

1 **STATUTORY CONSTRUCTION AMENDMENTS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Derek E. Brown**

5 Senate Sponsor: Stephen H. Urquhart

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

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

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 This bill provides an effective date.

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **17-3-1**, as last amended by Laws of Utah 2004, Chapter 371

23 **17-3-8**, Utah Code Annotated 1953

24 **17-8-7**, as last amended by Laws of Utah 1993, Chapter 227

25 **17-11-2**, as last amended by Laws of Utah 1993, Chapter 227

26 **17-15-16**, as last amended by Laws of Utah 1993, Chapter 227

27 **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

368 55-5-2, Utah Code Annotated 1953

369

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

371 Section 1. Section 17-3-1 is amended to read:

372 **17-3-1. By petition -- Election -- Ballots.**

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

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

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

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

391 **17-3-8. Prior offenses.**

392 [~~All offenses theretofore committed in such new county in which prosecution shall not~~
393 ~~have been commenced~~] An offense, for which prosecution has not commenced, that was

394 committed within the boundaries of a new county before the new county was created, may be
395 prosecuted to judgment and execution in [~~such~~] the new county.

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

397 **17-8-7. Declaration of drought emergency -- Appropriation -- Tax levy.**

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

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

409 **17-11-2. Initiating petitions -- Limitation.**

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

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

422 **17-15-16. Warrants -- Payment -- Registration -- Duty of auditor.**

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

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

431 **17-16-4. Election of officer to consolidated office.**

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

433 (1) only one person shall be elected to fill the united and consolidated offices [~~so~~
434 ~~united and consolidated, and he must~~]; and

435 (2) the person elected shall:

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

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

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

439 **17-16-9. Officers at county seats -- Office hours.**

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

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

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

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

450 on the next business day.

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

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

454 **17-16-16. Commissioners' traveling expenses.**

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

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

462 (a) submit an itemized statement ~~[shall be made]~~ showing in detail the expenses
463 incurred~~[: and shall be subscribed and sworn to by the member claiming such expenses.]; and~~

464 (b) subscribe and swear to the statement described in Subsection (2)(a).

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

466 **17-16a-3. Definitions.**

467 As used in this part:

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

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

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

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

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

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

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

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

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

492 (8) "Substantial interest" means the ownership, either legally or equitably, by an
493 individual, ~~[his]~~ the individual's spouse, and ~~[his]~~ the individual's minor children, of at least
494 10% of the outstanding shares of a corporation or 10% interest in any other business entity.

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

496 **17-16a-6. Interest in business entity regulated by county -- Disclosure.**

497 Every appointed or elected officer who is an officer, director, agent, or employee or the
498 owner of a substantial interest in any business entity which is subject to the regulation of the
499 county in which ~~[he]~~ the officer is an elected or appointed officer shall disclose the position
500 held and the precise nature and value of ~~[his]~~ the officer's interest upon first becoming
501 appointed or elected, and again during January of each year thereafter during which ~~[he]~~ the
502 officer continues to be an appointed or elected officer. The disclosure shall be made in a sworn
503 statement filed with the county legislative body. The commission shall report the substance of
504 all such disclosure statements to the members of the governing body or may provide to the
505 members of the governing body, copies of the disclosure statement within 30 days after the

506 statement is received. This section does not apply to instances where the value of the interest
507 does not exceed \$2,000, and life insurance policies and annuities [~~shall not~~] may not be
508 considered in determining the value of [~~any such~~] the interest.

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

510 **17-18-1.9. Creation of prosecution district by ordinance or interlocal agreement.**

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

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

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

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

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

520 **17-19-7. Current accounts with treasurer.**

521 The auditor [~~must~~] shall keep accounts current with the treasurer.

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

523 **17-19-14. Duties -- Omnibus provision.**

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

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

526 **17-22-6. Service of process on prisoners -- Penalty.**

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

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

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

533 **17-22-21. Process justifies sheriff's action.**

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

536 Section 16. Section **17-22-22** is amended to read:

537 **17-22-22. Process to be exhibited.**

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

541 Section 17. Section **17-22-23** is amended to read:

542 **17-22-23. Crier of court.**

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

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

548 **17-22-27. Sheriff -- Assignment of court bailiffs -- Contract and costs.**

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

553 (2) (a) The state court administrator shall enter into a contract with the county sheriff
554 for bailiffs and building security officers for the district and juvenile courts within the county.
555 The contract ~~shall not~~ may not exceed amounts appropriated by the Legislature for that
556 purpose. The county shall assume costs related to security administration, supervision, travel,
557 equipment, and training of bailiffs.

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

560 (c) If the court is located in the same facility as a state or local law enforcement agency
561 and the county sheriff's office is not in close proximity to the court, the State Court

562 Administrator in consultation with the sheriff may enter into a contract with the state or local
563 law enforcement agency for bailiff and security services subject to meeting all other
564 requirements of this section. If the services are provided by another agency, the county sheriff
565 shall have no responsibility for the services under this section.

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

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

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

573 **17-23-16. Resurveys.**

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

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

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

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

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

583 **17-27a-513. Manufactured homes.**

584 (1) For purposes of this section, a manufactured home is the same as defined in Section
585 58-56-3, except that the manufactured home ~~must~~ shall be attached to a permanent
586 foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and
587 frost protection in compliance with the applicable building code. All appendages, including
588 carports, garages, storage buildings, additions, or alterations ~~must~~ shall be built in compliance
589 with the applicable building code.

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

594 (3) A county may not:

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

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

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

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

603 (1) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

634 **17-28-11. Temporary work -- Term or period.**

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

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

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

643 **17-30-8. Preservation and inspection of examination papers.**

644 All examination papers shall remain the property of the commission, and shall be
645 preserved until the expiration of the eligible register for the preparation of which an

646 examination is given. Examination papers [~~shall not be~~] are not open to public inspection
647 without court order, but an applicant may inspect [~~his~~] the applicant's own papers at any time
648 within 30 days after the mailing of notice of [~~his~~] the applicant's grade. The appointing
649 authority may inspect the papers of any eligible applicant certified for appointment.

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

651 **17-30-22. Prohibitions against political activities -- Penalties.**

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

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

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

670 **17-31-3. Reserve fund authorized -- Use of collected funds.**

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

674 through 17-31-5.

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

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

678 (1) Any county to which the provisions of this act apply shall establish in its personnel
679 rules and regulations a grievance and appeals procedure. The procedure shall be used to
680 resolve disputes arising from grievances as defined in the rules and regulations, including [~~but~~
681 ~~not limited to~~] acts of discrimination. The procedure may also be used by employees in the
682 event of dismissal, demotion, suspension, or transfer.

683 (2) Any charge by a county career service employee of discriminatory or prohibited
684 employment practice as prohibited by Section 34A-5-106, can be filed with the Division of
685 Antidiscrimination and Labor within the Labor Commission. Complaints shall be filed within
686 30 days of the issuance of a written decision of the county career service council.

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

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

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

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

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

702 assistance.

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

704 **17-34-5. Budgeting, accounting for, and disbursing of funds -- Annual audit.**

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

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

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

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

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

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

722 (2) To implement Subsection (1):

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

726 (b) funds for the purposes of furnishing municipal-type services and functions under
727 this chapter shall be collected, held, and administered in the same manner as other funds of the
728 county are collected, held, and administered, but shall be segregated and separately maintained,
729 except that where, in the judgment of the county legislative body, advantages inure to the fund

730 from coinvestment of these funds and other funds also subject to control by the county
731 legislative body, the county legislative body may direct this coinvestment, but in no event may
732 the funds to furnish municipal-type services and functions or the income from their investment
733 be used for purposes other than those described in Section 17-34-1;

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

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

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

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

742 **17-35b-303. Community council form of county government.**

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

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

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

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

786 executive unless, by a vote of not less than 3/4 of its entire membership, the county council
787 determines that a particular program, in whole or in part, should be rejected as contrary to the
788 general welfare of the county. A community council program for local governmental services
789 within a community:

790 (a) shall include a method or methods for financing such services;

791 (b) may provide for supplying of such services by contract or by joint or cooperative
792 action pursuant to Title 11, Chapter 13, Interlocal Cooperation Act, in which case the
793 community council shall be considered a "public agency" within the meaning of said act; and

794 (c) may provide for supplying of such services through the creation of service areas
795 pursuant to Title 17B, Chapter 2a, Part 9, Service Area Act.

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

802 (a) may file with the community council a written statement of its comments,
803 suggestions, and recommendations relating to the program, and the community council shall
804 give due consideration thereto; or

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

812 (6) Except as provided herein, the qualifications, mode of election, term of office,
813 method of removal, procedure to fill vacancies, compensation, and other appropriate provisions

814 relating to membership on the county council or community councils shall be provided in the
815 plan.

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

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

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

835 **17-35b-304. Consolidated city and county -- Structural form.**

836 (1) The structural form of county government known as the "consolidated city and
837 county" form unites in a single consolidated city and county government the powers, duties,
838 and functions which, immediately prior to its effective date, are vested in the county, the largest
839 city in the county, such other cities and towns as elect to merge in it, and all special taxing
840 districts, public authorities, county service areas, and other local public entities functioning
841 within the boundaries of the county, except school districts. The consolidated government shall

842 with the consent of the continuing municipalities have power to extend on a countywide basis
843 any governmental service or function which is authorized by law or which the previous county,
844 cities, and other local public agencies included in them were empowered to provide for their
845 residents. No such service, however, shall be provided within an incorporated municipality
846 which continues to provide that such service for its own inhabitants, except upon a contract
847 basis for the municipality. No taxes, assessments, fees, or other charges shall be extended or
848 collected by the consolidated government within any municipality for the purpose of financing
849 any service which is not provided by the consolidated government within the municipality.

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

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

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

865 (4) Except as provided in this act, the qualifications, mode of election, term of office,
866 method of removal, procedure to fill vacancies, compensation, or other appropriate provisions
867 relating to membership on the county council shall be provided in the plan.

868 (5) Upon the effective date of the plan, as provided in it, all properties and assets,
869 whether tangible or intangible, and all obligations, debts, and liabilities of those governmental

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

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

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

887 **17-36-10. Preparation of tentative budget.**

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

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

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

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

894 (c) the estimated available revenues and expenditures for the ensuing budget period

895 computed by determining:

896 (i) the estimated expenditure for each fund after review of each departmental budget
897 request;

- 898 (ii) (A) the total revenue requirements of the fund;
- 899 (B) the part of the total revenue that will be derived from revenue sources other than
- 900 property tax; and
- 901 (C) the part of the total revenue that [~~must~~] shall be derived from property taxes; and
- 902 (d) if required by the governing body, actual performance experience to the extent
- 903 available in work units, unit costs, man hours, and man years for each budgeted fund that
- 904 includes an appropriation for salaries or wages for the last completed fiscal period and the first
- 905 eight months of the current fiscal period if the county is on an annual fiscal period, or the first
- 906 20 months of the current fiscal period if the county is on a biennial fiscal period, together with
- 907 the total estimated performance data of like character for the current fiscal period and for the
- 908 ensuing budget period.
- 909 (3) The budget officer may recommend modification of any departmental budget
- 910 request under Subsection (2)(c)(i) before it is filed with the governing body, if each department
- 911 head has been given an opportunity to be heard concerning the modification.
- 912 (4) Each tentative budget shall contain the estimates of expenditures submitted by any
- 913 department together with specific work programs and other supportive data as the governing
- 914 body requests. The tentative budget shall be accompanied by a supplementary estimate of all
- 915 capital projects or planned capital projects within the budget period and within the next three
- 916 succeeding years.
- 917 (5) (a) Each tentative budget submitted in a county with a population in excess of
- 918 25,000 determined pursuant to Section 17-36-4 shall be accompanied by a budget message in
- 919 explanation of the budget.
- 920 (b) The budget message shall contain an outline of the proposed financial policies of
- 921 the county for the budget period and describe the important features of the budgetary plan. It
- 922 shall also state the reasons for changes from the previous fiscal period in appropriation and
- 923 revenue items and explain any major changes in financial policy.
- 924 (c) A budget message for counties with a population of less than 25,000 is
- 925 recommended but not incumbent upon the budget officer.

926 (6) The tentative budget shall be reviewed, considered, and tentatively adopted by the
927 governing body in a regular or special meeting called for that purpose. It may thereafter be
928 amended or revised by the governing body prior to public hearings thereon, except that no
929 appropriation required for debt retirement and interest or reduction, pursuant to Section
930 17-36-17, of any deficits which exist may be reduced below the required minimum.

931 Section 32. Section 17-36-17 is amended to read:

932 **17-36-17. Appropriations in final budget -- Limitations.**

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

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

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

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

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

953 (2) (a) Upon the recommendation of the board of directors, the county may enter into a

954 contract or lease agreement with a private organization or entity for partial or full management,
955 operation and maintenance of any county planetarium and for other planetarium services,
956 which may include providing the physical facilities and equipment for the operation of a
957 planetarium.

958 (b) A contract or lease for ~~[such]~~ the purposes ~~[shall not]~~ described in Subsection (2)(a)
959 may not extend for more than a four-year period and shall be subject to annual review by the
960 board of directors to determine if performance is in conformance with the terms of the contract
961 or lease and to establish the level of the subsequent funding pursuant to the contract or lease.

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

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

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

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

983 **17-38-4. Nontermination of taxing power.**

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

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

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

989 (1) (a) A proposal to create an agriculture protection area or an industrial protection
990 area may be filed with:

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

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

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

999 (ii) For purposes of Subsection (1)(b)(i), the owners of real property shall be
1000 determined by the records of the county recorder.

