parent client has made a good faith effort to comply with the employment plan;  
13955 or

13956 (B) the division has complied with the employment plan.

13957 (3) (a) Except as provided in Subsection (3)(b), a parent client's participation in  
13958 education or training beyond that required to obtain a high school diploma or its equivalent is  
13959 limited to the lesser of:

13960 (i) 24 months; or

13961 (ii) the completion of the education and training requirements of the employment plan.

13962 (b) A parent client may participate in education or training for up to six months beyond  
13963 the 24-month limit of Subsection (3)(a)(i) if:

13964 (i) the parent client is employed for 80 or more hours a month; and

13965 (ii) the extension is for good cause shown and approved by the director.

13966 (c) A parent client who receives an extension under Subsection (3)(b) remains subject  
13967 to Subsection (4).

13968 (4) (a) A parent client with a high school diploma or equivalent who has received 24  
13969 months of education or training shall participate in full-time work activities.

13970 (b) The 24 months need not be continuous and the department may define "full-time  
13971 work activities" by rule.

13972 (5) As a condition for receiving cash assistance on behalf of a minor child under this

13973 part, the minor child [~~must~~] shall be:

13974 (a) enrolled in and attending school in compliance with Sections 53A-11-101.5 and  
13975 53A-11-101.7; or

13976 (b) exempt from school attendance under Section 53A-11-102.

13977 (6) This section does not apply to a person who has received diversion assistance under  
13978 Section 35A-3-303.

13979 (7) (a) The division shall recruit and train volunteers to serve as mentors for parent  
13980 clients.

13981 (b) A mentor may advocate on behalf of a parent client and help a parent client:

13982 (i) develop life skills;

13983 (ii) implement an employment plan; or

13984 (iii) obtain services and supports from:

13985 (A) the volunteer mentor;

13986 (B) the division; or

13987 (C) civic organizations.

13988 Section 333. Section **35A-3-310.5** is amended to read:

13989 **35A-3-310.5. Child care providers -- Criminal background checks -- Payment of**  
13990 **costs -- Prohibitions -- Department rules.**

13991 (1) This section applies to a child care provider who:

13992 (a) is selected by an applicant for, or a recipient of, a child care assistance payment;

13993 (b) is not required to undergo a criminal background check with the Department of  
13994 Health, Bureau of Child Care Licensing;

13995 (c) is not a license exempt child care center or program; and

13996 (d) is an eligible child care provider under department rules made in accordance with  
13997 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

13998 (2) (a) Each child care provider identified under Subsection (1) shall submit to the  
13999 department the name and other identifying information, which shall include a set of  
14000 fingerprints, of:

14001 (i) existing, new, and proposed providers of child care; and

14002 (ii) individuals who are at least 18 years of age and reside in the premises where the  
14003 child care is provided.

14004 (b) The department may waive the fingerprint requirement under Subsection (2)(a) for  
14005 an individual who has:

14006 (i) resided in Utah for five years prior to the required submission; or

14007 (ii) (A) previously submitted a set of fingerprints under this section for a national  
14008 criminal history record check; and

14009 (B) resided in Utah continuously since submitting the fingerprints.

14010 (c) The Utah Division of Criminal Investigation and Technical Services shall process  
14011 and conduct background checks on all individuals as requested by the department, including  
14012 submitting the fingerprints to the U.S. Federal Bureau of Investigation for a national criminal  
14013 history background check of the individual.

14014 (d) If the department waives the fingerprint requirement under Subsection (2)(b), the  
14015 Utah Division of Criminal Investigation and Technical Services may allow the department or  
14016 its representative access to the division's data base to determine whether the individual has  
14017 been convicted of a crime.

14018 (e) The child care provider shall pay the cost of the history background check provided  
14019 under Subsection (2)(c).

14020 (3) (a) Each child care provider identified under Subsection (1) shall submit to the  
14021 department the name and other identifying information of an individual, age 12 through 17,  
14022 who resides in the premises where the child care is provided.

14023 (b) The identifying information referred to in Subsection (3)(a) does not include  
14024 fingerprints.

14025 (c) The department or its representative shall access juvenile court records to determine  
14026 whether an individual described in Subsection (2) or (3)(a) has been adjudicated in juvenile  
14027 court of committing an act which, if committed by an adult, would be a felony or misdemeanor  
14028 if:

14029 (i) the individual described in Subsection (2) is under the age of 28; or

14030 (ii) the individual described in Subsection (2):

14031 (A) is over the age of 28; and

14032 (B) has been convicted of, has pleaded no contest to, or is currently subject to a plea in  
14033 abeyance or diversion agreement for a felony or misdemeanor.

14034 (4) Except as provided in Subsection (5), a child care provider under this section may

14035 not permit an individual who has been convicted of, has pleaded no contest to, or is currently  
14036 subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, or if  
14037 Subsection (3)(b) applies, an individual who has been adjudicated in juvenile court of  
14038 committing an act which if committed by an adult would be a felony or misdemeanor to:

14039 (a) provide subsidized child care; or

14040 (b) reside at the premises where subsidized child care is provided.

14041 (5) (a) The department may make a rule in accordance with Title 63G, Chapter 3, Utah  
14042 Administrative Rulemaking Act, to exempt the following from the restrictions of Subsection

14043 (4):

14044 (i) a specific misdemeanor;

14045 (ii) a specific act adjudicated in juvenile court, which if committed by an adult would  
14046 be a misdemeanor; and

14047 (iii) background checks of individuals other than the provider who are residing at the  
14048 premises where subsidized child care is provided if that child care is provided in the child's  
14049 home.

14050 (b) In accordance with criteria established by rule, the executive director or the  
14051 director's designee may consider and exempt individual cases, not otherwise exempt under  
14052 Subsection (5)(a), from the restrictions of Subsection (4).

14053 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
14054 department shall establish by rule:

14055 (a) whether a child care subsidy payment should be made prior to the completion of a  
14056 background check, particularly in the case of a delay in making or completing the background  
14057 check; and

14058 (b) if, and how often, a child care provider [~~must~~] shall resubmit the information  
14059 required under Subsections (2) and (3).

14060 Section 334. Section **35A-3-503** is amended to read:

14061 **35A-3-503. Legislative intent.**

14062 (1) The Legislature finds that public policy should promote and encourage a strong  
14063 civic sector. Civic organizations have an important role that cannot be adequately addressed  
14064 through either private or public sector action. Important public values such as the condition of  
14065 our neighborhoods, the character of our children, and the renewal of our cities directly depend

14066 on the strength of families, neighborhoods, and grassroots community organizations, as well as  
14067 the vitality of private and religious institutions that care for those in need. Civic organizations  
14068 transmit values between generations, encourage cooperation between citizens, and ensure that  
14069 our communities are livable and nurturing environments. The value provided to the state by  
14070 civic organizations is called social capital.

14071 (2) The purpose of this part is to promote the availability of social capital. Using social  
14072 capital, clients of and applicants for services under this chapter may receive a wide array of  
14073 services and supports that cannot be provided by state government alone. Social capital links  
14074 all parts of our society together by creating opportunities for service and giving. It facilitates  
14075 trust and cooperation and enhances investments in physical and human capital.

14076 (3) In enacting this part, the Legislature recognizes the constitutional limits of state  
14077 government to sustain civic institutions that provide social capital. While state government has  
14078 always depended on these institutions, it does not create them nor can it replace them. This  
14079 part recognizes that state government [~~must~~] shall respect, recognize, and, wherever possible,  
14080 constitutionally encourage strong civic institutions that sustain a sense of community and  
14081 humanize our lives.

14082 Section 335. Section **35A-4-303** is amended to read:

14083 **35A-4-303. Determination of contribution rates.**

14084 (1) (a) An employer's basic contribution rate is the same as the employer's benefit ratio,  
14085 determined by dividing the total benefit costs charged back to an employer during the  
14086 immediately preceding four fiscal years by the total taxable wages of the employer for the same  
14087 time period, calculated to four decimal places, disregarding the remaining fraction, if any.

14088 (b) In calculating the basic contribution rate under Subsection (1)(a):

14089 (i) if four fiscal years of data are not available, the data of three fiscal years shall be  
14090 divided by the total taxable wages for the same time period;

14091 (ii) if three fiscal years of data are not available, the data of two fiscal years shall be  
14092 divided by the total taxable wages for the same time period; or

14093 (iii) if two fiscal years of data are not available, the data of one fiscal year shall be  
14094 divided by the total taxable wages for the same time period.

14095 (2) (a) In calculating the social contribution rate under Subsection (2)(b) or (c):

14096 (i) if four fiscal years of data are not available, the data of three fiscal years shall be

14097 divided by the total taxable wages for the same time period; or

14098 (ii) if three fiscal years of data are not available, the data of two fiscal years shall be  
14099 divided by the total taxable wages for the same time period.

14100 (b) Beginning January 1, 2005, the division shall calculate the social contribution rate  
14101 by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding  
14102 four fiscal years by the total taxable wages of all employers subject to contributions for the  
14103 same period, calculated to four decimal places, disregarding any remaining fraction.