1001 (2) The proposal shall identify:

1002 (a) the boundaries of the land proposed to become part of an agriculture protection area
1003 or industrial protection area;

1004 (b) any limits on the types of agriculture production or industrial use to be allowed
1005 within the agriculture protection area or industrial protection area, respectively; and

1006 (c) for each parcel of land:

1007 (i) the names of the owners of record of the land proposed to be included within the
1008 agriculture protection area or industrial protection area;

1009 (ii) the tax parcel number or account number identifying each parcel; and

1010 (iii) the number of acres of each parcel.

1011 (3) An agriculture protection area or industrial protection area may include within its
1012 boundaries land used for a roadway, dwelling site, park, or other nonagricultural or, in the case
1013 of an industrial protection area, nonindustrial use if that land constitutes a minority of the total
1014 acreage within the agriculture protection area or industrial protection area, respectively.

1015 (4) A county or municipal legislative body may establish:

1016 (a) the manner and form for submission of proposals; and

1017 (b) reasonable fees for accepting and processing the proposal.

1018 (5) Each county and municipal legislative body shall establish the minimum number of
1019 continuous acres that ~~[must]~~ shall be included in an agriculture protection area or industrial
1020 protection area.

1021 Section 36. Section **17-41-401** is amended to read:

1022 **17-41-401. Farmland Assessment Act benefits not affected.**

1023 (1) Creation of an agriculture protection area ~~[shall not]~~ may not impair the ability of
1024 land within the area to obtain the benefits of Title 59, Chapter 2, Part 5, Farmland Assessment
1025 Act.

1026 (2) The eligibility of land for the benefits of Title 59, Chapter 2, Part 5, Farmland
1027 Assessment Act, shall be determined exclusively by the provisions of that act, notwithstanding
1028 the land's location within an agriculture protection area.

1029 Section 37. Section **17-52-401** is amended to read:

1030 **17-52-401. Contents of proposed optional plan.**

1031 (1) Each optional plan proposed under this chapter:

1032 (a) shall propose the adoption of one of the forms of county government listed in
1033 Subsection 17-52-402(1)(a);

1034 (b) shall contain detailed provisions relating to the transition from the existing form of
1035 county government to the form proposed in the optional plan, including provisions relating to
1036 the:

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

1038 county government;

1039 (ii) retention, elimination, or combining of existing offices and, if an office is

1040 eliminated, the division or department of county government responsible for performing the

1041 duties of the eliminated office;

1042 (iii) continuity of existing ordinances and regulations;

1043 (iv) continuation of pending legislative, administrative, or judicial proceedings;

1044 (v) making of interim and temporary appointments; and

1045 (vi) preparation, approval, and adjustment of necessary budget appropriations;

1046 (c) shall specify the date it is to become effective if adopted, which [~~shall not~~] may not

1047 be earlier than the first day of January next following the election of officers under the new

1048 plan; and

1049 (d) notwithstanding any other provision of this title and except with respect to an

1050 optional plan that proposes the adoption of the county commission or expanded county

1051 commission form of government, with respect to the county budget:

1052 (i) may provide that the county auditor's role is to be the budget officer, to project

1053 county revenues, and to prepare a tentative budget to present to the county executive; and

1054 (ii) shall provide that the county executive's role is to prepare and present a proposed

1055 budget to the county legislative body, and the county legislative body's role is to adopt a final

1056 budget.

1057 (2) Subject to Subsection (3), an optional plan may include provisions that are

1058 considered necessary or advisable to the effective operation of the proposed optional plan.

1059 (3) An optional plan may not include any provision that is inconsistent with or

1060 prohibited by the Utah Constitution or any statute.

1061 (4) Each optional plan proposing to change the form of government to a form under

1062 Section 17-52-504 or 17-52-505 shall:

1063 (a) provide for the same executive and legislative officers as are specified in the

1064 applicable section for the form of government being proposed by the optional plan;

1065 (b) provide for the election of the county council;

1066 (c) specify the number of county council members, which shall be an odd number from
1067 three to nine;

1068 (d) specify whether the members of the county council are to be elected from districts,
1069 at large, or by a combination of at large and by district;

1070 (e) specify county council members' qualifications and terms and whether the terms are
1071 to be staggered;

1072 (f) contain procedures for filling vacancies on the county council, consistent with the
1073 provisions of Section 20A-1-508; and

1074 (g) state the initial compensation, if any, of county council members and procedures for
1075 prescribing and changing compensation.

1076 (5) Each optional plan proposing to change the form of government to the county
1077 commission form under Section 17-52-501 or the expanded county commission form under
1078 Section 17-52-502 shall specify:

1079 (a) (i) for the county commission form of government, that the county commission
1080 shall have three members; or

1081 (ii) for the expanded county commission form of government, whether the county
1082 commission shall have five or seven members;

1083 (b) the terms of office for county commission members and whether the terms are to be
1084 staggered;

1085 (c) whether members of the county commission are to be elected from districts, at
1086 large, or by a combination of at large and from districts; and

1087 (d) if any members of the county commission are to be elected from districts, the
1088 district residency requirements for those commission members.

1089 Section 38. Section **17-53-209** is amended to read:

1090 **17-53-209. Records to be kept.**

1091 The legislative body of each county shall cause to be kept:

1092 (1) a minute record, in which [~~must~~] shall be recorded all orders and decisions made by
1093 the county legislative body and the daily proceedings had at all regular and special meetings;

1094 (2) an allowance record, in which [~~must~~] shall be recorded all orders for the allowance
1095 of money from the county treasury, to whom made and on what account, dating, numbering,
1096 and indexing the same through each year;

1097 (3) a road record, containing all proceedings and adjudications relating to the
1098 establishment, maintenance, charge, and discontinuance of roads and road districts, and all
1099 contracts and other matters pertaining thereto;

1100 (4) a franchise record, containing all franchises granted by the board, for what purpose,
1101 the length of time, and to whom granted, the amount of bond and license tax required or other
1102 consideration to be paid;

1103 (5) an ordinance record, in which [~~must~~] shall be entered all ordinances or laws duly
1104 passed by the county legislative body; and

1105 (6) a warrant record, to be kept by the county auditor, in which [~~must~~] shall be entered
1106 in the order of drawing all warrants drawn on the treasurer, with their number and reference to
1107 the order on the minute record, with date, amount, on what account, and the name of the payee.

1108 Section 39. Section **17-53-311** is amended to read:

1109 **17-53-311. Contracting for management, maintenance, operation, or construction**
1110 **of jails.**

1111 (1) (a) With the approval of the sheriff, a county executive may contract with private
1112 contractors for management, maintenance, operation, and construction of county jails.

1113 (b) A county executive may include a provision in the contract that allows use of a
1114 building authority created under the provisions of Title 17D, Chapter 2, Local Building
1115 Authority Act, to construct or acquire a jail facility.

1116 (c) A county executive may include a provision in the contract that requires that any
1117 jail facility meet any federal, state, or local standards for the construction of jails.

1118 (2) If a county executive contracts only for the management, maintenance, or operation
1119 of a jail, the county executive shall include provisions in the contract that:

1120 (a) require the private contractor to post a performance bond in the amount set by the
1121 county legislative body;

- 1122 (b) establish training standards that [~~must~~] shall be met by jail personnel;
- 1123 (c) require the private contractor to provide and fund training for jail personnel so that
- 1124 the personnel meet the standards established in the contract and any other federal, state, or local
- 1125 standards for the operation of jails and the treatment of jail prisoners;
- 1126 (d) require the private contractor to indemnify the county for errors, omissions,
- 1127 defalcations, and other activities committed by the private contractor that result in liability to
- 1128 the county;
- 1129 (e) require the private contractor to show evidence of liability insurance protecting the
- 1130 county and its officers, employees, and agents from liability arising from the construction,
- 1131 operation, or maintenance of the jail, in an amount not less than those specified in Title 63G,
- 1132 Chapter 7, Governmental Immunity Act of Utah;
- 1133 (f) require the private contractor to:
- 1134 (i) receive all prisoners committed to the jail by competent authority; and
- 1135 (ii) provide them with necessary food, clothing, and bedding in the manner prescribed
- 1136 by the governing body; and
- 1137 (g) prohibit the use of inmates by the private contractor for private business purposes
- 1138 of any kind.
- 1139 (3) A contractual provision requiring the private contractor to maintain liability
- 1140 insurance in an amount not less than the liability limits established by Title 63G, Chapter 7,
- 1141 Governmental Immunity Act of Utah, may not be construed as waiving the limitation on
- 1142 damages recoverable from a governmental entity or its employees established by that chapter.
- 1143 Section 40. Section **17B-1-304** is amended to read:
- 1144 **17B-1-304. Appointment procedures for appointed members.**
- 1145 (1) The appointing authority may, by resolution, appoint persons to serve as members
- 1146 of a local district board by following the procedures established by this section.
- 1147 (2) (a) In any calendar year when appointment of a new local district board member is
- 1148 required, the appointing authority shall prepare a notice of vacancy that contains:
- 1149 (i) the positions that are vacant that [~~must~~] shall be filled by appointment;

1150 (ii) the qualifications required to be appointed to those positions;
1151 (iii) the procedures for appointment that the governing body will follow in making
1152 those appointments; and

1153 (iv) the person to be contacted and any deadlines that a person [~~must~~] shall meet who
1154 wishes to be considered for appointment to those positions.

1155 (b) The appointing authority shall:

1156 (i) post the notice of vacancy in four public places within the local district at least one
1157 month before the deadline for accepting nominees for appointment; and

1158 (ii) (A) publish the notice of vacancy:

1159 (I) in a daily newspaper of general circulation within the local district for five
1160 consecutive days before the deadline for accepting nominees for appointment; or

1161 (II) in a local weekly newspaper circulated within the local district in the week before
1162 the deadline for accepting nominees for appointment; and

1163 (B) in accordance with Section 45-1-101 for five days before the deadline for accepting
1164 nominees for appointment.

1165 (c) The appointing authority may bill the local district for the cost of preparing,
1166 printing, and publishing the notice.

1167 (3) (a) Not sooner than two months after the appointing authority is notified of the
1168 vacancy, the appointing authority shall select a person to fill the vacancy from the applicants
1169 who meet the qualifications established by law.

1170 (b) The appointing authority shall:

1171 (i) comply with Title 52, Chapter 4, Open and Public Meetings Act, in making the
1172 appointment;

1173 (ii) allow any interested persons to be heard; and

1174 (iii) adopt a resolution appointing a person to the local district board.

1175 (c) If no candidate for appointment to fill the vacancy receives a majority vote of the
1176 appointing authority, the appointing authority shall select the appointee from the two top
1177 candidates by lot.

1178 (4) Persons appointed to serve as members of the local district board serve four-year
1179 terms, but may be removed for cause at any time after a hearing by 2/3 vote of the appointing
1180 body.

1181 (5) At the end of each board member's term, the position is considered vacant and the
1182 appointing authority may either reappoint the old board member or appoint a new member after
1183 following the appointment procedures established in this section.

1184 (6) Notwithstanding any other provision of this section, if the appointing authority
1185 appoints one of its own members, it need not comply with the provisions of this section.

1186 Section 41. Section **17B-1-506** is amended to read:

1187 **17B-1-506. Withdrawal petition requirements.**

1188 (1) Each petition under Section 17B-1-504 shall:

1189 (a) indicate the typed or printed name and current address of each owner of acre-feet of
1190 water, property owner, registered voter, or authorized representative of the governing body
1191 signing the petition;

1192 (b) separately group signatures by municipality and, in the case of unincorporated
1193 areas, by county;

1194 (c) if it is a petition signed by the owners of land, the assessment of which is based on
1195 acre-feet of water, indicate the address of the property and the property tax identification parcel
1196 number of the property as to which the owner is signing the request;

1197 (d) designate up to three signers of the petition as sponsors, or in the case of a petition
1198 filed under Subsection 17B-1-504(1)(a)(iv), designate a governmental representative as a
1199 sponsor, and in each case, designate one sponsor as the contact sponsor with the mailing
1200 address and telephone number of each;

1201 (e) state the reasons for withdrawal; and

1202 (f) when the petition is filed with the local district board of trustees, be accompanied by
1203 a map generally depicting the boundaries of the area proposed to be withdrawn and a legal
1204 description of the area proposed to be withdrawn.

1205 (2) (a) The local district may prepare an itemized list of expenses, other than attorney

1206 expenses, that will necessarily be incurred by the local district in the withdrawal proceeding.
1207 The itemized list of expenses may be submitted to the contact sponsor. If the list of expenses is
1208 submitted to the contact sponsor within 21 days after receipt of the petition, the contact sponsor
1209 on behalf of the petitioners shall be required to pay the expenses to the local district within 90
1210 days of receipt. Until funds to cover the expenses are delivered to the local district, the district
1211 will have no obligation to proceed with the withdrawal and the time limits on the district stated
1212 in this part will be tolled. If the expenses are not paid within the 90 days, or within 90 days
1213 from the conclusion of any arbitration under Subsection (2)(b), the petition requesting the
1214 withdrawal shall be considered to have been withdrawn.

1215 (b) If there is no agreement between the board of trustees of the local district and the
1216 contact sponsor on the amount of expenses that will necessarily be incurred by the local district
1217 in the withdrawal proceeding, either the board of trustees or the contact sponsor may submit
1218 the matter to binding arbitration in accordance with Title 78B, Chapter 6, Part 2, Alternative
1219 Dispute Resolution Act; provided that, if the parties cannot agree upon an arbitrator and the
1220 rules and procedures that will control the arbitration, either party may pursue arbitration under
1221 Title 78B, Chapter 11, Utah Uniform Arbitration Act.

1222 (3) A signer of a petition may withdraw or, once withdrawn, reinstate the signer's
1223 signature at any time before the public hearing under Section 17B-1-508 by submitting a
1224 written withdrawal or reinstatement with the board of trustees of the local district in which the
1225 area proposed to be withdrawn is located.

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

1234 shall be considered to have been withdrawn until the municipality files a petition with the local
1235 district under Subsection 17B-1-504(1)(a)(iv).

1236 (5) (a) After receiving the notice required by Subsection 17B-1-504(2), unless
1237 specifically allowed by law, a public entity may not make expenditures from public funds to
1238 support or oppose the gathering of signatures on a petition for withdrawal.

1239 (b) Nothing in this section prohibits a public entity from providing factual information
1240 and analysis regarding a withdrawal petition to the public, so long as the information grants
1241 equal access to both the opponents and proponents of the petition for withdrawal.

1242 (c) Nothing in this section prohibits a public official from speaking, campaigning,
1243 contributing personal money, or otherwise exercising the public official's constitutional rights.

1244 Section 42. Section **17B-1-510** is amended to read:

1245 **17B-1-510. Resolution approving or rejecting withdrawal -- Criteria for approval**
1246 **or rejection -- Terms and conditions.**

1247 (1) (a) On or before the date of the board meeting next following the public hearing
1248 under Section 17B-1-508, but in no case later than 90 days after the public hearing or, if no
1249 hearing is held, within 90 days after the filing of a petition under Section 17B-1-504, the board
1250 of trustees of the local district in which the area proposed to be withdrawn is located shall
1251 adopt a resolution:

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

1253 (ii) rejecting the withdrawal.

1254 (b) Each resolution approving a withdrawal shall:

1255 (i) include a legal description of the area proposed to be withdrawn;

1256 (ii) state the effective date of the withdrawal; and

1257 (iii) set forth the terms and conditions under Subsection (5), if any, of the withdrawal.

1258 (c) Each resolution rejecting a withdrawal shall include a detailed explanation of the
1259 board of trustees' reasons for the rejection.

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

1262 district if the board of trustees determines that:

1263 (a) the area to be withdrawn does not and will not require the service that the local
1264 district provides;

1265 (b) the local district will not be able to provide service to the area to be withdrawn for
1266 the reasonably foreseeable future; or

1267 (c) the area to be withdrawn has obtained the same service that is provided by the local
1268 district or a commitment to provide the same service that is provided by the local district from
1269 another source.

1270 (3) The board of trustees shall adopt a resolution denying the withdrawal if it
1271 determines that the proposed withdrawal would:

1272 (a) result in a breach or default by the local district under:

1273 (i) any of its notes, bonds, or other debt or revenue obligations;

1274 (ii) any of its agreements with entities which have insured, guaranteed, or otherwise
1275 credit-enhanced any debt or revenue obligations of the local district; or

1276 (iii) any of its agreements with the United States or any agency of the United States;
1277 provided, however, that, if the local district has entered into an agreement with the United
1278 States that requires the consent of the United States for a withdrawal of territory from the
1279 district, a withdrawal under this part may occur if the written consent of the United States is
1280 obtained and filed with the board of trustees;

1281 (b) adversely affect the ability of the local district to make any payments or perform
1282 any other material obligations under:

1283 (i) any of its agreements with the United States or any agency of the United States;

1284 (ii) any of its notes, bonds, or other debt or revenue obligations; or

1285 (iii) any of its agreements with entities which have insured, guaranteed, or otherwise
1286 credit-enhanced any debt or revenue obligations of the local district;

1287 (c) result in the reduction or withdrawal of any rating on an outstanding note, bond, or
1288 other debt or revenue obligation of the local district;

1289 (d) create an island or peninsula of nondistrict territory within the local district or of

1290 district territory within nondistrict territory that has a material adverse affect on the local
1291 district's ability to provide service or materially increases the cost of providing service to the
1292 remainder of the local district;

1293 (e) materially impair the operations of the remaining local district; or

1294 (f) require the local district to materially increase the fees it charges or property taxes
1295 or other taxes it levies in order to provide to the remainder of the district the same level and
1296 quality of service that was provided before the withdrawal.

1297 (4) In determining whether the withdrawal would have any of the results described in
1298 Subsection (3), the board of trustees may consider the cumulative impact that multiple
1299 withdrawals over a specified period of time would have on the local district.

1300 (5) (a) Despite the presence of one or more of the conditions listed in Subsection (3),
1301 the board of trustees may approve a resolution withdrawing an area from the local district
1302 imposing terms or conditions that mitigate or eliminate the conditions listed in Subsection (3),
1303 including:

1304 (i) a requirement that the owners of property located within the area proposed to be
1305 withdrawn or residents within that area pay their proportionate share of any outstanding district
1306 bond or other obligation as determined pursuant to Subsection (5)(b);

1307 (ii) a requirement that the owners of property located within the area proposed to be
1308 withdrawn or residents within that area make one or more payments in lieu of taxes, fees, or
1309 assessments;

1310 (iii) a requirement that the board of trustees and the receiving entity agree to reasonable
1311 payment and other terms in accordance with Subsections (5)(f) through (g) regarding the
1312 transfer to the receiving entity of district assets that the district used before withdrawal to
1313 provide service to the withdrawn area but no longer needs because of the withdrawal; provided
1314 that, if those district assets are allocated in accordance with Subsections (5)(f) through (g), the
1315 district shall immediately transfer to the receiving entity on the effective date of the
1316 withdrawal, all title to and possession of district assets allocated to the receiving entity; or

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

1318 trustees.

1319 (b) Other than as provided for in Subsection 17B-1-511(2), and except as provided in
1320 Subsection (5)(e), in determining the proportionate share of outstanding bonded indebtedness
1321 or other obligations under Subsection (5)(a)(i) and for purposes of determining the allocation
1322 and transfer of district assets under Subsection (5)(a)(iii), the board of trustees and the
1323 receiving entity, or in cases where there is no receiving entity, the board and the sponsors of the
1324 petition shall:

1325 (i) engage engineering and accounting consultants chosen by the procedure provided in
1326 Subsection (5)(d); provided however, that if the withdrawn area is not receiving service, an
1327 engineering consultant need not be engaged; and

1328 (ii) require the engineering and accounting consultants engaged under Subsection
1329 (5)(b)(i) to communicate in writing to the board of trustees and the receiving entity, or in cases
1330 where there is no receiving entity, the board and the sponsors of the petition the information
1331 required by Subsections (5)(f) through (h).

1332 (c) For purposes of this Subsection (5):

1333 (i) "accounting consultant" means a certified public accountant or a firm of certified
1334 public accountants with the expertise necessary to make the determinations required under
1335 Subsection (5)(h); and

1336 (ii) "engineering consultant" means a person or firm that has the expertise in the
1337 engineering aspects of the type of system by which the withdrawn area is receiving service that
1338 is necessary to make the determination required under Subsections (5)(f) and (g).

1339 (d) (i) Unless the board of trustees and the receiving entity, or in cases where there is
1340 no receiving entity, the board and the sponsors of the petition agree on an engineering
1341 consultant and an accounting consultant, each consultant shall be chosen from a list of
1342 consultants provided by the Consulting Engineers Council of Utah and the Utah Association of
1343 Certified Public Accountants, respectively, as provided in this Subsection (5)(d).

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

1346 immediately before the list is provided to the local district.

1347 (iii) Within 20 days of receiving the lists described in Subsection (5)(d)(i), the board of
1348 trustees shall eliminate the name of one engineering consultant from the list of engineering
1349 consultants and the name of one accounting consultant from the list of accounting consultants
1350 and shall notify the receiving entity, or in cases where there is no receiving entity, the sponsors
1351 of the petition in writing of the eliminations.

1352 (iv) Within three days of receiving notification under Subsection (5)(d), the receiving
1353 entity, or in cases where there is no receiving entity, the sponsors of the petition shall eliminate
1354 another name of an engineering consultant from the list of engineering consultants and another
1355 name of an accounting consultant from the list of accounting consultants and shall notify the
1356 board of trustees in writing of the eliminations.

1357 (v) The board of trustees and the receiving entity, or in cases where there is no
1358 receiving entity, the board and the sponsors of the petition shall continue to alternate between
1359 them, each eliminating the name of one engineering consultant from the list of engineering
1360 consultants and the name of one accounting consultant from the list of accounting consultants
1361 and providing written notification of the eliminations within three days of receiving
1362 notification of the previous notification, until the name of only one engineering consultant
1363 remains on the list of engineering consultants and the name of only one accounting consultant
1364 remains on the list of accounting consultants.

1365 (e) The requirement under Subsection (5)(b) to engage engineering and accounting
1366 consultants does not apply if the board of trustees and the receiving entity, or in cases where
1367 there is no receiving entity, the board and the sponsors of the petition agree on the allocations
1368 that are the engineering consultant's responsibility under Subsection (5)(f) or the
1369 determinations that are the accounting consultant's responsibility under Subsection (5)(h);
1370 provided however, that if engineering and accounting consultants are engaged, the district and
1371 the receiving entity, or in cases where there is no receiving entity, the district and the sponsors
1372 of the petition shall equally share the cost of the engineering and accounting consultants.

1373 (f) (i) The engineering consultant shall allocate the district assets between the district

1374 and the receiving entity as provided in this Subsection (5)(f).

1375 (ii) The engineering consultant shall allocate:

1376 (A) to the district those assets reasonably needed by the district to provide to the area
1377 of the district remaining after withdrawal the kind, level, and quality of service that was
1378 provided before withdrawal; and

1379 (B) to the receiving entity those assets reasonably needed by the receiving entity to
1380 provide to the withdrawn area the kind and quality of service that was provided before
1381 withdrawal.

1382 (iii) If the engineering consultant determines that both the local district and the
1383 receiving entity reasonably need a district asset to provide to their respective areas the kind and
1384 quality of service provided before withdrawal, the engineering consultant shall:

1385 (A) allocate the asset between the local district and the receiving entity according to
1386 their relative needs, if the asset is reasonably susceptible of division; or

1387 (B) allocate the asset to the local district, if the asset is not reasonably susceptible of
1388 division.

1389 (g) All district assets remaining after application of Subsection (5)(f) shall be allocated
1390 to the local district.

1391 (h) (i) The accounting consultant shall determine the withdrawn area's proportionate
1392 share of any redemption premium and the principal of and interest on:

1393 (A) the local district's revenue bonds that were outstanding at the time the petition was
1394 filed;

1395 (B) the local district's general obligation bonds that were outstanding at the time the
1396 petition was filed; and

1397 (C) the local district's general obligation bonds that:

1398 (I) were outstanding at the time the petition was filed; and

1399 (II) are treated as revenue bonds under Subsection (5)(i); and

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

1402 revenue bonds.

1403 (ii) For purposes of Subsection (5)(h)(i), the withdrawn area's proportionate share of
1404 redemption premium, principal, and interest shall be the amount that bears the same
1405 relationship to the total redemption premium, principal, and interest for the entire district that
1406 the average annual gross revenues from the withdrawn area during the three most recent
1407 complete fiscal years before the filing of the petition bears to the average annual gross revenues
1408 from the entire district for the same period.

1409 (i) For purposes of Subsection (5)(h)(i), a district general obligation bond shall be
1410 treated as a revenue bond if:

1411 (i) the bond is outstanding on the date the petition was filed; and

1412 (ii) the principal of and interest on the bond, as of the date the petition was filed, had
1413 been paid entirely from local district revenues and not from a levy of ad valorem tax.

1414 (j) (i) Before the board of trustees of the local district files a resolution approving a
1415 withdrawal, the receiving entity, or in cases where there is no receiving entity, the sponsors of
1416 the petition shall irrevocably deposit government obligations, as defined in Subsection
1417 11-27-2(6), into an escrow trust fund the principal of and interest on which are sufficient to
1418 provide for the timely payment of the amount determined by the accounting consultant under
1419 Subsection (5)(h) or in an amount mutually agreeable to the board of trustees of the local
1420 district and the receiving entity, or in cases where there is no receiving entity, the board and the
1421 sponsors of the petition. Notwithstanding Subsection 17B-1-512(1), the board of trustees
1422 [~~shall not~~] may not be required to file a resolution approving a withdrawal until the
1423 requirements for establishing and funding an escrow trust fund in this Subsection (5)(j)(i) have
1424 been met; provided that, if the escrow trust fund has not been established and funded within
1425 180 days after the board of trustees passes a resolution approving a withdrawal, the resolution
1426 approving the withdrawal shall be void.

1427 (ii) Concurrently with the creation of the escrow, the receiving entity, or in cases where
1428 there is no receiving entity, the sponsors of the petition shall provide to the board of trustees of
1429 the local district:

1430 (A) a written opinion of an attorney experienced in the tax-exempt status of municipal
1431 bonds stating that the establishment and use of the escrow to pay the proportionate share of the
1432 district's outstanding revenue bonds and general obligation bonds that are treated as revenue
1433 bonds will not adversely affect the tax-exempt status of the bonds; and

1434 (B) a written opinion of an independent certified public accountant verifying that the
1435 principal of and interest on the deposited government obligations are sufficient to provide for
1436 the payment of the withdrawn area's proportionate share of the bonds as provided in Subsection
1437 (5)(h).

1438 (iii) The receiving entity, or in cases where there is no receiving entity, the sponsors of
1439 the petition shall bear all expenses of the escrow and the redemption of the bonds.