14104 (c) Beginning January 1, 2009, the division shall calculate the social contribution rate  
14105 by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding  
14106 four fiscal years by the total taxable wages of all employers subject to contributions for the  
14107 same period, calculated to four decimal places, disregarding any remaining fraction, and  
14108 rounded to three decimal places, disregarding any further fraction, if the fourth decimal place is  
14109 .0004 or less, or rounding up to the next higher number, if the fourth decimal place is .0005 or  
14110 more.

14111 (3) (a) Beginning January 1, 2000, the division shall by administrative decision set the  
14112 reserve factor at a rate that shall sustain an adequate reserve.

14113 (b) For the purpose of setting the reserve factor:

14114 (i) (A) the adequate reserve is defined as between 17 and 19 months of benefits at the  
14115 average of the five highest benefit cost rates in the last 25 years;

14116 (B) beginning January 1, 2009, the adequate reserve is defined as between 18 and 24  
14117 months of benefits at the average of the five highest benefit cost rates in the last 25 years;

14118 (ii) the reserve factor shall be 1.0000 if the actual reserve fund balance as of June 30  
14119 preceding the computation date is determined to be an adequate reserve;

14120 (iii) the reserve factor will be set between 0.5000 and 1.0000 if the actual reserve fund  
14121 balance as of June 30 preceding the computation date is greater than the adequate reserve;

14122 (iv) the reserve factor will be set between 1.0000 and 1.5000 if the actual reserve fund  
14123 balance as of June 30 prior to the computation date is less than the adequate reserve;

14124 (v) if the actual reserve fund balance as of June 30 preceding the computation date is  
14125 insolvent or negative or if there is an outstanding loan from the Federal Unemployment  
14126 Account, the reserve factor will be set at 2.0000 until the actual reserve fund balance as of June  
14127 30 preceding the computation date is determined to be an adequate reserve;

14128 (vi) the reserve factor will be set on or before January 1 of each year; and

14129 (vii) monies made available to the state under Section 903 of the Social Security Act,  
14130 as amended, which are received on or after January 1, 2004, may not be considered in  
14131 establishing the reserve factor under this section for the rate year 2005 or any subsequent rate  
14132 year.

14133 (4) (a) On or after January 1, 2004, an employer's overall contribution rate is the  
14134 employer's basic contribution rate multiplied by the reserve factor established according to  
14135 Subsection (3), calculated to four decimal places, disregarding the remaining fraction, plus the  
14136 social contribution rate established according to Subsection (2), and calculated to three decimal  
14137 places, disregarding the remaining fraction, but not more than a maximum overall contribution  
14138 rate of 9.0%, plus the applicable social contribution rate and not less than 1.1% for new  
14139 employers.

14140 (b) Beginning January 1, 2009, an employer's overall contribution rate is the employer's  
14141 basic contribution rate multiplied by the reserve factor established according to Subsection  
14142 (3)(b), calculated to four decimal places, disregarding the remaining fraction, plus the social  
14143 contribution rate established according to Subsection (2), and calculated to three decimal  
14144 places, disregarding the remaining fraction, but not more than a maximum overall contribution  
14145 rate of 9%, plus the applicable social contribution rate and not less than 1.1% for new  
14146 employers.

14147 (c) The overall contribution rate does not include the addition of any penalty applicable  
14148 to an employer as a result of delinquency in the payment of contributions as provided in  
14149 Subsection (9).

14150 (d) The overall contribution rate does not include the addition of any penalty applicable  
14151 to an employer assessed a penalty rate under Subsection 35A-4-304(5)(a).

14152 (5) Except as provided in Subsection (9), each new employer shall pay a contribution  
14153 rate based on the average benefit cost rate experienced by employers of the major industry as  
14154 defined by department rule to which the new employer belongs, the basic contribution rate to  
14155 be determined as follows:

14156 (a) Except as provided in Subsection (5)(b), by January 1 of each year, the basic  
14157 contribution rate to be used in computing the employer's overall contribution rate is the benefit  
14158 cost rate which is the greater of:

14159 (i) the amount calculated by dividing the total benefit costs charged back to both active  
14160 and inactive employers of the same major industry for the last two fiscal years by the total  
14161 taxable wages paid by those employers that were paid during the same time period, computed  
14162 to four decimal places, disregarding the remaining fraction, if any; or

14163 (ii) 1%.

14164 (b) If the major industrial classification assigned to a new employer is an industry for  
14165 which a benefit cost rate does not exist because the industry has not operated in the state or has  
14166 not been covered under this chapter, the employer's basic contribution rate shall be 5.4%. This  
14167 basic contribution rate is used in computing the employer's overall contribution rate.

14168 (6) Notwithstanding any other provision of this chapter, and except as provided in  
14169 Subsection (7), if an employing unit that moves into this state is declared to be a qualified  
14170 employer because it has sufficient payroll and benefit cost experience under another state, a  
14171 rate shall be computed on the same basis as a rate is computed for all other employers subject  
14172 to this chapter if that unit furnishes adequate records on which to compute the rate.

14173 (7) An employer who begins to operate in this state after having operated in another  
14174 state shall be assigned the maximum overall contribution rate until the employer acquires  
14175 sufficient experience in this state to be considered a "qualified employer" if the employer is:

14176 (a) regularly engaged as a contractor in the construction, improvement, or repair of  
14177 buildings, roads, or other structures on lands;

14178 (b) generally regarded as being a construction contractor or a subcontractor specialized  
14179 in some aspect of construction; or

14180 (c) required to have a contractor's license or similar qualification under Title 58,  
14181 Chapter 55, Utah Construction Trades Licensing Act, or the equivalent in laws of another state.

14182 (8) (a) If an employer acquires the business or all or substantially all the assets of  
14183 another employer and the other employer had discontinued operations upon the acquisition or  
14184 transfers its trade or business, or a portion of its trade or business, under Subsection  
14185 35A-4-304(3)(a):

14186 (i) for purposes of determining and establishing the acquiring party's qualifications for  
14187 an experience rating classification, the payrolls of both employers during the qualifying period  
14188 shall be jointly considered in determining the period of liability with respect to:

14189 (A) the filing of contribution reports;

- 14190 (B) the payment of contributions; and
- 14191 (C) after January 1, 1985, the benefit costs of both employers;
- 14192 (ii) the transferring employer shall be divested of the transferring employer's
- 14193 unemployment experience provided the transferring employer had discontinued operations, but
- 14194 only to the extent as defined under Subsection 35A-4-304(3)(c); and
- 14195 (iii) if an employer transfers its trade or business, or a portion of its trade or business,
- 14196 as defined under Subsection 35A-4-304(3), the transferring employer may not be divested of its
- 14197 employer's unemployment experience.
- 14198 (b) An employing unit or prospective employing unit that acquires the unemployment
- 14199 experience of an employer shall, for all purposes of this chapter, be an employer as of the date
- 14200 of acquisition.
- 14201 (c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in
- 14202 Subsection (8)(a), is divested of the employer's unemployment experience by transferring all of
- 14203 the employer's business to another and by ceasing operations as of the date of the transfer, the
- 14204 transferring employer shall cease to be an employer, as defined by this chapter, as of the date of
- 14205 transfer.
- 14206 (9) (a) A rate of less than 8% shall be effective January 1 of any contribution year on or
- 14207 after January 1, 1985, but before January 1, 1988, and a rate of less than the maximum overall
- 14208 contribution rate on or after January 1, 1988, only with respect to new employers and to those
- 14209 qualified employers who, except for amounts due under division determinations that have not
- 14210 become final, paid all contributions prescribed by the division with respect to the four
- 14211 consecutive calendar quarters in the fiscal year immediately preceding the computation date on
- 14212 or after January 1, 1985.
- 14213 (b) Notwithstanding Subsections (1), (5), (6), and (8), on or after January 1, 1988, an
- 14214 employer who fails to pay all contributions prescribed by the division with respect to the four
- 14215 consecutive calendar quarters in the fiscal year immediately preceding the computation date,
- 14216 except for amounts due under determinations that have not become final, shall pay a
- 14217 contribution rate equal to the overall contribution rate determined under the experience rating
- 14218 provisions of this chapter, plus a surcharge of 1% of wages.
- 14219 (c) An employer who pays all required contributions shall, for the current contribution
- 14220 year, be assigned a rate based upon the employer's own experience as provided under the

14221 experience rating provisions of this chapter effective the first day of the calendar quarter in  
14222 which the payment was made.

14223 (d) Delinquency in filing contribution reports [~~shall~~] may not be the basis for denial of  
14224 a rate less than the maximum contribution rate.

14225 Section 336. Section **35A-4-304** is amended to read:

14226 **35A-4-304. Special provisions regarding transfers of unemployment experience**  
14227 **and assignment rates.**

14228 (1) As used in this section:

14229 (a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance  
14230 or reckless disregard for the prohibition involved.