1440 (iv) The receiving entity may issue bonds under Title 11, Chapter 14, Local
1441 Government Bonding Act, and Title 11, Chapter 27, Utah Refunding Bond Act, to fund the
1442 escrow.

1443 (6) A requirement imposed by the board of trustees as a condition to withdrawal under
1444 Subsection (5) shall, in addition to being expressed in the resolution, be reduced to a duly
1445 authorized and executed written agreement between the parties to the withdrawal.

1446 (7) An area that is the subject of a withdrawal petition under Section 17B-1-504 that
1447 results in a board of trustees resolution denying the proposed withdrawal may not be the
1448 subject of another withdrawal petition under Section 17B-1-504 for two years after the date of
1449 the board of trustees resolution denying the withdrawal.

1450 Section 43. Section **17B-1-512** is amended to read:

1451 **17B-1-512. Filing of notice and plat -- Recording requirements -- Contest period**
1452 **-- Judicial review.**

1453 (1) (a) Within the time specified in Subsection (1)(b), the board of trustees shall file
1454 with the lieutenant governor:

1455 (i) a copy of a notice of an impending boundary action, as defined in Section 67-1a-6.5,
1456 that meets the requirements of Subsection 67-1a-6.5(3); and

1457 (ii) a copy of an approved final local entity plat, as defined in Section 67-1a-6.5.

1458 (b) The board of trustees shall file the documents listed in Subsection (1)(a):
1459 (i) within 10 days after adopting a resolution approving a withdrawal under Section
1460 17B-1-510; and
1461 (ii) as soon as practicable after receiving a notice under Subsection 10-2-425(2) of an
1462 automatic withdrawal under Subsection 17B-1-502(2), after receiving a copy of the municipal
1463 legislative body's resolution approving an automatic withdrawal under Subsection
1464 17B-1-502(3)(a), or after receiving notice of a withdrawal of a municipality from a local
1465 district under Section 17B-2-505.

1466 (c) Upon the lieutenant governor's issuance of a certificate of withdrawal under Section
1467 67-1a-6.5, the board shall:

1468 (i) if the withdrawn area is located within the boundary of a single county, submit to
1469 the recorder of that county:

1470 (A) the original:

1471 (I) notice of an impending boundary action;

1472 (II) certificate of withdrawal; and

1473 (III) approved final local entity plat; and

1474 (B) if applicable, a certified copy of the resolution or notice referred to in Subsection
1475 (1)(b); or

1476 (ii) if the withdrawn area is located within the boundaries of more than a single county,
1477 submit:

1478 (A) the original of the documents listed in Subsections (1)(c)(i)(A)(I), (II), and (III)
1479 and, if applicable, a certified copy of the resolution or notice referred to in Subsection (1)(b) to
1480 one of those counties; and

1481 (B) a certified copy of the documents listed in Subsections (1)(c)(i)(A)(I), (II), and (III)
1482 and a certified copy of the resolution or notice referred to in Subsection (1)(b) to each other
1483 county.

1484 (2) (a) Upon the lieutenant governor's issuance of the certificate of withdrawal under
1485 Section 67-1a-6.5 for a withdrawal under Section 17B-1-510, for an automatic withdrawal

1486 under Subsection 17B-1-502(3), or for the withdrawal of a municipality from a local district
1487 under Section 17B-1-505, the withdrawal shall be effective, subject to the conditions of the
1488 withdrawal resolution, if applicable.

1489 (b) An automatic withdrawal under Subsection 17B-1-502(3) shall be effective upon
1490 the lieutenant governor's issuance of a certificate of withdrawal under Section 67-1a-6.5.

1491 (3) (a) The local district may provide for the publication of any resolution approving or
1492 denying the withdrawal of an area:

1493 (i) in a newspaper of general circulation in the area proposed for withdrawal; and

1494 (ii) as required in Section 45-1-101.

1495 (b) In lieu of publishing the entire resolution, the local district may publish a notice of
1496 withdrawal or denial of withdrawal, containing:

1497 (i) the name of the local district;

1498 (ii) a description of the area proposed for withdrawal;

1499 (iii) a brief explanation of the grounds on which the board of trustees determined to
1500 approve or deny the withdrawal; and

1501 (iv) the times and place where a copy of the resolution may be examined, which shall
1502 be at the place of business of the local district, identified in the notice, during regular business
1503 hours of the local district as described in the notice and for a period of at least 30 days after the
1504 publication of the notice.

1505 (4) Any sponsor of the petition or receiving entity may contest the board's decision to
1506 deny a withdrawal of an area from the local district by submitting a request, within 60 days
1507 after the resolution is adopted under Section 17B-1-510, to the board of trustees, suggesting
1508 terms or conditions to mitigate or eliminate the conditions upon which the board of trustees
1509 based its decision to deny the withdrawal.

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

1514 provided in Subsection (1).

1515 (6) (a) Any person in interest may seek judicial review of:

1516 (i) the board of trustees' decision to withdraw an area from the local district;

1517 (ii) the terms and conditions of a withdrawal; or

1518 (iii) the board's decision to deny a withdrawal.

1519 (b) Judicial review under this Subsection (6) shall be initiated by filing an action in the
1520 district court in the county in which a majority of the area proposed to be withdrawn is located:

1521 (i) if the resolution approving or denying the withdrawal is published under Subsection
1522 (3), within 60 days after the publication or after the board of trustees' denial of the request
1523 under Subsection (5);

1524 (ii) if the resolution is not published pursuant to Subsection (3), within 60 days after
1525 the resolution approving or denying the withdrawal is adopted; or

1526 (iii) if a request is submitted to the board of trustees of a local district under Subsection
1527 (4), and the board adopts a resolution under Subsection (5), within 60 days after the board
1528 adopts a resolution under Subsection (5) unless the resolution is published under Subsection
1529 (3), in which event the action ~~must~~ shall be filed within 60 days after the publication.

1530 (c) A court in which an action is filed under this Subsection (6) may not overturn, in
1531 whole or in part, the board of trustees' decision to approve or reject the withdrawal unless:

1532 (i) the court finds the board of trustees' decision to be arbitrary or capricious; or

1533 (ii) the court finds that the board materially failed to follow the procedures set forth in
1534 this part.

1535 (d) A court may award costs and expenses of an action under this section, including
1536 reasonable attorney fees, to the prevailing party.

1537 (7) After the applicable contest period under Subsection (4) or (6), no person may
1538 contest the board of trustees' approval or denial of withdrawal for any cause.

1539 Section 44. Section **17B-1-607** is amended to read:

1540 **17B-1-607. Tentative budget to be prepared -- Review by governing body.**

1541 (1) On or before the first regularly scheduled meeting of the board of trustees in

1542 November for a calendar year entity and May for a fiscal year entity, the budget officer of each
1543 local district shall prepare for the ensuing year, on forms provided by the state auditor, and file
1544 with the board of trustees a tentative budget for each fund for which a budget is required.

1545 (2) (a) Each tentative budget under Subsection (1) shall provide in tabular form:

1546 (i) actual revenues and expenditures for the last completed fiscal year;

1547 (ii) estimated total revenues and expenditures for the current fiscal year; and

1548 (iii) the budget officer's estimates of revenues and expenditures for the budget year.

1549 (b) The budget officer shall estimate the amount of revenue available to serve the needs
1550 of each fund, estimate the portion to be derived from all sources other than general property
1551 taxes, and estimate the portion that ~~must~~ shall be derived from general property taxes.

1552 (3) The tentative budget, when filed by the budget officer with the board of trustees,
1553 shall contain the estimates of expenditures together with specific work programs and any other
1554 supporting data required by this part or requested by the board.

1555 (4) The board of trustees shall review, consider, and tentatively adopt the tentative
1556 budget in any regular meeting or special meeting called for that purpose and may amend or
1557 revise the tentative budget in any manner that the board considers advisable prior to public
1558 hearings, but no appropriation required for debt retirement and interest or reduction of any
1559 existing deficits under Section 17B-1-613, or otherwise required by law, may be reduced below
1560 the minimums so required.

1561 (5) When a new district is created, the board of trustees shall:

1562 (a) prepare a budget covering the period from the date of incorporation to the end of
1563 the fiscal year;

1564 (b) substantially comply with all other provisions of this part with respect to notices
1565 and hearings; and

1566 (c) pass the budget as soon after incorporation as feasible.

1567 Section 45. Section **17B-2a-807** is amended to read:

1568 **17B-2a-807. Public transit district board of trustees -- Appointment --**
1569 **Apportionment -- Qualifications -- Quorum -- Compensation -- Terms.**

1570 (1) (a) If 200,000 people or fewer reside within the boundaries of a public transit
1571 district, the board of trustees shall consist of members appointed by the legislative bodies of
1572 each municipality, county, or unincorporated area within any county on the basis of one
1573 member for each full unit of regularly scheduled passenger routes proposed to be served by the
1574 district in each municipality or unincorporated area within any county in the following calendar
1575 year.

1576 (b) For purposes of determining membership under Subsection (1)(a), the number of
1577 service miles comprising a unit shall be determined jointly by the legislative bodies of the
1578 municipalities or counties comprising the district.

1579 (c) The board of trustees of a public transit district under this Subsection (1) may
1580 include a member that is a commissioner on the Transportation Commission created in Section
1581 72-1-301 and appointed as provided in Subsection (11), who shall serve as a nonvoting, ex
1582 officio member.

1583 (d) Members appointed under this Subsection (1) shall be appointed and added to the
1584 board or omitted from the board at the time scheduled routes are changed, or as municipalities,
1585 counties, or unincorporated areas of counties annex to or withdraw from the district using the
1586 same appointment procedures.

1587 (e) For purposes of appointing members under this Subsection (1), municipalities,
1588 counties, and unincorporated areas of counties in which regularly scheduled passenger routes
1589 proposed to be served by the district in the following calendar year is less than a full unit, as
1590 defined in Subsection (1)(b), may combine with any other similarly situated municipality or
1591 unincorporated area to form a whole unit and may appoint one member for each whole unit
1592 formed.

1593 (2) (a) Subject to Section 17B-2a-807.5, if more than 200,000 people reside within the
1594 boundaries of a public transit district, the board of trustees shall consist of:

1595 (i) 11 members:

1596 (A) appointed as described under this Subsection (2); or

1597 (B) retained in accordance with Section 17B-2a-807.5;

- 1598 (ii) three members appointed as described in Subsection (4); and
1599 (iii) one voting member appointed as provided in Subsection (11).
- 1600 (b) Except as provided in Subsections (2)(c) and (d), the board shall apportion voting
1601 members to each county within the district using an average of:
- 1602 (i) the proportion of population included in the district and residing within each county,
1603 rounded to the nearest 1/11 of the total transit district population; and
- 1604 (ii) the cumulative proportion of transit sales and use tax collected from areas included
1605 in the district and within each county, rounded to the nearest 1/11 of the total cumulative transit
1606 sales and use tax collected for the transit district.
- 1607 (c) The board shall join an entire or partial county not apportioned a voting member
1608 under this Subsection (2) with an adjacent county for representation. The combined
1609 apportionment basis included in the district of both counties shall be used for the
1610 apportionment.
- 1611 (d) (i) If rounding to the nearest 1/11 of the total public transit district apportionment
1612 basis under Subsection (2)(b) results in an apportionment of more than 11 members, the county
1613 or combination of counties with the smallest additional fraction of a whole member proportion
1614 shall have one less member apportioned to it.
- 1615 (ii) If rounding to the nearest 1/11 of the total public transit district apportionment
1616 basis under Subsection (2)(b) results in an apportionment of less than 11 members, the county
1617 or combination of counties with the largest additional fraction of a whole member proportion
1618 shall have one more member apportioned to it.
- 1619 (e) If the population in the unincorporated area of a county is at least 140,000, the
1620 county executive, with the advice and consent of the county legislative body, shall appoint one
1621 voting member to represent the population within a county's unincorporated area.
- 1622 (f) If a municipality's population is at least 160,000, the chief municipal executive,
1623 with the advice and consent of the municipal legislative body, shall appoint one voting member
1624 to represent the population within a municipality.
- 1625 (g) (i) The number of voting members appointed from a county and municipalities

1626 within a county under Subsections (2)(e) and (f) shall be subtracted from the county's total
1627 voting member apportionment under this Subsection (2).

1628 (ii) Notwithstanding Subsections (2)(l) and (10), no more than one voting member
1629 appointed by an appointing entity may be a locally elected public official.

1630 (h) If the entire county is within the district, the remaining voting members for the
1631 county shall represent the county or combination of counties, if Subsection (2)(c) applies, or
1632 the municipalities within the county.

1633 (i) If the entire county is not within the district, and the county is not joined with
1634 another county under Subsection (2)(c), the remaining voting members for the county shall
1635 represent a municipality or combination of municipalities.

1636 (j) (i) Except as provided under Subsections (2)(e) and (f), voting members
1637 representing counties, combinations of counties if Subsection (2)(c) applies, or municipalities
1638 within the county shall be designated and appointed by a simple majority of the chief
1639 executives of the municipalities within the county or combinations of counties if Subsection
1640 (2)(c) applies.

1641 (ii) The appointments shall be made by joint written agreement of the appointing
1642 municipalities, with the consent and approval of the county legislative body of the county that
1643 has at least 1/11 of the district's apportionment basis.

1644 (k) Voting members representing a municipality or combination of municipalities shall
1645 be designated and appointed by the chief executive officer of the municipality or simple
1646 majority of chief executive officers of municipalities with the consent of the legislative body of
1647 the municipality or municipalities.