14231 (b) "Person" has the meaning given that term by Section 7701(a)(1) of the Internal  
14232 Revenue Code of 1986.

14233 (c) "Trade or business" includes the employer's workforce.

14234 (d) "Violate or attempt to violate" includes intent to evade, misrepresentation, or  
14235 willful nondisclosure.

14236 (2) Notwithstanding any other provision of this chapter, Subsections (3) and (4) shall  
14237 apply regarding assignment of rates and transfers of unemployment experience.

14238 (3) (a) If an employer transfers its trade or business, or a portion of its trade or  
14239 business, to another employer and, at the time of the transfer, there is common ownership,  
14240 management, or control of the employers, then the unemployment experience attributable to  
14241 each employer shall be combined into a common experience rate calculation.

14242 (b) The contribution rates of the employers shall be recalculated and made effective  
14243 upon the date of the transfer of trade or business as determined by division rule in accordance  
14244 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

14245 (c) (i) If one or more of the employers is a qualified employer at the time of the  
14246 transfer, then all employing units that are party to a transfer described in Subsection (3)(a) of  
14247 this section shall be assigned an overall contribution rate under Subsection 35A-4-303(4)(d),  
14248 using combined unemployment experience rating factors, for the rate year during which the  
14249 transfer occurred and for the subsequent three rate years.

14250 (ii) If none of the employing units is a qualified employer at the time of the transfer,  
14251 then all employing units that are party to the transfer described in Subsection (3)(a) shall be

14252 assigned the highest overall contribution rate applicable at the time of the transfer to any  
14253 employer who is party to the acquisition for the rate year during which the transfer occurred  
14254 and for subsequent rate years until the time when one or more of the employing units is a  
14255 qualified employer.

14256 (iii) Once one or more employing units described in Subsection (3)(c)(ii) is a qualified  
14257 employer, all the employing units shall be assigned an overall rate under Subsection  
14258 35A-4-303(4)(d), using combined unemployment experience rating factors for subsequent rate  
14259 years, not to exceed three years following the year of the transfer.

14260 (d) The transfer of some or all of an employer's workforce to another employer shall be  
14261 considered a transfer of its trade or business when, as the result of the transfer, the transferring  
14262 employer no longer performs trade or business with respect to the transferred workforce, and  
14263 the trade or business is now performed by the employer to whom the workforce is transferred.

14264 (4) (a) Whenever a person is not an employer under this chapter at the time it acquires  
14265 the trade or business of an employer, the unemployment experience of the acquired business  
14266 [~~shall not~~] may not be transferred to that person if the division finds that the person acquired  
14267 the business solely or primarily for the purpose of obtaining a lower rate of contributions.

14268 (b) The person shall be assigned the applicable new employer rate under Subsection  
14269 35A-4-303(5).

14270 (c) In determining whether the business was acquired solely or primarily for the  
14271 purpose of obtaining a lower rate of contributions, the division shall use objective factors  
14272 which may include:

14273 (i) the cost of acquiring the business;

14274 (ii) whether the person continued the business enterprise of the acquired business;

14275 (iii) how long the business enterprise was continued; or

14276 (iv) whether a substantial number of new employees were hired for performance of  
14277 duties unrelated to the business activity conducted prior to acquisition.

14278 (5) (a) If a person knowingly violates or attempts to violate Subsection (3) or (4) or any  
14279 other provision of this chapter related to determining the assignment of a contribution rate, or if  
14280 a person knowingly advises another person in a way that results in a violation of any of those  
14281 subsections or provisions, the person is subject to the following penalties:

14282 (i) (A) If the person is an employer, then the employer shall be assigned an overall

14283 contribution rate of 5.4% for the rate year during which the violation or attempted violation  
14284 occurred and for the subsequent rate year.

14285 (B) If the person's business is already at 5.4% for any year, or if the amount of increase  
14286 in the person's rate would be less than 2% for that year, then a penalty surcharge of  
14287 contributions of 2% of taxable wages shall be imposed for the rate year during which the  
14288 violation or attempted violation occurred and for the subsequent rate year.

14289 (ii) (A) If the person is not an employer, the person shall be subject to a civil penalty of  
14290 not more than \$5,000.

14291 (B) The fine shall be deposited in the penalty and interest account established under  
14292 Section 35A-4-506.

14293 (b) (i) In addition to the penalty imposed by Subsection (5)(a), a violation of this  
14294 section may be prosecuted as unemployment insurance fraud.

14295 (ii) The determination of the degree of an offense shall be measured by the total value  
14296 of all contributions avoided or reduced or contributions sought to be avoided or reduced by the  
14297 unlawful conduct as applied to the degrees listed under Subsection 76-8-1301(2)(a).

14298 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
14299 division shall make rules to identify the transfer or acquisition of a business for purposes of this  
14300 section.

14301 (7) This section shall be interpreted and applied in a manner that meets the minimum  
14302 requirements contained in any guidance or regulations issued by the United States Department  
14303 of Labor.

14304 Section 337. Section **35A-4-305** is amended to read:

14305 **35A-4-305. Collection of contributions -- Unpaid contributions to bear interest.**

14306 (1) (a) Contributions unpaid on the date on which they are due and payable, as  
14307 prescribed by the division, shall bear interest at the rate of 1% per month from and after that  
14308 date until payment plus accrued interest is received by the division.

14309 (b) (i) Contribution reports not made and filed by the date on which they are due as  
14310 prescribed by the division are subject to a penalty to be assessed and collected in the same  
14311 manner as contributions due under this section equal to 5% of the contribution due if the failure  
14312 to file on time was not more than 15 days, with an additional 5% for each additional 15 days or  
14313 fraction thereof during which the failure continued, but not to exceed 25% in the aggregate and

14314 not less than \$25 with respect to each reporting period.

14315 (ii) If a report is filed after the required time and it is shown to the satisfaction of the  
14316 division or its authorized representative that the failure to file was due to a reasonable cause  
14317 and not to willful neglect, no addition shall be made to the contribution.

14318 (c) (i) If contributions are unpaid after 10 days from the date of the mailing or personal  
14319 delivery by the division or its authorized representative, of a written demand for payment, there  
14320 shall attach to the contribution, to be assessed and collected in the same manner as  
14321 contributions due under this section, a penalty equal to 5% of the contribution due.

14322 (ii) A penalty may not attach if within 10 days after the mailing or personal delivery,  
14323 arrangements for payment have been made with the division, or its authorized representative,  
14324 and payment is made in accordance with those arrangements.

14325 (d) The division shall assess as a penalty a service charge, in addition to any other  
14326 penalties that may apply, in an amount not to exceed the service charge imposed by Section  
14327 7-15-1 for dishonored instruments if:

14328 (i) any amount due the division for contributions, interest, other penalties or benefit  
14329 overpayments is paid by check, draft, order, or other instrument; and

14330 (ii) the instrument is dishonored or not paid by the institution against which it is drawn.

14331 (e) Except for benefit overpayments under Subsection 35A-4-405(5), benefit  
14332 overpayments, contributions, interest, penalties, and assessed costs, uncollected three years  
14333 after they become due, may be charged as uncollectible and removed from the records of the  
14334 division if:

14335 (i) no assets belonging to the liable person and subject to attachment can be found; and

14336 (ii) in the opinion of the division there is no likelihood of collection at a future date.

14337 (f) Interest and penalties collected in accordance with this section shall be paid into the  
14338 Special Administrative Expense Account created by Section 35A-4-506.

14339 (g) Action required for the collection of sums due under this chapter is subject to the  
14340 applicable limitations of actions under Title 78B, Chapter 2, Statutes of Limitations.

14341 (2) (a) If an employer fails to file a report when prescribed by the division for the  
14342 purpose of determining the amount of the employer's contribution due under this chapter, or if  
14343 the report when filed is incorrect or insufficient or is not satisfactory to the division, the  
14344 division may determine the amount of wages paid for employment during the period or periods

14345 with respect to which the reports were or should have been made and the amount of  
14346 contribution due from the employer on the basis of any information it may be able to obtain.

14347 (b) The division shall give written notice of the determination to the employer.

14348 (c) The determination is considered correct unless:

14349 (i) the employer, within 10 days after mailing or personal delivery of notice of the  
14350 determination, applies to the division for a review of the determination as provided in Section  
14351 35A-4-508; or

14352 (ii) unless the division or its authorized representative of its own motion reviews the  
14353 determination.

14354 (d) The amount of contribution determined under Subsection (2)(a) is subject to  
14355 penalties and interest as provided in Subsection (1).

14356 (3) (a) If, after due notice, an employer defaults in the payment of contributions,  
14357 interest, or penalties on the contributions, or a claimant defaults in a repayment of benefit  
14358 overpayments and penalties on the overpayments, the amount due shall be collectible by civil  
14359 action in the name of the division, and the employer adjudged in default shall pay the costs of  
14360 the action.