1648 (l) The appointment of voting members shall be made without regard to partisan
1649 political affiliation from among citizens in the community.

1650 (m) Each voting member shall be a bona fide resident of the municipality, county, or
1651 unincorporated area or areas which the voting member is to represent for at least six months
1652 before the date of appointment, and ~~must~~ shall continue in that residency to remain qualified
1653 to serve as a voting member.

1654 (n) (i) All population figures used under this section shall be derived from the most
1655 recent official census or census estimate of the United States Bureau of the Census.

1656 (ii) If population estimates are not available from the United States Bureau of Census,
1657 population figures shall be derived from the estimate from the Utah Population Estimates
1658 Committee.

1659 (iii) All transit sales and use tax totals shall be obtained from the State Tax
1660 Commission.

1661 (o) (i) The board shall be apportioned as provided under this section in conjunction
1662 with the decennial United States Census Bureau report every 10 years.

1663 (ii) Within 120 days following the receipt of the population estimates under this
1664 Subsection (2)(o), the district shall reapportion representation on the board of trustees in
1665 accordance with this section.

1666 (iii) The board shall adopt by resolution a schedule reflecting the current and proposed
1667 apportionment.

1668 (iv) Upon adoption of the resolution, the board shall forward a copy of the resolution to
1669 each of its constituent entities as defined under Section 17B-1-701.

1670 (v) The appointing entities gaining a new board member shall appoint a new member
1671 within 30 days following receipt of the resolution.

1672 (vi) The appointing entities losing a board member shall inform the board of which
1673 member currently serving on the board will step down:

1674 (A) upon appointment of a new member under Subsection (2)(o)(v); or

1675 (B) in accordance with Section 17B-2a-807.5.

1676 (3) Upon the completion of an annexation to a public transit district under Chapter 1,
1677 Part 4, Annexation, the annexed area shall have a representative on the board of trustees on the
1678 same basis as if the area had been included in the district as originally organized.

1679 (4) In addition to the voting members appointed in accordance with Subsection (2), the
1680 board shall consist of three voting members appointed as follows:

1681 (a) one member appointed by the speaker of the House of Representatives;

1682 (b) one member appointed by the president of the Senate; and

1683 (c) one member appointed by the governor.

1684 (5) (a) Except as provided in Section 17B-2a-807.5, the terms of office of the voting
1685 members of the board shall be four years or until a successor is appointed, qualified, seated,
1686 and has taken the oath of office.

1687 (b) (i) A voting member may not be appointed for more than three successive full
1688 terms regardless of the appointing entity that appoints the voting member.

1689 (ii) A person:

1690 (A) may serve no more than 12 years on a public transit district board of trustees
1691 described in Subsection (2)(a) regardless of the appointing entity that appoints the member; and

1692 (B) that has served 12 years on a public transit district board of trustees described in
1693 Subsection (2)(a) is ineligible for reappointment to a public transit board of trustees described
1694 in Subsection (2)(a).

1695 (6) (a) Vacancies for voting members shall be filled by the official appointing the
1696 member creating the vacancy for the unexpired term, unless the official fails to fill the vacancy
1697 within 90 days.

1698 (b) If the appointing official under Subsection (1) does not fill the vacancy within 90
1699 days, the board of trustees of the authority shall fill the vacancy.

1700 (c) If the appointing official under Subsection (2) does not fill the vacancy within 90
1701 days, the governor, with the advice and consent of the Senate, shall fill the vacancy.

1702 (7) (a) Each voting member may cast one vote on all questions, orders, resolutions, and
1703 ordinances coming before the board of trustees.

1704 (b) A majority of all voting members of the board of trustees are a quorum for the
1705 transaction of business.

1706 (c) The affirmative vote of a majority of all voting members present at any meeting at
1707 which a quorum was initially present shall be necessary and, except as otherwise provided, is
1708 sufficient to carry any order, resolution, ordinance, or proposition before the board of trustees.

1709 (8) Each public transit district shall pay to each voting member:

1710 (a) an attendance fee of \$50 per board or committee meeting attended, not to exceed
1711 \$200 in any calendar month to any voting member; and

1712 (b) reasonable mileage and expenses necessarily incurred to attend board or committee
1713 meetings.

1714 (9) (a) Members of the initial board of trustees shall convene at the time and place
1715 fixed by the chief executive officer of the entity initiating the proceedings.

1716 (b) The board of trustees shall elect from its voting membership a chair, vice chair, and
1717 secretary.

1718 (c) The members elected under Subsection (9)(b) shall serve for a period of two years
1719 or until their successors shall be elected and qualified.

1720 (d) On or after January 1, 2011, a locally elected public official is not eligible to serve
1721 as the chair, vice chair, or secretary of the board of trustees.

1722 (10) Except as otherwise authorized under Subsection (2)(g) and Section
1723 17B-2a-807.5, at the time of a voting member's appointment or during a voting member's
1724 tenure in office, a voting member may not hold any employment, except as an independent
1725 contractor or locally elected public official, with a county or municipality within the district.

1726 (11) The Transportation Commission created in Section 72-1-301:

1727 (a) for a public transit district serving a population of 200,000 people or fewer, may
1728 appoint a commissioner of the Transportation Commission to serve on the board of trustees as
1729 a nonvoting, ex officio member; and

1730 (b) for a public transit district serving a population of more than 200,000 people, shall
1731 appoint a commissioner of the Transportation Commission to serve on the board of trustees as
1732 a voting member.

1733 (12) (a) (i) Each member of the board of trustees of a public transit district is subject to
1734 recall at any time by the legislative body of the county or municipality from which the member
1735 is appointed.

1736 (ii) Each recall of a board of trustees member shall be made in the same manner as the
1737 original appointment.

1738 (iii) The legislative body recalling a board of trustees member shall provide written
1739 notice to the member being recalled.

1740 (b) Upon providing written notice to the board of trustees, a member of the board may
1741 resign from the board of trustees.

1742 (c) Except as provided in Section 17B-2a-807.5, if a board member is recalled or
1743 resigns under this Subsection (12), the vacancy shall be filled as provided in Subsection (6).

1744 Section 46. Section **17B-2a-818.5** is amended to read:

1745 **17B-2a-818.5. Contracting powers of public transit districts -- Health insurance**
1746 **coverage.**

1747 (1) For purposes of this section:

1748 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
1749 34A-2-104 who:

1750 (i) works at least 30 hours per calendar week; and

1751 (ii) meets employer eligibility waiting requirements for health care insurance which
1752 may not exceed the first day of the calendar month following 90 days from the date of hire.

1753 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

1754 (c) "Qualified health insurance coverage" means at the time the contract is entered into
1755 or renewed:

1756 (i) a health benefit plan and employer contribution level with a combined actuarial
1757 value at least actuarially equivalent to the combined actuarial value of the benchmark plan
1758 determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and
1759 a contribution level of 50% of the premium for the employee and the dependents of the
1760 employee who reside or work in the state, in which:

1761 (A) the employer pays at least 50% of the premium for the employee and the
1762 dependents of the employee who reside or work in the state; and

1763 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

1764 (I) rather than the benchmark plan's deductible, and the benchmark plan's out-of-pocket
1765 maximum based on income levels:

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

1794 (b) the contract is a sole source contract; or

1795 (c) the contract is an emergency procurement.

1796 (4) (a) This section does not apply to a change order as defined in Section 63G-6-102,
1797 or a modification to a contract, when the contract does not meet the initial threshold required
1798 by Subsection (2).

1799 (b) A person who intentionally uses change orders or contract modifications to
1800 circumvent the requirements of Subsection (2) is guilty of an infraction.

1801 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the public transit
1802 district that the contractor has and will maintain an offer of qualified health insurance coverage
1803 for the contractor's employees and the employee's dependents during the duration of the
1804 contract.

1805 (b) If a subcontractor of the contractor is subject to Subsection (2)(b), the contractor
1806 shall demonstrate to the public transit district that the subcontractor has and will maintain an
1807 offer of qualified health insurance coverage for the subcontractor's employees and the
1808 employee's dependents during the duration of the contract.

1809 (c) (i) (A) A contractor who fails to meet the requirements of Subsection (5)(a) during
1810 the duration of the contract is subject to penalties in accordance with an ordinance adopted by
1811 the public transit district under Subsection (6).

1812 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
1813 requirements of Subsection (5)(b).

1814 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
1815 the duration of the contract is subject to penalties in accordance with an ordinance adopted by
1816 the public transit district under Subsection (6).

1817 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
1818 requirements of Subsection (5)(a).

1819 (6) The public transit district shall adopt ordinances:

1820 (a) in coordination with:

1821 (i) the Department of Environmental Quality in accordance with Section 19-1-206;

- 1822 (ii) the Department of Natural Resources in accordance with Section 79-2-404;
- 1823 (iii) the State Building Board in accordance with Section 63A-5-205;
- 1824 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403; and
- 1825 (v) the Department of Transportation in accordance with Section 72-6-107.5; and
- 1826 (b) which establish:
- 1827 (i) the requirements and procedures a contractor [~~must~~] shall follow to demonstrate to
- 1828 the public transit district compliance with this section which shall include:
- 1829 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
- 1830 (b) more than twice in any 12-month period; and
- 1831 (B) that the actuarially equivalent determination required in Subsection (1) is met by
- 1832 the contractor if the contractor provides the department or division with a written statement of
- 1833 actuarial equivalency from either:
- 1834 (I) the Utah Insurance Department;
- 1835 (II) an actuary selected by the contractor or the contractor's insurer; or
- 1836 (III) an underwriter who is responsible for developing the employer group's premium
- 1837 rates;
- 1838 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
- 1839 violates the provisions of this section, which may include:
- 1840 (A) a three-month suspension of the contractor or subcontractor from entering into
- 1841 future contracts with the public transit district upon the first violation;
- 1842 (B) a six-month suspension of the contractor or subcontractor from entering into future
- 1843 contracts with the public transit district upon the second violation;
- 1844 (C) an action for debarment of the contractor or subcontractor in accordance with
- 1845 Section 63G-6-804 upon the third or subsequent violation; and
- 1846 (D) monetary penalties which may not exceed 50% of the amount necessary to
- 1847 purchase qualified health insurance coverage for employees and dependents of employees of
- 1848 the contractor or subcontractor who were not offered qualified health insurance coverage
- 1849 during the duration of the contract; and

1850 (iii) a website on which the district shall post the benchmark for the qualified health
1851 insurance coverage identified in Subsection (1)(c)(i).

1852 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(b)(ii), a contractor
1853 or subcontractor who intentionally violates the provisions of this section shall be liable to the
1854 employee for health care costs that would have been covered by qualified health insurance
1855 coverage.

1856 (ii) An employer has an affirmative defense to a cause of action under Subsection
1857 (7)(a)(i) if:

1858 (A) the employer relied in good faith on a written statement of actuarial equivalency
1859 provided by an:

1860 (I) actuary; or

1861 (II) underwriter who is responsible for developing the employer group's premium rates;

1862 or

1863 (B) a department or division determines that compliance with this section is not
1864 required under the provisions of Subsection (3) or (4).

1865 (b) An employee has a private right of action only against the employee's employer to
1866 enforce the provisions of this Subsection (7).

1867 (8) Any penalties imposed and collected under this section shall be deposited into the
1868 Medicaid Restricted Account created in Section 26-18-402.

1869 (9) The failure of a contractor or subcontractor to provide qualified health insurance
1870 coverage as required by this section:

1871 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
1872 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
1873 Legal and Contractual Remedies; and

1874 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
1875 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
1876 or construction.

1877 Section 47. Section **18-1-1** is amended to read:

1878 **18-1-1. Liability of owners -- Scierter -- Dogs used in law enforcement.**

1879 (1) Every person owning or keeping a dog [~~shall be~~] is liable in damages for injury
1880 committed by [~~such~~] the dog, and it [~~shall not be~~] is not necessary in [~~any~~] the action brought
1881 therefor to allege or prove that [~~such~~] the dog was of a vicious or mischievous disposition or
1882 that the owner or keeper [~~thereof~~] of the dog knew that it was vicious or mischievous[~~; but~~
1883 neither].

1884 (2) Notwithstanding Subsection (1), neither the state nor any county, city, or town in
1885 the state nor any peace officer employed by any of them shall be liable in damages for injury
1886 committed by a dog [~~when: (1) The~~], if:

1887 (a) the dog has been trained to assist in law enforcement[~~;~~]; and [~~(2)~~]

1888 (b) the injury occurs while the dog is reasonably and carefully being used in the
1889 apprehension, arrest, or location of a suspected offender or in maintaining or controlling the
1890 public order.

1891 Section 48. Section **19-1-206** is amended to read:

1892 **19-1-206. Contracting powers of department -- Health insurance coverage.**

1893 (1) For purposes of this section:

1894 (a) "Employee" means an "employee," "worker," or "operative" as defined in Section
1895 34A-2-104 who:

1896 (i) works at least 30 hours per calendar week; and

1897 (ii) meets employer eligibility waiting requirements for health care insurance which
1898 may not exceed the first day of the calendar month following 90 days from the date of hire.

1899 (b) "Health benefit plan" has the same meaning as provided in Section 31A-1-301.