14361 (b) Civil actions brought under this section to collect contributions, interest, or  
14362 penalties from an employer, or benefit overpayments and penalties from a claimant shall be:

14363 (i) heard by the court at the earliest possible date; and

14364 (ii) entitled to preference upon the calendar of the court over all other civil actions  
14365 except:

14366 (A) petitions for judicial review under this chapter; and

14367 (B) cases arising under the workers' compensation law of this state.

14368 (c) (i) (A) To collect contributions, interest, or penalties, or benefit overpayments and  
14369 penalties due from employers or claimants located outside Utah, the division may employ  
14370 private collectors providing debt collection services outside Utah.

14371 (B) Accounts may be placed with private collectors only after the employer or claimant  
14372 has been given a final notice that the division intends to place the account with a private  
14373 collector for further collection action.

14374 (C) The notice shall advise the employer or claimant of the employer's or claimant's  
14375 rights under this chapter and the applicable rules of the department.

14376 (ii) (A) A private collector may receive as compensation up to 25% of the lesser of the  
14377 amount collected or the amount due, plus the costs and fees of any civil action or postjudgment  
14378 remedy instituted by the private collector with the approval of the division.

14379 (B) The employer or claimant shall be liable to pay the compensation of the collector,  
14380 costs, and fees in addition to the original amount due.

14381 (iii) A private collector is subject to the federal Fair Debt Collection Practices Act, 15  
14382 U.S.C. Sec. 1692 et seq.

14383 (iv) (A) A civil action may not be maintained by a private collector without specific  
14384 prior written approval of the division.

14385 (B) When division approval is given for civil action against an employer or claimant,  
14386 the division may cooperate with the private collector to the extent necessary to effect the civil  
14387 action.

14388 (d) (i) Notwithstanding Section 35A-4-312, the division may disclose the contribution,  
14389 interest, penalties or benefit overpayments and penalties, costs due, the name of the employer  
14390 or claimant, and the employer's or claimant's address and telephone number when any  
14391 collection matter is referred to a private collector under Subsection (3)(c).

14392 (ii) A private collector is subject to the confidentiality requirements and penalty  
14393 provisions provided in Section 35A-4-312 and Subsection 76-8-1301(4), except to the extent  
14394 disclosure is necessary in a civil action to enforce collection of the amounts due.

14395 (e) An action taken by the division under this section may not be construed to be an  
14396 election to forego other collection procedures by the division.

14397 (4) (a) In the event of a distribution of an employer's assets under an order of a court  
14398 under the laws of Utah, including a receivership, assignment for benefits of creditors,  
14399 adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter  
14400 due shall be paid in full prior to all other claims except taxes and claims for wages of not more  
14401 than \$400 to each claimant, earned within five months of the commencement of the  
14402 proceeding.

14403 (b) If an employer commences a proceeding in the Federal Bankruptcy Court under a  
14404 chapter of 11 U.S.C. 101 et seq., as amended by the Bankruptcy Abuse Prevention and  
14405 Consumer Protection Act of 2005, contributions, interest, and penalties then or thereafter due  
14406 shall be entitled to the priority provided for taxes, interest, and penalties in the Bankruptcy

14407 Abuse Prevention and Consumer Protection Act of 2005.

14408 (5) (a) In addition and as an alternative to any other remedy provided by this chapter  
14409 and provided that no appeal or other proceeding for review provided by this chapter is then  
14410 pending and the time for taking it has expired, the division may issue a warrant in duplicate,  
14411 under its official seal, directed to the sheriff of any county of the state, commanding the sheriff  
14412 to levy upon and sell the real and personal property of a delinquent employer or claimant found  
14413 within the sheriff's county for the payment of the contributions due, with the added penalties,  
14414 interest, or benefit overpayment and penalties, and costs, and to return the warrant to the  
14415 division and pay into the fund the money collected by virtue of the warrant by a time to be  
14416 specified in the warrant, not more than 60 days from the date of the warrant.

14417 (b) (i) Immediately upon receipt of the warrant in duplicate, the sheriff shall file the  
14418 duplicate with the clerk of the district court in the sheriff's county.

14419 (ii) The clerk shall enter in the judgment docket, in the column for judgment debtors,  
14420 the name of the delinquent employer or claimant mentioned in the warrant, and in appropriate  
14421 columns the amount of the contribution, penalties, interest, or benefit overpayment and  
14422 penalties, and costs, for which the warrant is issued and the date when the duplicate is filed.

14423 (c) The amount of the docketed warrant shall:

14424 (i) have the force and effect of an execution against all personal property of the  
14425 delinquent employer; and

14426 (ii) become a lien upon the real property of the delinquent employer or claimant in the  
14427 same manner and to the same extent as a judgment duly rendered by a district court and  
14428 docketed in the office of the clerk.

14429 (d) After docketing, the sheriff shall:

14430 (i) proceed in the same manner as is prescribed by law with respect to execution issued  
14431 against property upon judgments of a court of record; and

14432 (ii) be entitled to the same fees for the sheriff's services in executing the warrant, to be  
14433 collected in the same manner.

14434 (6) (a) Contributions imposed by this chapter are a lien upon the property of an  
14435 employer liable for the contribution required to be collected under this section who shall sell  
14436 out the employer's business or stock of goods or shall quit business, if the employer fails to  
14437 make a final report and payment on the date subsequent to the date of selling or quitting

14438 business on which they are due and payable as prescribed by rule.

14439 (b) (i) An employer's successor, successors, or assigns, if any, are required to withhold  
14440 sufficient of the purchase money to cover the amount of the contributions and interest or  
14441 penalties due and payable until the former owner produces a receipt from the division showing  
14442 that they have been paid or a certificate stating that no amount is due.

14443 (ii) If the purchaser of a business or stock of goods fails to withhold sufficient purchase  
14444 money, the purchaser is personally liable for the payment of the amount of the contributions  
14445 required to be paid by the former owner, interest and penalties accrued and unpaid by the  
14446 former owner, owners, or assignors.

14447 (7) (a) If an employer is delinquent in the payment of a contribution, the division may  
14448 give notice of the amount of the delinquency by registered mail to all persons having in their  
14449 possession or under their control, any credits or other personal property belonging to the  
14450 employer, or owing any debts to the employer at the time of the receipt by them of the notice.

14451 (b) A person notified under Subsection (7)(a) shall neither transfer nor make any other  
14452 disposition of the credits, other personal property, or debts until:

14453 (i) the division has consented to a transfer or disposition; or

14454 (ii) 20 days after the receipt of the notice.

14455 (c) All persons notified under Subsection (7)(a) shall, within five days after receipt of  
14456 the notice, advise the division of credits, other personal property, or other debts in their  
14457 possession, under their control or owing by them, as the case may be.

14458 (8) (a) (i) Each employer shall furnish the division necessary information for the proper  
14459 administration of this chapter and shall include wage information for each employee, for each  
14460 calendar quarter.

14461 (ii) The information shall be furnished at a time, in the form, and to those individuals  
14462 as the department may by rule require.

14463 (b) (i) Each employer shall furnish each individual worker who is separated that  
14464 information as the department may by rule require, and shall furnish within 48 hours of the  
14465 receipt of a request from the division a report of the earnings of any individual during the  
14466 individual's base-period.

14467 (ii) The report shall be on a form prescribed by the division and contain all information  
14468 prescribed by the division.

14469 (c) (i) For each failure by an employer to conform to this Subsection (8) the division  
14470 shall, unless good cause is shown, assess a \$50 penalty if the filing was not more than 15 days  
14471 late.

14472 (ii) If the filing is more than 15 days late, the division shall assess an additional penalty  
14473 of \$50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed \$250  
14474 per filing.

14475 (iii) The penalty is to be collected in the same manner as contributions due under this  
14476 chapter.

14477 (d) (i) The division shall prescribe rules providing standards for determining which  
14478 contribution reports [~~must~~] shall be filed on magnetic or electronic media or in other  
14479 machine-readable form.

14480 (ii) In prescribing these rules, the division:

14481 (A) may not require an employer to file contribution reports on magnetic or electronic  
14482 media unless the employer is required to file wage data on at least 250 employees during any  
14483 calendar quarter or is an authorized employer representative who files quarterly tax reports on  
14484 behalf of 100 or more employers during any calendar quarter;

14485 (B) shall take into account, among other relevant factors, the ability of the employer to  
14486 comply at reasonable cost with the requirements of the rules; and

14487 (C) may require an employer to post a bond for failure to comply with the rules  
14488 required by this Subsection (8)(d).

14489 (9) (a) (i) An employer liable for payments in lieu of contributions shall file  
14490 Reimbursable Employment and Wage Reports.

14491 (ii) The reports are due on the last day of the month that follows the end of each  
14492 calendar quarter unless the division, after giving notice, changes the due date.

14493 (iii) A report postmarked on or before the due date is considered timely.

14494 (b) (i) Unless the employer can show good cause, the division shall assess a \$50  
14495 penalty against an employer who does not file Reimbursable Employment and Wage Reports  
14496 within the time limits set out in Subsection (9)(a) if the filing was not more than 15 days late.

14497 (ii) If the filing is more than 15 days late, the division shall assess an additional penalty  
14498 of \$50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed \$250  
14499 per filing.

14500 (iii) The division shall assess and collect the penalties referred to in this Subsection  
14501 (9)(b) in the same manner as prescribed in Sections 35A-4-309 and 35A-4-311.

14502 (10) If a person liable to pay a contribution or benefit overpayment imposed by this  
14503 chapter neglects or refuses to pay it after demand, the amount, including any interest, additional  
14504 amount, addition to contributions, or assessable penalty, together with any additional accruable  
14505 costs, shall be a lien in favor of the division upon all property and rights to property, whether  
14506 real or personal belonging to the person.

14507 (11) (a) The lien imposed by Subsection (10) arises at the time the assessment, as  
14508 defined in the department rules, is made and continues until the liability for the amount  
14509 assessed, or a judgment against the taxpayer arising out of the liability, is satisfied.

14510 (b) (i) The lien imposed by Subsection (10) is not valid as against a purchaser, holder  
14511 of a security interest, mechanics' lien holder, or judgment lien creditor until the division files a  
14512 warrant with the clerk of the district court.

14513 (ii) For the purposes of this Subsection (11)(b):

14514 (A) "Judgment lien creditor" means a person who obtains a valid judgment of a court  
14515 of record for recovery of specific property or a sum certain of money, and who in the case of a  
14516 recovery of money, has a perfected lien under the judgment on the property involved. A  
14517 judgment lien does not include inchoate liens such as attachment or garnishment liens until  
14518 they ripen into a judgment. A judgment lien does not include the determination or assessment  
14519 of a quasi-judicial authority, such as a state or federal taxing authority.

14520 (B) "Mechanics' lien holder" means any person who has a lien on real property, or on  
14521 the proceeds of a contract relating to real property, for services, labor, or materials furnished in  
14522 connection with the construction or improvement of the property. A person has a lien on the  
14523 earliest date the lien becomes valid against subsequent purchasers without actual notice, but not  
14524 before the person begins to furnish the services, labor, or materials.

14525 (C) "Person" means:

14526 (I) an individual;

14527 (II) a trust;

14528 (III) an estate;

14529 (IV) a partnership;

14530 (V) an association;

- 14531 (VI) a company;
- 14532 (VII) a limited liability company;
- 14533 (VIII) a limited liability partnership; or
- 14534 (IX) a corporation.

14535 (D) "Purchaser" means a person who, for adequate and full consideration in money or  
14536 money's worth, acquires an interest, other than a lien or security interest, in property which is  
14537 valid under state law against subsequent purchasers without actual notice.

14538 (E) "Security interest" means any interest in property acquired by contract for the  
14539 purpose of securing payment or performance of an obligation or indemnifying against loss or  
14540 liability. A security interest exists at any time:

14541 (I) the property is in existence and the interest has become protected under the law  
14542 against a subsequent judgment lien arising out of an unsecured obligation; and

14543 (II) to the extent that, at that time, the holder has parted with money or money's worth.  
14544 Section 338. Section **35A-4-309** is amended to read:

14545 **35A-4-309. Nonprofit organizations -- Contributions -- Payments in lieu of**  
14546 **contributions.**

14547 (1) Notwithstanding any other provisions of this chapter for payments by employers,  
14548 benefits paid to employees of nonprofit organizations, as described in Section 501(c)(3) of the  
14549 Internal Revenue Code, 26 U.S.C. 501(c)(3), that are exempt from income tax under Section  
14550 501(a), shall be financed in accordance with the following provisions:

14551 (a) Any nonprofit organization which is, or becomes, subject to this chapter shall pay  
14552 contributions under Section 35A-4-303, unless it elects in accordance with this Subsection (1)  
14553 to pay to the division for the unemployment fund an amount equal to the amount of regular  
14554 benefits and of 1/2 of the extended benefits paid that is attributable to service in the employ of  
14555 the nonprofit organization, to individuals for weeks of unemployment that begin during the  
14556 effective period of this election.

14557 (b) (i) Any nonprofit organization that is, or becomes, subject to this chapter may elect  
14558 to become liable for payments in lieu of contributions for a period of not less than one  
14559 contribution year beginning with the date on which the organization becomes subject to this  
14560 chapter.

14561 (ii) The nonprofit organization shall file a written notice of its election with the

14562 division not later than 30 days immediately following the date that the division gives notice to  
14563 the organization that it is subject to this chapter.

14564 (c) Any nonprofit organization that makes an election in accordance with Subsection  
14565 (1)(b)(i) shall continue to be liable for payments in lieu of contributions until it files with the  
14566 division a written notice terminating its election, not later than 30 days prior to the beginning of  
14567 the contribution year for which this termination shall first be effective.

14568 (d) (i) Any nonprofit organization that has been paying contributions under this chapter  
14569 may change to a reimbursable basis by filing with the division, no later than 30 days prior to  
14570 the beginning of any contribution year, a written notice of election to become liable for  
14571 payments in lieu of contributions.

14572 (ii) This election is not terminable by the organization for that year or the next year.

14573 (e) The division may, for good cause, extend the period within which a notice of  
14574 election or a notice of termination [~~must~~] shall be filed and may permit an election to be  
14575 retroactive.

14576 (f) (i) The division, in accordance with department rules, shall notify each nonprofit  
14577 organization of any determination that the division may make of the organization's status as an  
14578 employer, of the effective date of any election that it makes, and of any termination of this  
14579 election.

14580 (ii) These determinations are subject to reconsideration, appeal, and review in  
14581 accordance with Section 35A-4-508.

14582 (2) Payments in lieu of contributions shall be made in accordance with this Subsection  
14583 (2).

14584 (a) At the end of each calendar month, or at the end of any other period as determined  
14585 by the division, the division shall bill each nonprofit organization or group of nonprofit  
14586 organizations that has elected to make payments in lieu of contributions for an amount equal to  
14587 the full amount of regular benefits plus [~~1/2~~] one-half of the amount of extended benefits paid  
14588 during this month or other prescribed period that is attributable to service in the employ of the  
14589 organization.

14590 (b) Payment of any bill rendered under Subsection (2)(a) shall be made no later than 30  
14591 days after the bill was mailed to the last-known address of the nonprofit organization or was  
14592 otherwise delivered to it, unless there has been an application for review and redetermination in

14593 accordance with Subsection (2)(d).

14594 (c) Payments made by any nonprofit organization under this Subsection (2) may not be  
14595 deducted or deductible, in whole or in part, from the remuneration of individuals in the employ  
14596 of the organization.

14597 (d) (i) The amount due specified in any bill from the division shall be conclusive on  
14598 the organization unless, not later than 15 days after the bill was mailed to its last-known  
14599 address or otherwise delivered to it, the organization files an application for redetermination by  
14600 the division or an appeal to the Division of Adjudication, setting forth the grounds for the  
14601 application or appeal in accordance with Section 35A-4-508.

14602 (ii) The division shall promptly review and reconsider the amount due specified in the  
14603 bill and shall thereafter issue a redetermination in any case in which the application for  
14604 redetermination has been filed.

14605 (iii) Any redetermination is conclusive on the organization unless, no later than 15  
14606 days after the redetermination was mailed to its last known address or otherwise delivered to it,  
14607 the organization files an appeal to the Division of Adjudication in accordance with Section  
14608 35A-4-508 and Chapter 1, Part 3, Adjudicative Proceedings, setting forth the grounds for the  
14609 appeal.

14610 (iv) Proceedings on appeal to the Division of Adjudication from the amount of a bill  
14611 rendered under this Subsection (2) or a redetermination of the amount shall be in accordance  
14612 with Section 35A-4-508.

14613 (e) Past due payments of amounts in lieu of contributions are subject to the same  
14614 interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.

14615 (3) If any nonprofit organization is delinquent in making payments in lieu of  
14616 contributions as required under Subsection (2), the division may terminate the organization's  
14617 election to make payment in lieu of contributions as of the beginning of the next contribution  
14618 year, and the termination is effective for that and the next contribution year.

14619 (4) (a) In the discretion of the division, any nonprofit organization that elects to  
14620 become liable for payments in lieu of contributions shall be required, within 30 days after the  
14621 effective date of its election, to deposit money with the division.

14622 (b) The amount of the deposit shall be determined in accordance with this Subsection  
14623 (4).

14624 (c) (i) The amount of the deposit required by this Subsection (4) shall be equal to 1%  
14625 of the organization's total wages paid for employment as defined in Section 35A-4-204 for the  
14626 four calendar quarters immediately preceding the effective date of the election, or the biennial  
14627 anniversary of the effective date of election, whichever date shall be most recent and  
14628 applicable.

14629 (ii) If the nonprofit organization did not pay wages in each of these four calendar  
14630 quarters, the amount of the deposit is as determined by the division.

14631 (d) (i) Any deposit of money in accordance with this Subsection (4) shall be retained  
14632 by the division in an escrow account until liability under the election is terminated, at which  
14633 time it shall be returned to the organization, less any deductions as provided in this Subsection  
14634 (4).