1900 (c) "Qualified health insurance coverage" means at the time the contract is entered into
1901 or renewed:

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

1906 employee who reside or work in the state, in which:

1907 (A) the employer pays at least 50% of the premium for the employee and the
1908 dependents of the employee who reside or work in the state; and

1909 (B) for purposes of calculating actuarial equivalency under this Subsection (1)(c)(i):

1910 (I) rather than the benchmark plan's deductible, and the benchmark plan's out-of-pocket
1911 maximum based on income levels:

1912 (Aa) the deductible is \$750 per individual and \$2,250 per family; and

1913 (Bb) the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;

1914 (II) dental coverage is not required; and

1915 (III) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not
1916 apply; or

1917 (ii) (A) is a federally qualified high deductible health plan that, at a minimum, has a
1918 deductible that is either:

1919 (I) the lowest deductible permitted for a federally qualified high deductible health plan;
1920 or

1921 (II) a deductible that is higher than the lowest deductible permitted for a federally
1922 qualified high deductible health plan, but includes an employer contribution to a health savings
1923 account in a dollar amount at least equal to the dollar amount difference between the lowest
1924 deductible permitted for a federally qualified high deductible plan and the deductible for the
1925 employer offered federally qualified high deductible plan;

1926 (B) an out-of-pocket maximum that does not exceed three times the amount of the
1927 annual deductible; and

1928 (C) under which the employer pays 75% of the premium for the employee and the
1929 dependents of the employee who work or reside in the state.

1930 (d) "Subcontractor" has the same meaning provided for in Section 63A-5-208.

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

1934 accordance with Subsection (2)(b).

1935 (b) (i) A prime contractor is subject to this section if the prime contract is in the
1936 amount of \$1,500,000 or greater.

1937 (ii) A subcontractor is subject to this section if a subcontract is in the amount of
1938 \$750,000 or greater.

1939 (3) This section does not apply to contracts entered into by the department or a division
1940 or board of the department if:

1941 (a) the application of this section jeopardizes the receipt of federal funds;

1942 (b) the contract or agreement is between:

1943 (i) the department or a division or board of the department; and

1944 (ii) (A) another agency of the state;

1945 (B) the federal government;

1946 (C) another state;

1947 (D) an interstate agency;

1948 (E) a political subdivision of this state; or

1949 (F) a political subdivision of another state;

1950 (c) the executive director determines that applying the requirements of this section to a
1951 particular contract interferes with the effective response to an immediate health and safety
1952 threat from the environment; or

1953 (d) the contract is:

1954 (i) a sole source contract; or

1955 (ii) an emergency procurement.

1956 (4) (a) This section does not apply to a change order as defined in Section 63G-6-103,
1957 or a modification to a contract, when the contract does not meet the initial threshold required
1958 by Subsection (2).

1959 (b) A person who intentionally uses change orders or contract modifications to
1960 circumvent the requirements of Subsection (2) is guilty of an infraction.

1961 (5) (a) A contractor subject to Subsection (2) shall demonstrate to the executive

1962 director that the contractor has and will maintain an offer of qualified health insurance
1963 coverage for the contractor's employees and the employees' dependents during the duration of
1964 the contract.

1965 (b) If a subcontractor of the contractor is subject to Subsection (2), the contractor shall
1966 demonstrate to the executive director that the subcontractor has and will maintain an offer of
1967 qualified health insurance coverage for the subcontractor's employees and the employees'
1968 dependents during the duration of the contract.

1969 (c) (i) (A) A contractor who fails to comply with Subsection (5)(a) during the duration
1970 of the contract is subject to penalties in accordance with administrative rules adopted by the
1971 department under Subsection (6).

1972 (B) A contractor is not subject to penalties for the failure of a subcontractor to meet the
1973 requirements of Subsection (5)(b).

1974 (ii) (A) A subcontractor who fails to meet the requirements of Subsection (5)(b) during
1975 the duration of the contract is subject to penalties in accordance with administrative rules
1976 adopted by the department under Subsection (6).

1977 (B) A subcontractor is not subject to penalties for the failure of a contractor to meet the
1978 requirements of Subsection (5)(a).

1979 (6) The department shall adopt administrative rules:

1980 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

1981 (b) in coordination with:

1982 (i) a public transit district in accordance with Section 17B-2a-818.5;

1983 (ii) the Department of Natural Resources in accordance with Section 79-2-404;

1984 (iii) the State Building Board in accordance with Section 63A-5-205;

1985 (iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

1986 (v) the Department of Transportation in accordance with Section 72-6-107.5; and

1987 (vi) the Legislature's Administrative Rules Review Committee; and

1988 (c) which establish:

1989 (i) the requirements and procedures a contractor [~~must~~] shall follow to demonstrate to

1990 the public transit district compliance with this section [~~which~~ that] shall include:

1991 (A) that a contractor will not have to demonstrate compliance with Subsection (5)(a) or
1992 (b) more than twice in any 12-month period; and

1993 (B) that the actuarially equivalent determination required in Subsection (1) is met by
1994 the contractor if the contractor provides the department or division with a written statement of
1995 actuarial equivalency from either:

1996 (I) the Utah Insurance Department;

1997 (II) an actuary selected by the contractor or the contractor's insurer; or

1998 (III) an underwriter who is responsible for developing the employer group's premium
1999 rates;

2000 (ii) the penalties that may be imposed if a contractor or subcontractor intentionally
2001 violates the provisions of this section, which may include:

2002 (A) a three-month suspension of the contractor or subcontractor from entering into
2003 future contracts with the state upon the first violation;

2004 (B) a six-month suspension of the contractor or subcontractor from entering into future
2005 contracts with the state upon the second violation;

2006 (C) an action for debarment of the contractor or subcontractor in accordance with
2007 Section 63G-6-804 upon the third or subsequent violation; and

2008 (D) notwithstanding Section 19-1-303, monetary penalties which may not exceed 50%
2009 of the amount necessary to purchase qualified health insurance coverage for an employee and
2010 the dependents of an employee of the contractor or subcontractor who was not offered qualified
2011 health insurance coverage during the duration of the contract; and

2012 (iii) a website on which the department shall post the benchmark for the qualified
2013 health insurance coverage identified in Subsection (1)(c)(i).

2014 (7) (a) (i) In addition to the penalties imposed under Subsection (6)(c), a contractor or
2015 subcontractor who intentionally violates the provisions of this section shall be liable to the
2016 employee for health care costs that would have been covered by qualified health insurance
2017 coverage.

2018 (ii) An employer has an affirmative defense to a cause of action under Subsection
2019 (7)(a)(i) if:

2020 (A) the employer relied in good faith on a written statement of actuarial equivalency
2021 provided by:

2022 (I) an actuary; or

2023 (II) an underwriter who is responsible for developing the employer group's premium
2024 rates; or

2025 (B) the department determines that compliance with this section is not required under
2026 the provisions of Subsection (3) or (4).

2027 (b) An employee has a private right of action only against the employee's employer to
2028 enforce the provisions of this Subsection (7).

2029 (8) Any penalties imposed and collected under this section shall be deposited into the
2030 Medicaid Restricted Account created in Section 26-18-402.

2031 (9) The failure of a contractor or subcontractor to provide qualified health insurance
2032 coverage as required by this section:

2033 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
2034 or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8,
2035 Legal and Contractual Remedies; and

2036 (b) may not be used by the procurement entity or a prospective bidder, offeror, or
2037 contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design
2038 or construction.

2039 Section 49. Section **19-2-109.1** is amended to read:

2040 **19-2-109.1. Operating permit required -- Emissions fee -- Implementation.**

2041 (1) As used in this section and Sections 19-2-109.2 and 19-2-109.3:

2042 (a) "EPA" means the federal Environmental Protection Agency.

2043 (b) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.

2044 (c) "Operating permit" means a permit issued by the executive secretary to sources of
2045 air pollution that meet the requirements of Titles IV and V of the 1990 Clean Air Act.

2046 (d) "Program" means the air pollution operating permit program established under this
2047 section to comply with Title V of the 1990 Clean Air Act.

2048 (e) "Regulated pollutant" has the same meaning as defined in Title V of the 1990 Clean
2049 Air Act and implementing federal regulations.

2050 (2) (a) A person may not operate any source of air pollution required to have a permit
2051 under Title V of the 1990 Clean Air Act without having obtained an operating permit from the
2052 executive secretary under procedures the board establishes by rule.

2053 (b) A person is not required to submit an operating permit application until the
2054 governor has submitted an operating permit program to the EPA.

2055 (c) Any operating permit issued under this section may not become effective until the
2056 day after the EPA issues approval of the permit program or November 15, 1995, whichever
2057 occurs first.

2058 (3) (a) Operating permits issued under this section shall be for a period of five years
2059 unless the board makes a written finding, after public comment and hearing, and based on
2060 substantial evidence in the record, that an operating permit term of less than five years is
2061 necessary to protect the public health and the environment of the state.

2062 (b) The executive secretary may issue, modify, or renew an operating permit only after
2063 providing public notice, an opportunity for public comment, and an opportunity for a public
2064 hearing.

2065 (c) The executive secretary shall, in conformity with the 1990 Clean Air Act and
2066 implementing federal regulations, revise the conditions of issued operating permits to
2067 incorporate applicable federal regulations in conformity with Section 502(b)(9) of the 1990
2068 Clean Air Act, if the remaining period of the permit is three or more years.

2069 (d) The executive secretary may terminate, modify, revoke, or reissue an operating
2070 permit for cause.

2071 (4) (a) The board shall establish a proposed annual emissions fee that conforms with
2072 Title V of the 1990 Clean Air Act for each ton of regulated pollutant, applicable to all sources
2073 required to obtain a permit. The emissions fee established under this section is in addition to

2074 fees assessed under Section 19-2-108 for issuance of an approval order.

2075 (b) In establishing the fee the board shall comply with the provisions of Section
2076 63J-1-504 that require a public hearing and require the established fee to be submitted to the
2077 Legislature for its approval as part of the department's annual appropriations request.

2078 (c) The fee shall cover all reasonable direct and indirect costs required to develop and
2079 administer the program and the small business assistance program established under Section
2080 19-2-109.2. The board shall prepare an annual report of the emissions fees collected and the
2081 costs covered by those fees under this Subsection (4).

2082 (d) The fee shall be established uniformly for all sources required to obtain an
2083 operating permit under the program and for all regulated pollutants.

2084 (e) The fee may not be assessed for emissions of any regulated pollutant if the
2085 emissions are already accounted for within the emissions of another regulated pollutant.

2086 (f) An emissions fee may not be assessed for any amount of a regulated pollutant
2087 emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

2088 (5) Emissions fees for the period:

2089 (a) of July 1, 1992, through June 30, 1993, shall be based on the most recent emissions
2090 inventory prepared by the executive secretary; and

2091 (b) on and after July 1, 1993, but ~~[prior to]~~ before issuance of an operating permit, shall
2092 be based on the most recent emissions inventory, unless a source elects prior to July 1, 1992, to
2093 base the fee on allowable emissions, if applicable for a regulated pollutant.

2094 (6) After an operating permit is issued the emissions fee shall be based on actual
2095 emissions for a regulated pollutant unless a source elects, prior to the issuance or renewal of a
2096 permit, to base the fee during the period of the permit on allowable emissions for that regulated
2097 pollutant.

2098 (7) If the owner or operator of a source subject to this section fails to timely pay an
2099 annual emissions fee, the executive secretary may:

2100 (a) impose a penalty of not more than 50% of the fee, in addition to the fee, plus
2101 interest on the fee computed at 12% annually; or

2102 (b) revoke the operating permit.

2103 (8) The owner or operator of a source subject to this section may contest an emissions
2104 fee assessment or associated penalty in an adjudicative hearing under the Title 63G, Chapter 4,
2105 Administrative Procedures Act, and Section 19-1-301, as provided in this Subsection (8).

2106 (a) The owner or operator [~~must~~] shall pay the fee under protest prior to being entitled
2107 to a hearing. Payment of an emissions fee or penalty under protest is not a waiver of the right
2108 to contest the fee or penalty under this section.

2109 (b) A request for a hearing under this Subsection (8) shall be made after payment of the
2110 emissions fee and within six months after the emissions fee was due.

2111 (9) To reinstate an operating permit revoked under Subsection (7) the owner or
2112 operator shall pay all outstanding emissions fees, a penalty of not more than 50% of all
2113 outstanding fees, and interest on the outstanding emissions fees computed at 12% annually.

2114 (10) All emissions fees and penalties collected by the department under this section
2115 shall be deposited in the General Fund as the Air Pollution Operating Permit Program
2116 dedicated credit to be used solely to pay for the reasonable direct and indirect costs incurred by
2117 the department in developing and administering the program and the small business assistance
2118 program under Section 19-2-109.2.

2119 (11) Failure of the executive secretary to act on any operating permit application or
2120 renewal is a final administrative action only for the purpose of obtaining judicial review by any
2121 of the following persons to require the executive secretary to take action on the permit or its
2122 renewal without additional delay:

2123 (a) the applicant;

2124 (b) any person who participated in the public comment process; or

2125 (c) any other person who could obtain judicial review of that action under applicable
2126 law.

2127 Section 50. Section **19-2-113** is amended to read:

2128 **19-2-113. Variances -- Judicial review.**

2129 (1) (a) Any person who owns or is in control of any plant, building, structure,

2130 establishment, process, or equipment may apply to the board for a variance from its rules.

2131 (b) The board may grant the requested variance following an announced public
2132 meeting, if it finds, after considering the endangerment to human health and safety and other
2133 relevant factors, that compliance with the rules from which variance is sought would produce
2134 serious hardship without equal or greater benefits to the public.

2135 (2) A variance may not be granted under this section until the board has considered the
2136 relative interests of the applicant, other owners of property likely to be affected by the
2137 discharges, and the general public.