14635 (ii) The division may deduct from the money deposited under this Subsection (4) by a  
14636 nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of  
14637 contributions and any applicable interest and penalties provided for in Subsection (2)(e).

14638 (iii) The division shall require the organization within 30 days following any  
14639 deduction from a money deposit under this Subsection (4) to deposit sufficient additional  
14640 money to make whole the organization's deposit at the prior level.

14641 (iv) (A) The division may, at any time, review the adequacy of the deposit made by any  
14642 organization.

14643 (B) If, as a result of this review, the division determines that an adjustment is  
14644 necessary, it shall require the organization to make an additional deposit within 30 days of  
14645 written notice of the division's determination or shall return to it any portion of the deposit the  
14646 division no longer considers necessary, as considered appropriate.

14647 (e) If any nonprofit organization fails to make a deposit, or to increase or make whole  
14648 the amount of a previously made deposit, as provided under this Subsection (4), the division  
14649 may terminate the organization's election to make payments in lieu of contributions.

14650 (f) (i) Termination under Subsection (4)(e) shall continue for not less than the  
14651 four-consecutive-calendar-quarter period beginning with the quarter in which the termination  
14652 becomes effective.

14653 (ii) The division may extend for good cause the applicable filing, deposit, or  
14654 adjustment period by not more than 60 days.

14655 (5) (a) Each employer liable for payments in lieu of contributions shall pay to the  
14656 division for the fund the amount of regular benefits plus the amount of [~~1/2~~] one-half of  
14657 extended benefits paid that are attributable to service in the employ of the employer.

14658 (b) If benefits paid to an individual are based on wages paid by more than one  
14659 employer and one or more of these employers are liable for payments in lieu of contributions,  
14660 the amount payable to the fund by each employer liable for the payments shall be determined in  
14661 accordance with Subsection (5)(c) or (d).

14662 (c) If benefits paid to an individual are based on wages paid by one or more employers  
14663 who are liable for payments in lieu of contributions and on wages paid by one or more  
14664 employers who are liable for contributions, the amount of benefits payable by each employer  
14665 that is liable for payments in lieu of contributions shall be an amount that bears the same ratio  
14666 to the total benefits paid to the individual as the total base-period wages paid to the individual  
14667 by that employer bear to the total base-period wages paid to the individual by all of the  
14668 individual's base-period employers.

14669 (d) If benefits paid to an individual are based on wages paid by two or more employers  
14670 who are liable for payments in lieu of contributions, the amount of benefits payable by each of  
14671 those employers shall be an amount which bears the same ratio to the total benefits paid to the  
14672 individual as the total base-period wages paid to the individual by the employer bear to the total  
14673 base-period wages paid to the individual by all of the individual's base-period employers.

14674 (6) (a) (i) Two or more employers who have become liable for payments in lieu of  
14675 contributions, in accordance with this section and Subsection 35A-4-204(2)(d), may file a joint  
14676 application to the division for the establishment of a group account for the purpose of sharing  
14677 the cost of benefits paid that are attributable to service in the employ of these employers.

14678 (ii) Each application shall identify and authorize a group representative to act as the  
14679 group's agent for the purpose of this Subsection (6).

14680 (b) (i) Upon approval of the application, the division shall establish a group account for  
14681 these employers effective as of the beginning of the calendar quarter in which it receives the  
14682 application and shall notify the group's representative of the effective date of the account.

14683 (ii) This account shall remain in effect for not less than two contribution years and  
14684 thereafter until terminated at the discretion of the division or upon application by the group.

14685 (c) Upon establishment of the account, each member of the group is liable for

14686 payments in lieu of contributions with respect to each calendar quarter in the amount that bears  
14687 the same ratio to the total benefits paid in the quarter attributable to service performed in the  
14688 employ of all members of the group as the total wages paid for service in employment by the  
14689 member in the quarter bear to the total wages paid during the quarter for service performed in  
14690 the employ of all members of the group.

14691 (d) The department shall prescribe rules, with respect to applications for establishment,  
14692 maintenance, and termination of group accounts authorized by this Subsection (6), for addition  
14693 of new members to, and withdrawal of active members from, these accounts, for the  
14694 determination of the amounts that are payable under this Subsection (6) by members of the  
14695 group, and the time and manner of these payments.

14696 (7) (a) An employing unit that acquires a nonprofit organization or substantially all the  
14697 assets of a nonprofit organization that has elected reimbursable coverage as defined in  
14698 Subsection (1), in accordance with rules made by the commission, shall be given the subject  
14699 date of the transferring nonprofit organization, provided the transferring nonprofit organization  
14700 ceases to operate as an employing unit at the point of acquisition.

14701 (b) The acquiring entity shall reimburse the Unemployment Compensation Fund for the  
14702 transferring nonprofit organization's share of any unreimbursed benefits paid to former  
14703 employees of the transferring nonprofit organization.

14704 Section 339. Section **35A-4-311** is amended to read:

14705 **35A-4-311. Coverage and liability of governmental units or Indian tribal units --**  
14706 **Payments in lieu of contributions -- Delinquencies -- Payments to division.**

14707 (1) Notwithstanding any other provisions of this chapter, benefits paid to employees of  
14708 counties, cities, towns, school districts, political subdivisions, or their instrumentalities or  
14709 Indian tribes or tribal units shall be financed in accordance with the following provisions:

14710 (a) Any county, city, town, school district, political subdivision, or instrumentality  
14711 thereof or Indian tribes or tribal units that is or becomes subject to this chapter may pay  
14712 contributions under the provisions of Section 35A-4-302, or may elect to pay to the division  
14713 for the unemployment fund an amount equal to the amount of regular benefits and, as provided  
14714 in Subsection (4), the extended benefits attributable to service in the employ of such  
14715 organization, and paid to individuals for weeks of unemployment that begin during the  
14716 effective period of such election.

14717 (b) Any county, city, town, school district, political subdivision, or instrumentality  
14718 thereof or Indian tribes or tribal units of the state, or combination of the foregoing, that is or  
14719 becomes subject to this chapter may elect to become liable for payments in lieu of  
14720 contributions for a period of not less than one contribution year beginning with the date on  
14721 which the organization becomes subject to this chapter by filing a written notice of its election  
14722 with the division not later than 30 days immediately following the date that the division gives  
14723 notice to the organization that it is subject to this chapter.

14724 (c) Any county, city, town, school district, political subdivision, or instrumentality  
14725 thereof, or Indian tribes or tribal units, or combination of the foregoing, that makes an election  
14726 in accordance with Subsections (1)(a) and (b) shall continue to be liable for payments in lieu of  
14727 contributions until it files with the division a written notice terminating its election. A notice  
14728 terminating such election [~~must~~] shall be filed by January 31 of the year in which the  
14729 termination is to be effective.

14730 (d) Any county, city, town, school district, political subdivision, or instrumentality  
14731 thereof of the state, or Indian tribes or tribal units, or combination of the foregoing which have  
14732 been paying contributions under this chapter may change to a reimbursable basis by filing with  
14733 the division, no later than 30 days prior to the beginning of any contribution year, a written  
14734 notice of election to become liable for payments in lieu of contributions; the organization may  
14735 not terminate such election for a period of two contribution years.

14736 (e) The division may, for good cause, extend the period within which a notice of  
14737 election or a notice of termination [~~must~~] shall be filed and may permit an election to be  
14738 retroactive.

14739 (f) The division, in accordance with department rules, shall notify each county, city,  
14740 town, school district, political subdivision, or Indian tribes or tribal units, or their  
14741 instrumentalities of any determination that it may make of its status as an employer, or the  
14742 effective date of any election which it makes, and of any termination of such election. The  
14743 determinations shall be subject to reconsideration, appeal, and review in accordance with the  
14744 provisions of Section 35A-4-508.

14745 (2) Payments in lieu of contributions shall be made in accordance with the provisions  
14746 of this Subsection (2).

14747 (a) At the end of each calendar month, or at the end of any other period as determined

14748 by the division, the division shall bill each county, city, town, school district, political  
14749 subdivision, or instrumentality thereof, or combination of the foregoing, that has elected to  
14750 make payments in lieu of contributions for an amount equal to the full amount of regular  
14751 benefits and, as provided in Subsection (4), the amount of extended benefits paid during such  
14752 month or other prescribed period that is attributable to service in the employ of such county,  
14753 city, town, school district, political subdivision, or instrumentality thereof.

14754 (b) Payment of any bill rendered under Subsection (2)(a) shall be made not later than  
14755 30 days after such bill was mailed to the governmental unit or tribal unit or was otherwise  
14756 delivered to it, unless there has been an application for review and redetermination in  
14757 accordance with Subsection (2)(c).

14758 (c) (i) The amount due specified in any bill from the division shall be conclusive on the  
14759 governmental unit or tribal unit unless, no later than 15 days after the bill was mailed or  
14760 otherwise delivered to it, the governmental unit or tribal unit files an application for  
14761 redetermination by the division or an appeal, setting forth the grounds for such application or  
14762 appeal.