2138 (3) Any variance or renewal of a variance shall be granted within the requirements of
2139 Subsection (1) and for time periods and under conditions consistent with the reasons for it, and
2140 within the following limitations:

2141 (a) if the variance is granted on the grounds that there are no practicable means known
2142 or available for the adequate prevention, abatement, or control of the air pollution involved, it
2143 shall be only until the necessary means for prevention, abatement, or control become known
2144 and available, and subject to the taking of any substitute or alternate measures that the board
2145 may prescribe;

2146 (b) (i) if the variance is granted on the grounds that compliance with the requirements
2147 from which variance is sought will require that measures, because of their extent or cost, must
2148 be spread over a long period of time, the variance shall be granted for a reasonable time that, in
2149 the view of the board, is required for implementation of the necessary measures; and

2150 (ii) a variance granted on this ground shall contain a timetable for the implementation
2151 of remedial measures in an expeditious manner and shall be conditioned on adherence to the
2152 timetable; or

2153 (c) if the variance is granted on the ground that it is necessary to relieve or prevent
2154 hardship of a kind other than that provided for in Subsection (3)(a) or (b), it [~~shall not~~] may not
2155 be granted for more than one year.

2156 (4) (a) Any variance granted under this section may be renewed on terms and
2157 conditions and for periods that would be appropriate for initially granting a variance.

2158 (b) If a complaint is made to the board because of the variance, a renewal may not be
2159 granted unless, following an announced public meeting, the board finds that renewal is
2160 justified.

2161 (c) To receive a renewal, an applicant shall submit a request for agency action to the
2162 board requesting a renewal.

2163 (d) Immediately upon receipt of an application for renewal, the board shall give public
2164 notice of the application as required by its rules.

2165 (5) (a) A variance or renewal is not a right of the applicant or holder but may be
2166 granted at the board's discretion.

2167 (b) A person aggrieved by the board's decision may obtain judicial review.

2168 (c) Venue for judicial review of informal adjudicative proceedings is in the district
2169 court in which the air contaminant source is situated.

2170 (6) (a) The board may review any variance during the term for which it was granted.

2171 (b) The review procedure is the same as that for an original application.

2172 (c) The variance may be revoked upon a finding that:

2173 (i) the nature or amount of emission has changed or increased; or

2174 (ii) if facts existing at the date of the review had existed at the time of the original
2175 application, the variance would not have been granted.

2176 (7) Nothing in this section and no variance or renewal granted pursuant to it shall be
2177 construed to prevent or limit the application of the emergency provisions and procedures of
2178 Section 19-2-112 to any person or property.

2179 Section 51. Section **19-2-115** is amended to read:

2180 **19-2-115. Violations -- Penalties -- Reimbursement for expenses.**

2181 (1) As used in this section, the terms "knowingly," "willfully," and "criminal
2182 negligence" shall mean as defined in Section 76-2-103.

2183 (2) (a) A person who violates this chapter, or any rule, order, or permit issued or made
2184 under this chapter is subject in a civil proceeding to a penalty not to exceed \$10,000 per day for
2185 each violation.

2186 (b) Subsection (2)(a) also applies to rules made under the authority of Section
2187 19-2-104, for implementation of 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act,
2188 Subchapter II - Asbestos Hazard Emergency Response.

2189 (c) Penalties assessed for violations described in 15 U.S.C.A. 2647, Toxic Substances
2190 Control Act, Subchapter II - Asbestos Hazard Emergency Response, may not exceed the
2191 amounts specified in that section and shall be used in accordance with that section.

2192 (3) A person is guilty of a class A misdemeanor and is subject to imprisonment under
2193 Section 76-3-204 and a fine of not more than \$25,000 per day of violation if that person
2194 knowingly violates any of the following under this chapter:

2195 (a) an applicable standard or limitation;

2196 (b) a permit condition; or

2197 (c) a fee or filing requirement.

2198 (4) A person is guilty of a third degree felony and is subject to imprisonment under
2199 Section 76-3-203 and a fine of not more than \$25,000 per day of violation who knowingly:

2200 (a) makes any false material statement, representation, or certification, in any notice or
2201 report required by permit; or

2202 (b) renders inaccurate any monitoring device or method required to be maintained by
2203 this chapter or applicable rules made under this chapter.

2204 (5) Any fine or penalty assessed under Subsections (2) or (3) is in lieu of any penalty
2205 under Section 19-2-109.1.

2206 (6) A person who willfully violates Section 19-2-120 is guilty of a class A
2207 misdemeanor.

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

2214 in the case of the first offense, and not more than \$50,000 per day of violation in the case of
2215 subsequent offenses.

2216 (8) (a) As used in this section:

2217 (i) "Hazardous air pollutant" means any hazardous air pollutant listed under 42 U.S.C.
2218 7412 or any extremely hazardous substance listed under 42 U.S.C. 11002(a)(2).

2219 (ii) "Organization" means a legal entity, other than a government, established or
2220 organized for any purpose, and includes a corporation, company, association, firm, partnership,
2221 joint stock company, foundation, institution, trust, society, union, or any other association of
2222 persons.

2223 (iii) "Serious bodily injury" means bodily injury which involves a substantial risk of
2224 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
2225 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

2226 (b) (i) A person is guilty of a class A misdemeanor and subject to imprisonment under
2227 Section 76-3-204 and a fine of not more than \$25,000 per day of violation if that person with
2228 criminal negligence:

2229 (A) releases into the ambient air any hazardous air pollutant; and

2230 (B) places another person in imminent danger of death or serious bodily injury.

2231 (ii) As used in this Subsection (8)(b), "person" does not include an employee who is
2232 carrying out the employee's normal activities and who is not a part of senior management
2233 personnel or a corporate officer.

2234 (c) A person is guilty of a second degree felony and is subject to imprisonment under
2235 Section 76-3-203 and a fine of not more than \$50,000 per day of violation if that person:

2236 (i) knowingly releases into the ambient air any hazardous air pollutant; and

2237 (ii) knows at the time that the person is placing another person in imminent danger of
2238 death or serious bodily injury.

2239 (d) If a person is an organization, it shall, upon conviction of violating Subsection
2240 (8)(c), be subject to a fine of not more than \$1,000,000.

2241 (e) (i) A defendant who is an individual is considered to have acted knowingly under

2242 Subsections (8)(c) and (d), if:

2243 (A) the defendant's conduct placed another person in imminent danger of death or
2244 serious bodily injury; and

2245 (B) the defendant was aware of or believed that there was an imminent danger of death
2246 or serious bodily injury to another person.

2247 (ii) Knowledge possessed by a person other than the defendant may not be attributed to
2248 the defendant.

2249 (iii) Circumstantial evidence may be used to prove that the defendant possessed actual
2250 knowledge, including evidence that the defendant took affirmative steps to be shielded from
2251 receiving relevant information.

2252 (f) (i) It is an affirmative defense to prosecution under this Subsection (8) that the
2253 conduct charged was freely consented to by the person endangered and that the danger and
2254 conduct charged were reasonably foreseeable hazards of:

2255 (A) an occupation, a business, a profession; or

2256 (B) medical treatment or medical or scientific experimentation conducted by
2257 professionally approved methods and the other person was aware of the risks involved prior to
2258 giving consent.

2259 (ii) The defendant has the burden of proof to establish any affirmative defense under
2260 this Subsection (8)(f) and ~~must~~ shall prove that defense by a preponderance of the evidence.

2261 (9) (a) Except as provided in Subsection (9)(b), and unless prohibited by federal law,
2262 all penalties assessed and collected under the authority of this section shall be deposited in the
2263 General Fund.

2264 (b) The department may reimburse itself and local governments from money collected
2265 from civil penalties for extraordinary expenses incurred in environmental enforcement
2266 activities.

2267 (c) The department shall regulate reimbursements by making rules in accordance with
2268 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

2269 (i) define qualifying environmental enforcement activities; and

2270 (ii) define qualifying extraordinary expenses.

2271 Section 52. Section **19-3-302** is amended to read:

2272 **19-3-302. Legislative intent.**

2273 (1) (a) The state [~~of Utah~~] enacts this part to prevent the placement of any high-level
2274 nuclear waste or greater than class C radioactive waste in Utah. The state also recognizes that
2275 high-level nuclear waste or greater than class C radioactive waste may be placed within the
2276 exterior boundaries of the state, pursuant to a license from the federal government, or by the
2277 federal government itself, in violation of this state law.

2278 (b) Due to this possibility, the state also enacts provisions in this part to regulate
2279 transportation, transfer, storage, decay in storage, treatment, and disposal of any high-level
2280 nuclear waste and greater than class C radioactive waste in Utah, thereby asserting and
2281 protecting the state's interests in environmental and economic resources consistent with 42
2282 U.S.C.A. 2011 et seq., Atomic Energy Act and 42 U.S.C.A. 10101 et seq., Nuclear Waste
2283 Policy Act, should the federal government decide to authorize any entity to operate, or operate
2284 itself, in violation of this state law.

2285 (2) Neither the Atomic Energy Act nor the Nuclear Waste Policy Act provides for
2286 siting a large privately owned high-level nuclear waste transfer, storage, decay in storage, or
2287 treatment facility away from the vicinity of the reactors. The Atomic Energy Act and the
2288 Nuclear Waste Policy Act specifically define authorized storage and disposal programs and
2289 activities. The state [~~of Utah~~] in enacting this part is not preempted by federal law, since any
2290 proposed facilities that would be sited in Utah are not contemplated or authorized by federal
2291 law and, in any circumstance, this part is not contrary to or inconsistent with federal law or
2292 congressional intent.

2293 (3) The state [~~of Utah~~] has environmental and economic interests which do not involve
2294 nuclear safety regulation, and which [~~must~~] shall be considered and complied with in siting a
2295 high-level nuclear waste or greater than class C radioactive waste transfer, storage, decay in
2296 storage, treatment, or disposal facility and in transporting these wastes in the state.

2297 (4) An additional primary purpose of this part is to ensure protection of the state from

2298 nonradiological hazards associated with any waste transportation, transfer, storage, decay in
2299 storage, treatment, or disposal.

2300 (5) The state recognizes the sovereign rights of Indian tribes within the state [~~of Utah~~].
2301 However, any proposed transfer, storage, decay in storage, treatment, or disposal facility
2302 located on a reservation which directly affects and impacts state interests by creating
2303 off-reservation effects such as potential or actual degradation of soils and groundwater,
2304 potential or actual contamination of surface water, pollution of the ambient air, emergency
2305 planning costs, impacts on development, agriculture, and ranching, and increased
2306 transportation activity, is subject to state jurisdiction.

2307 (6) There is no tradition of regulation by the Indian tribes in Utah of high-level nuclear
2308 waste or higher than class C radioactive waste. The state does have a long history of regulation
2309 of radioactive sources and natural resources and in the transfer, storage, treatment, and
2310 transportation of materials and wastes throughout the state. The state finds that its interests are
2311 even greater when nonmembers of an Indian tribe propose to locate a facility on tribal trust
2312 lands primarily to avoid state regulation and state authorities under federal law.

2313 (7) (a) This part is not intended to modify existing state requirements for obtaining
2314 environmental approvals, permits, and licenses, including surface and groundwater permits and
2315 air quality permits, when the permits are necessary under state and federal law to construct and
2316 operate a high-level nuclear waste or greater than class C radioactive waste transfer, storage,
2317 decay in storage, treatment, or disposal facility.

2318 (b) Any source of air pollution proposed to be located within the state, including
2319 sources located within the boundaries of an Indian reservation, which will potentially or
2320 actually have a direct and significant impact on ambient air within the state, is required to
2321 obtain an approval order and permit from the state under Section 19-2-108.

2322 (c) Any facility which will potentially or actually have a significant impact on the
2323 state's surface or groundwater resources is required to obtain a permit under Section 19-5-107
2324 even if located within the boundaries of an Indian reservation.

2325 (8) The state finds that the transportation, transfer, storage, decay in storage, treatment,

2326 and disposal of high-level nuclear waste and greater than class C radioactive waste within the
2327 state is an ultra-hazardous activity which carries with it the risk that any release of waste may
2328 result in enormous economic and human injury.

2329 Section 53. Section **19-3-308** is amended to read:

2330 **19-3-308. Application fee and annual fees.**

2331 (1) (a) Any application for a waste transfer, storage, decay in storage, treatment, or
2332 disposal facility shall be accompanied by an initial fee of \$5,000,000.

2333 (b) The applicant shall subsequently pay an additional fee to cover the costs to the state
2334 associated with review of the application, including costs to the state and the state's contractors
2335 for permitting, technical, administrative, legal, safety, and emergency response reviews,
2336 planning, training, infrastructure, and other impact analyses, studies, and services required to
2337 evaluate a proposed facility.

2338 (2) For the purpose of funding the state oversight and inspection of any waste transfer,
2339 storage, decay in storage, treatment, or disposal facility, and to establish state infrastructure,
2340 including~~[-but not limited to]~~ providing for state Department of Environmental Quality, state
2341 Department of Transportation, state Department of Public Safety, and other state agencies'
2342 technical, administrative, legal, infrastructure, maintenance, training, safety, socio-economic,
2343 law enforcement, and emergency resources necessary to respond to these facilities, the owner
2344 or operator shall pay to the state a fee as established by department rule under Section
2345 63J-1-504, to be assessed:

2346 (a) per ton of storage cask and high-level nuclear waste per year for storage, decay in
2347 storage, treatment, or disposal of high-level nuclear waste;

2348 (b) per ton of transportation cask and high-level nuclear waste for each transfer of
2349 high-level nuclear waste;

2350 (c) per ton of storage cask and greater than class C radioactive waste for the storage,
2351 decay in storage, treatment, or disposal of greater than class C radioactive waste; and

2352 (d) per ton of transportation cask and greater than class C radioactive waste for each
2353 transfer of greater than class C radioactive waste.