14763 (ii) Upon an application for redetermination the division shall promptly review and  
14764 reconsider the amount due specified in the bill and shall thereafter issue a redetermination.

14765 (iii) Any such redetermination shall be conclusive on the governmental unit or tribal  
14766 unit unless, no later than 15 days after the redetermination was mailed to its last known address  
14767 or otherwise delivered to it, the governmental unit or tribal unit files an appeal, setting forth the  
14768 grounds for the appeal.

14769 (iv) Proceedings on appeal from the amount of a bill rendered under this Subsection (2)  
14770 or a redetermination of the amount shall be in accordance with the provisions of Section  
14771 35A-4-508.

14772 (d) Past due payments of amounts in lieu of contributions shall be subject to the same  
14773 interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.

14774 (3) (a) If any governmental unit or tribal unit is delinquent in making payments in lieu  
14775 of contributions as required under Subsection (2), the division may terminate the governmental  
14776 unit's or tribal unit's election to make payment in lieu of contributions as of the beginning of  
14777 the next contribution year, and the termination shall be effective for that and the next  
14778 contribution year.

14779 (b) (i) Failure of the Indian tribe or tribal unit to make required payments, including  
14780 assessments of interest and penalty, within 90 days of receipt of a billing notice will cause the  
14781 Indian tribe to lose the option to make payments in lieu of contributions, as described in  
14782 Subsection 35A-4-311(1), for the following tax year unless payment in full is received before  
14783 contribution rates for the next tax year are computed.

14784 (ii) Any Indian tribe that loses the option to make payments in lieu of contributions due  
14785 to late payment or nonpayment, as described in Subsection (3)(b)(i), shall have the option  
14786 reinstated if, after a period of one year:

14787 (A) all contributions have been made timely; and

14788 (B) no contributions, payments in lieu of contributions for benefits paid, penalties, or  
14789 interest remain outstanding.

14790 (iii) Notices of payment and reporting delinquency to Indian tribes or their tribal units  
14791 shall include information that failure to make full payment within the prescribed time frame:

14792 (A) will cause the Indian tribe to be liable for taxes under the Federal Unemployment  
14793 Tax Act; and

14794 (B) will cause the Indian tribe to lose the option to make payments in lieu of  
14795 contributions.

14796 (4) Each governmental unit or tribal unit liable for payments in lieu of contributions  
14797 shall pay to the division for the fund the amount of regular benefits plus the amount of  
14798 extended benefits paid that are attributable to service in the employ of such governmental unit  
14799 or tribal unit. Provided, that governmental units or tribal units electing payments in lieu of  
14800 contributions shall, with respect to extended benefit costs for weeks of unemployment  
14801 beginning prior to January 1, 1979, pay an amount equal to 50% of such costs and with respect  
14802 to extended benefit costs for weeks of unemployment beginning on or after January 1, 1979,  
14803 shall pay 100% of such costs. If benefits paid to an individual are based on wages paid by  
14804 more than one employer and one or more of such employers are liable for payments in lieu of  
14805 contributions, the amount payable to the fund by each employer liable for the payments shall be  
14806 determined in accordance with Subsection (4)(a) or (4)(b).

14807 (a) If benefits paid to an individual are based on wages paid by one or more employers  
14808 who are liable for payments in lieu of contributions and on wages paid by one or more  
14809 employers who are liable for contributions, the amount of benefits payable by each employer

14810 that is liable for payments in lieu of contributions shall be an amount that bears the same ratio  
14811 to the total benefits paid to the individual as the total base-period wages paid to the individual  
14812 by such employer bear to the total base-period wages paid to the individual by all of his  
14813 base-period employers.

14814 (b) If benefits paid to an individual are based on wages paid by two or more employers  
14815 who are liable for payments in lieu of contributions, the amount of benefits payable by each  
14816 such employer shall be an amount that bears the same ratio to the total benefits paid to the  
14817 individual as the total base-period wages paid to the individual by such employer bear to the  
14818 total base-period wages paid to the individual by all of his base-period employers.

14819 (5) (a) Two or more Indian tribe or tribal unit employers who have become liable for  
14820 payments in lieu of contributions, in accordance with the provisions of this section and  
14821 Subsection 35A-4-204(2)(d), may file a joint application to the division for the establishment  
14822 of a group account for the purpose of sharing the cost of benefits paid that are attributable to  
14823 service in the employ of these employers. Each application shall identify and authorize a group  
14824 representative to act as the group's agent for the purpose of this Subsection (5).

14825 (b) Upon approval of the application, the division shall establish a group account for  
14826 these employers effective as of the beginning of the calendar quarter in which it receives the  
14827 application and shall notify the group's representative of the effective date of the account. This  
14828 account shall remain in effect for not less than one contribution year and thereafter until  
14829 terminated at the discretion of the division or upon application by the group.

14830 (c) Upon establishment of the account, each member of the group shall be liable for  
14831 payments in lieu of contributions with respect to each calendar quarter in the amount that bears  
14832 the same ratio to the total benefits paid in the quarter attributable to service performed in the  
14833 employ of all members of the group as the total wages paid for service in employment by such  
14834 member in the quarter bear to the total wages paid during the quarter for service performed in  
14835 the employ of all members of the group.

14836 Section 340. Section **35A-4-404** is amended to read:

14837 **35A-4-404. Eligibility for benefits after receiving workers' compensation or**  
14838 **occupational disease compensation.**

14839 (1) Notwithstanding any requirements involving base periods or other benefit  
14840 compensational factors provided for under this chapter a person who has had a continuous

14841 period of sickness or injury for which [he] the person was compensated under the workers'  
14842 compensation or the occupational disease laws of this state or under federal law shall, if [he]  
14843 the person is otherwise eligible, thereafter be entitled to receive the unemployment  
14844 compensation benefits [he] the person would have been entitled to receive under the law and  
14845 regulations based on [his] the person's potential eligibility at the time of [his] the person's last  
14846 employment.

14847 (2) Benefit rights [~~shall not be~~] are not preserved under this section unless the  
14848 individual:

14849 (a) files a claim for benefits with respect to a week no later than 90 days after the end  
14850 of the continuous period of sickness or injury; and

14851 (b) files the claim with respect to a week within the 36-month period immediately  
14852 following the commencement of such period of sickness or injury.

14853 Section 341. Section **35A-4-501** is amended to read:

14854 **35A-4-501. Unemployment Compensation Fund -- Administration -- Contents --**  
14855 **Treasurer and custodian -- Separate accounts -- Use of money requisitioned -- Advances**  
14856 **under Social Security Act.**

14857 (1) (a) There is established the Unemployment Compensation Fund, separate and apart  
14858 from all public money or funds of this state, that shall be administered by the department  
14859 exclusively for the purposes of this chapter.

14860 (b) This fund shall consist of the following money, all of which shall be mingled and  
14861 undivided:

14862 (i) all contributions collected under this chapter, less refunds of contributions made  
14863 from the clearing account under Subsection 35A-4-306(5);

14864 (ii) interest earned upon any money in the fund;

14865 (iii) any property or securities acquired through the use of money belonging to the  
14866 fund;

14867 (iv) all earnings of the property or securities;

14868 (v) all money credited to this state's account in the unemployment trust fund under  
14869 Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended; and

14870 (vi) all other money received for the fund from any other source.

14871 (2) (a) The state treasurer shall:

- 14872 (i) be the treasurer and custodian of the fund;
- 14873 (ii) administer the fund in accordance with the directions of the division; and
- 14874 (iii) pay all warrants drawn upon it by the division or its duly authorized agent in  
14875 accordance with rules made by the department.
- 14876 (b) The division shall maintain within the fund three separate accounts:
- 14877 (i) a clearing account;
- 14878 (ii) an unemployment trust fund account; and
- 14879 (iii) a benefit account.
- 14880 (c) All money payable to the fund, upon receipt by the division, shall be immediately  
14881 deposited in the clearing account.
- 14882 (d) (i) All money in the clearing account after clearance shall, except as otherwise  
14883 provided in this section, be deposited immediately with the secretary of the treasury of the  
14884 United States of America to the credit of the account of this state in the unemployment trust  
14885 fund, established and maintained under Section 904 of the Social Security Act, 42 U.S.C. 1104,  
14886 as amended, any provisions of law in this state relating to the deposit, administration, release,  
14887 or disbursement of money in the possession or custody of this state to the contrary  
14888 notwithstanding.
- 14889 (ii) Refunds of contributions payable under Subsections 35A-4-205(1)(a) and  
14890 35A-4-306(5) may be paid from the clearing account or the benefit account.
- 14891 (e) The benefit account shall consist of all money requisitioned from this state's  
14892 account in the unemployment trust fund in the United States treasury.
- 14893 (f) Money in the clearing and benefit accounts may be deposited in any depository bank  
14894 in which general funds of this state may be deposited, but no public deposit insurance charge or  
14895 premium may be paid out of the fund.
- 14896 (g) (i) Money in the clearing and benefit accounts may not be commingled with other  
14897 state funds, but shall be maintained in separate accounts on the books of the depository bank.
- 14898 (ii) The money shall be secured by the depository bank to the same extent and in the  
14899 same manner as required by the general depository law of this state.
- 14900 (iii) Collateral pledged for this purpose shall be kept separate and distinct from any  
14901 collateral pledged to secure other funds of the state.
- 14902 (h) (i) The state treasurer is liable on the state treasurer's official bond for the faithful

14903 performance of the state treasurer's duties in connection with the unemployment compensation  
14904 fund provided for under this chapter.

14905 (ii) The liability on the official bond shall be effective immediately upon the enactment  
14906 of this provision, and that liability shall exist in addition to the liability upon any separate bond  
14907 existent on the effective date of this provision, or which may be given in the future.

14908 (iii) All sums recovered for losses sustained by the fund shall be deposited in the fund.

14909 (3) (a) (i) Money requisitioned from the state's account in the unemployment trust fund  
14910 shall, except as set forth in this section, be used exclusively for the payment of benefits and for  
14911 refunds of contributions under Subsections 35A-4-205(1)(a) and 35A-4-306(5).

14912 (ii) The department shall from time to time requisition from the unemployment trust  
14913 fund amounts, not exceeding the amounts standing to this state's account in the fund, as it  
14914 considers necessary for the payment of those benefits and refunds for a reasonable future  
14915 period.

14916 (iii) (A) Upon receipt the treasurer shall deposit the money in the benefit account and  
14917 shall pay benefits and refunds from the account by means of warrants issued by the division in  
14918 accordance with rules prescribed by the department.

14919 (B) Expenditures of these money in the benefit account and refunds from the clearing  
14920 account are not subject to any provisions of law requiring specific appropriations or other  
14921 formal release by state officers of money in their custody.

14922 (b) Money in the state's account in the unemployment trust fund that were collected  
14923 under the Federal Unemployment Tax Act, 26 U.S.C. 3301 et seq., and credited to the state  
14924 under Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended may be  
14925 requisitioned from the state's account and used in the payment of expenses incurred by the  
14926 department for the administration of the state's unemployment law and public employment  
14927 offices, if the expenses are incurred and the withdrawals are made only after and under a  
14928 specific appropriation of the Legislature that specifies:

14929 (i) the purposes and amounts;

14930 (ii) that the money may not be obligated after the two-year period that began on the  
14931 date of the enactment of the appropriation law; and

14932 (iii) that the total amount which may be used during a fiscal year [~~shall not~~] may not  
14933 exceed the amount by which the aggregate of the amounts credited to this state's account under

14934 Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended, during the fiscal  
14935 year and the 34 preceding fiscal years, exceeds the aggregate of the amounts used by this state  
14936 for administration during the same 35 fiscal years.

14937 (A) For the purpose of Subsection (3)(b)(iii), amounts used during any fiscal year shall  
14938 be charged against equivalent amounts that were first credited and that have not previously  
14939 been so charged. An amount used during any fiscal year may not be charged against any  
14940 amount credited during a fiscal year earlier than the 34th preceding fiscal year.

14941 (B) Except as appropriated and used for administrative expenses, as provided in this  
14942 section, money transferred to this state under Section 903 of the Social Security Act as  
14943 amended, may be used only for the payment of benefits.

14944 (C) Any money used for the payment of benefits may be restored for appropriation and  
14945 use for administrative expenses, upon request of the governor, under Section 903(c) of the  
14946 Social Security Act.

14947 (D) The division shall maintain a separate record of the deposit, obligation,  
14948 expenditure, and return of funds deposited.

14949 (E) Money deposited shall, until expended, remain a part of the unemployment fund  
14950 and, if not expended, shall be returned promptly to the account of this state in the  
14951 unemployment trust fund.

14952 (F) The money available by reason of this legislative appropriation [~~shall not~~] may not  
14953 be expended or available for expenditure in any manner that would permit their substitution  
14954 for, or a corresponding reduction in, federal funds that would in the absence of the money be  
14955 available to finance expenditures for the administration of this chapter.

14956 (c) Any balance of money requisitioned from the unemployment trust fund that remains  
14957 unclaimed or unpaid in the benefit account after the expiration of the period for which the sums  
14958 were requisitioned shall either be deducted from estimates for, and may be utilized for the  
14959 payment of, benefits and refunds during succeeding periods, or in the discretion of the division,  
14960 shall be redeposited with the secretary of the treasury of the United States of America to the  
14961 credit of the state's account in the unemployment trust fund, as provided in Subsection (2).

14962 (4) (a) The provisions of Subsections (1), (2), and (3), to the extent that they relate to  
14963 the unemployment trust fund, shall be operative only so long as the unemployment trust fund  
14964 continues to exist and so long as the secretary of the treasury of the United States of America

14965 continues to maintain for the state a separate book account of all money deposited in the fund  
14966 by the state for benefit purposes, together with the state's proportionate share of the earnings of  
14967 the unemployment trust fund, from which no other state is permitted to make withdrawals.

14968 (b) (i) When the unemployment trust fund ceases to exist, or the separate book account  
14969 is no longer maintained, all money belonging to the unemployment compensation fund of the  
14970 state shall be administered by the division as a trust fund for the purpose of paying benefits  
14971 under this chapter, and the division shall have authority to hold, invest, transfer, sell, deposit,  
14972 and release the money, and any properties, securities, or earnings acquired as an incident to the  
14973 administration.

14974 (ii) The money shall be invested in readily marketable bonds or other interest-bearing  
14975 obligations of the United States of America, of the state, or of any county, city, town, or school  
14976 district of the state, at current market prices for the bonds.

14977 (iii) The investment shall be made so that all the assets of the fund shall always be  
14978 readily convertible into cash when needed for the payment of benefits.

14979 Section 342. Section **35A-4-506** is amended to read:

14980 **35A-4-506. Special Administrative Account.**

14981 (1) There is created a restricted account within the General Fund known as the "Special  
14982 Administrative Expense Account."

14983 (2) (a) Interest and penalties collected under this chapter, less refunds made under  
14984 Subsection 35A-4-306(5), shall be paid into the restricted account from the clearing account of  
14985 the restricted account at the end of each calendar month.

14986 (b) A contribution to the restricted account and any other money received for that  
14987 purpose shall be paid into the restricted account.

14988 (c) The money may not be expended in any manner that would permit their substitution  
14989 for, or a corresponding reduction in, federal funds that would in the absence of the money be  
14990 available to finance expenditures for the administration of this chapter.

14991 (3) Nothing in this section shall prevent the money from being used as a revolving fund  
14992 to cover expenditures, necessary and proper under this chapter, for which federal funds have  
14993 been duly requested but not yet received subject to the charging of those expenditures against  
14994 the funds when received.

14995 (4) Money in the restricted account shall be deposited, administered, and dispersed in

14996 accordance with the directions of the Legislature.

14997 (5) Money in the restricted account is made available to replace, within a reasonable  
14998 time, any money received by this state under Section 302 of the Federal Social Security Act, 42  
14999 U.S.C. 502, as amended, that because of any action of contingency have been lost or have been  
15000 expended for purposes other than or in amounts in excess of those necessary for the proper  
15001 administration of this chapter.

15002 (6) Money in the restricted account shall be available to the division for expenditure in  
15003 accordance with this section and [~~shall not~~] may not lapse at any time or be transferred to any  
15004 other fund or account except as directed by the Legislature.

15005 (7) The state treasurer shall pay all warrants drawn upon it by the division or its duly  
15006 authorized agent in accordance with such rules as the department shall prescribe.

15007 (8) (a) The state treasurer shall be liable on the state treasurer's official bond for the  
15008 faithful performance of the treasurer's duties in connection with the Special Administrative  
15009 Expense Account provided for under this chapter.

15010 (b) Liability on the official bond shall exist in addition to any liability upon any  
15011 separate bond existent on the effective date of this provision or that may be given in the future.

15012 (c) Any money recovered on any surety bond losses sustained by the Special  
15013 Administrative Expense Account shall be deposited in the restricted account or in the General  
15014 Fund if so directed by the Legislature.

15015 Section 343. **Effective date.**

15016 (1) Except as provided in Subsections (2) and (3), this bill takes effect on May 10,  
15017 2011.

15018 (2) The amendments to the following sections take effect on July 1, 2011:

15019 (a) Section 32B-1-407 (Effective 07/01/11);

15020 (b) Section 32B-1-505 (Effective 07/01/11);

15021 (c) Section 32B-6-407 (Effective 07/01/11); and

15022 (d) Section 32B-8-304 (Effective 07/01/11).

15023 (3) The amendments to Section 20A-7-702 (Effective 01/01/12) take effect on January  
15024 1, 2012.

**Legislative Review Note**  
**as of 1-7-11 1:51 PM**

**Office of Legislative Research and General Counsel**