2354 (3) Funds collected under Subsection (2) shall be placed in the Nuclear Accident and
2355 Hazard Compensation Account, created in Subsection 19-3-309(3).

2356 (4) The owner or operator of the facility shall pay the fees imposed under this section
2357 to the department on or before the 15th day of the month following the month in which the fee
2358 accrued.

2359 (5) Annual fees due under this part accrue on July 1 of each year and shall be paid to
2360 the department by July 15 of that year.

2361 Section 54. Section **19-4-112** is amended to read:

2362 **19-4-112. Limit on authority of department and board to control irrigation**
2363 **facilities -- Precautions relating to nonpotable water systems.**

2364 (1) Except as provided in this section and in Section 19-5-104, nothing contained in
2365 this chapter authorizes the department or board to:

2366 (a) exercise administrative control over water used solely for irrigation purposes,
2367 whether conveyed in pipes, ditches, canals, or by other facilities; or

2368 (b) adopt rules relating to the construction, operation, and maintenance of facilities for
2369 conveying irrigation water to the place of use.

2370 (2) Where nonpotable water is conveyed in pipelines under pressure in areas served by
2371 a potable water system, the following precautions shall be observed:

2372 (a) a distinctive coloring or other marking on all exposed portions of the nonpotable
2373 system shall be used;

2374 (b) potable and nonpotable water system service lines and extensions shall be
2375 completely separated and shall be installed in separate trenches;

2376 (c) all hydrants and sprinkling system control valves shall be operated by a removable
2377 key so that it is not possible to turn on the hydrant or valve without a key;

2378 (d) there shall be no cross connection between the potable and nonpotable water
2379 systems;

2380 (e) the nonpotable system [~~shall not~~] may not be extended into any building except
2381 greenhouses or other buildings for plant and animal production; and

2382 (f) no connection in the nonpotable water system shall be made except by the persons
2383 responsible for its management.

2384 Section 55. Section **19-5-102** is amended to read:

2385 **19-5-102. Definitions.**

2386 As used in this chapter:

2387 (1) "Board" means the Water Quality Board created in Section 19-1-106.

2388 (2) "Contaminant" means any physical, chemical, biological, or radiological substance
2389 or matter in water.

2390 (3) "Discharge" means the addition of any pollutant to any waters of the state.

2391 (4) "Discharge permit" means a permit issued to a person who:

2392 (a) discharges or whose activities would probably result in a discharge of pollutants
2393 into the waters of the state; or

2394 (b) generates or manages sewage sludge.

2395 (5) "Disposal system" means a system for disposing of wastes, and includes sewerage
2396 systems and treatment works.

2397 (6) "Effluent limitations" means any restrictions, requirements, or prohibitions,
2398 including schedules of compliance established under this chapter which apply to discharges.

2399 (7) "Executive secretary" means the executive secretary of the board.

2400 (8) "Point source":

2401 (a) means any discernible, confined, and discrete conveyance, including [~~but not~~
2402 ~~limited to~~] any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling
2403 stock, concentrated animal feeding operation, or vessel or other floating craft, from which
2404 pollutants are or may be discharged; and

2405 (b) does not include return flows from irrigated agriculture.

2406 (9) "Pollution" means any man-made or man-induced alteration of the chemical,
2407 physical, biological, or radiological integrity of any waters of the state, unless the alteration is
2408 necessary for the public health and safety.

2409 (10) "Publicly owned treatment works" means any facility for the treatment of

2410 pollutants owned by the state, its political subdivisions, or other public entity.

2411 (11) "Schedule of compliance" means a schedule of remedial measures, including an
2412 enforceable sequence of actions or operations leading to compliance with this chapter.

2413 (12) "Sewage sludge" means any solid, semisolid, or liquid residue removed during the
2414 treatment of municipal wastewater or domestic sewage.

2415 (13) "Sewerage system" means pipelines or conduits, pumping stations, and all other
2416 constructions, devices, appurtenances, and facilities used for collecting or conducting wastes to
2417 a point of ultimate disposal.

2418 (14) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station,
2419 incinerator, or other works used for the purpose of treating, stabilizing, or holding wastes.

2420 (15) "Underground injection" means the subsurface emplacement of fluids by well
2421 injection.

2422 (16) "Underground wastewater disposal system" means a system for disposing of
2423 domestic wastewater discharges as defined by the board and the executive director.

2424 (17) "Waste" or "pollutant" means dredged spoil, solid waste, incinerator residue,
2425 sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive
2426 materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial,
2427 municipal, and agricultural waste discharged into water.

2428 (18) "Waters of the state":

2429 (a) means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs,
2430 irrigation systems, drainage systems, and all other bodies or accumulations of water, surface
2431 and underground, natural or artificial, public or private, which are contained within, flow
2432 through, or border upon this state or any portion of the state; and

2433 (b) does not include bodies of water confined to and retained within the limits of
2434 private property, and which do not develop into or constitute a nuisance, a public health hazard,
2435 or a menace to fish or wildlife.

2436 Section 56. Section **19-5-115** is amended to read:

2437 **19-5-115. Violations -- Penalties -- Civil actions by board -- Ordinances and rules**

2438 **of political subdivisions.**

2439 (1) The terms "knowingly," "willfully," and "criminal negligence" [~~shall mean~~] are as
2440 defined in Section 76-2-103.

2441 (2) Any person who violates this chapter, or any permit, rule, or order adopted under it,
2442 upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty not
2443 to exceed \$10,000 per day of violation.

2444 (3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment
2445 under Section 76-3-204 and a fine not exceeding \$25,000 per day who with criminal
2446 negligence:

2447 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any
2448 condition or limitation included in a permit issued under Subsection 19-5-107(3);

2449 (ii) violates Section 19-5-113;

2450 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned
2451 treatment works; or

2452 (iv) manages sewage sludge in violation of this chapter or rules adopted under it.

2453 (b) A person is guilty of a third degree felony and is subject to imprisonment under
2454 Section 76-3-203 and a fine not to exceed \$50,000 per day of violation who knowingly:

2455 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any
2456 condition or limitation included in a permit issued under Subsection 19-5-107(3);

2457 (ii) violates Section 19-5-113;

2458 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned
2459 treatment works; or

2460 (iv) manages sewage sludge in violation of this chapter or rules adopted under it.

2461 (4) A person is guilty of a third degree felony and subject to imprisonment under
2462 Section 76-3-203 and shall be punished by a fine not exceeding \$10,000 per day of violation if
2463 that person knowingly:

2464 (a) makes a false material statement, representation, or certification in any application,
2465 record, report, plan, or other document filed or required to be maintained under this chapter, or

2466 by any permit, rule, or order issued under it; or

2467 (b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or
2468 method required to be maintained under this chapter.

2469 (5) (a) As used in this section:

2470 (i) "Organization" means a legal entity, other than a government, established or
2471 organized for any purpose, and includes a corporation, company, association, firm, partnership,
2472 joint stock company, foundation, institution, trust, society, union, or any other association of
2473 persons.

2474 (ii) "Serious bodily injury" means bodily injury which involves a substantial risk of
2475 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
2476 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

2477 (b) A person is guilty of a second degree felony and, upon conviction, is subject to
2478 imprisonment under Section 76-3-203 and a fine of not more than \$250,000 if that person:

2479 (i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and

2480 (ii) knows at that time that he is placing another person in imminent danger of death or
2481 serious bodily injury.

2482 (c) If a person is an organization, it shall, upon conviction of violating Subsection
2483 (5)~~(a)~~(b), be subject to a fine of not more than \$1,000,000.

2484 (d) (i) A defendant who is an individual is considered to have acted knowingly if:

2485 (A) the defendant's conduct placed another person in imminent danger of death or
2486 serious bodily injury; and

2487 (B) the defendant was aware of or believed that there was an imminent danger of death
2488 or serious bodily injury to another person.

2489 (ii) Knowledge possessed by a person other than the defendant may not be attributed to
2490 the defendant.

2491 (iii) Circumstantial evidence may be used to prove that the defendant possessed actual
2492 knowledge, including evidence that the defendant took affirmative steps to be shielded from
2493 receiving relevant information.

2494 (e) (i) It is an affirmative defense to prosecution under this Subsection (5) that the
2495 conduct charged was consented to by the person endangered and that the danger and conduct
2496 charged were reasonably foreseeable hazards of:

2497 (A) an occupation, a business, or a profession; or

2498 (B) medical treatment or medical or scientific experimentation conducted by
2499 professionally approved methods and the other person was aware of the risks involved prior to
2500 giving consent.

2501 (ii) The defendant has the burden of proof to establish any affirmative defense under
2502 this Subsection (5)(e) and [~~must~~] shall prove that defense by a preponderance of the evidence.

2503 (6) For purposes of Subsections 19-5-115(3) through (5), a single operational upset
2504 which leads to simultaneous violations of more than one pollutant parameter shall be treated as
2505 a single violation.

2506 (7) (a) The board may begin a civil action for appropriate relief, including a permanent
2507 or temporary injunction, for any violation or threatened violation for which it is authorized to
2508 issue a compliance order under Section 19-5-111.

2509 (b) Actions shall be brought in the district court where the violation or threatened
2510 violation occurs.

2511 (8) (a) The attorney general is the legal advisor for the board and its executive secretary
2512 and shall defend them in all actions or proceedings brought against them.

2513 (b) The county attorney or district attorney as appropriate under Sections 17-18-1,
2514 17-18-1.5, and 17-18-1.7 in the county in which a cause of action arises, shall bring any action,
2515 civil or criminal, requested by the board, to abate a condition that exists in violation of, or to
2516 prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of the
2517 board or the executive secretary issued under this chapter.

2518 (c) The board may itself initiate any action under this section and be represented by the
2519 attorney general.

2520 (9) If any person fails to comply with a cease and desist order that is not subject to a
2521 stay pending administrative or judicial review, the board may, through its executive secretary,

2522 initiate an action for and be entitled to injunctive relief to prevent any further or continued
2523 violation of the order.

2524 (10) Any political subdivision of the state may enact and enforce ordinances or rules
2525 for the implementation of this chapter that are not inconsistent with this chapter.

2526 (11) (a) Except as provided in Subsection (11)(b), all penalties assessed and collected
2527 under the authority of this section shall be deposited in the General Fund.

2528 (b) The department may reimburse itself and local governments from money collected
2529 from civil penalties for extraordinary expenses incurred in environmental enforcement
2530 activities.

2531 (c) The department shall regulate reimbursements by making rules that:

2532 (i) define qualifying environmental enforcement activities; and

2533 (ii) define qualifying extraordinary expenses.

2534 Section 57. Section **19-5-116** is amended to read:

2535 **19-5-116. Limitation on effluent limitation standards for BOD, SS, Coliforms,**
2536 **and pH for domestic or municipal sewage.**

2537 Unless required to meet instream water quality standards or federal requirements
2538 established under the federal Water Pollution Control Act, the board [~~shall not~~] may not
2539 establish, under Section 19-5-104, effluent limitation standards for Biochemical Oxygen
2540 Demand (BOD), Total Suspended Solids (SS), Coliforms, and pH for domestic or municipal
2541 sewage which are more stringent than the following:

2542 (1) Biochemical Oxygen Demand (BOD): The arithmetic mean of BOD values
2543 determined on effluent samples collected during any 30-day period [~~shall not~~] may not exceed
2544 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any seven-day period.

2545 (2) Total Suspended Solids (SS): The arithmetic mean of SS values determined on
2546 effluent samples collected during any 30-day period [~~shall not~~] may not exceed 25 mg/l, nor
2547 shall the arithmetic mean exceed 35 mg/l during any seven-day period.

2548 (3) Coliform: The geometric mean of total coliforms and fecal coliform bacteria in
2549 effluent samples collected during any 30-day period [~~shall not~~] may not exceed either 2000/100

2550 ml for total coliforms or 200/100 ml for fecal coliforms. The geometric mean during any
2551 seven-day period [~~shall not~~] may not exceed 2500/100 ml for total coliforms or 250/100 for
2552 fecal coliforms.

2553 (4) pH: The pH level shall be maintained at a level not less than 6.5 or greater than 9.0.

2554 Section 58. Section **19-5-121** is amended to read:

2555 **19-5-121. Underground wastewater disposal systems -- Certification required to**
2556 **design, inspect, maintain, or conduct percolation or soil tests -- Exemptions -- Rules --**
2557 **Fees.**

2558 (1) As used in this section, "maintain" does not include the pumping of an underground
2559 wastewater disposal system.

2560 (2) (a) Except as provided in Subsections (2)(b) and (2)(c), beginning January 1, 2002,
2561 a person may not design, inspect, maintain, or conduct percolation or soil tests for an
2562 underground wastewater disposal system, without first obtaining certification from the board.

2563 (b) An individual is not required to obtain certification from the board to maintain an
2564 underground wastewater disposal system that serves a noncommercial, private residence owned
2565 by the individual or a member of the individual's family and in which the individual or a
2566 member of the individual's family resides or an employee of the individual resides without
2567 payment of rent.

2568 (c) The board shall make rules allowing an uncertified individual to conduct
2569 percolation or soil tests for an underground wastewater disposal system that serves a
2570 noncommercial, private residence owned by the individual and in which the individual resides
2571 or intends to reside, or which is intended for use by an employee of the individual without
2572 payment of rent, if the individual:

2573 (i) has the capability of properly conducting the tests; and

2574 (ii) is supervised by a certified individual when conducting the tests.

2575 (3) (a) The board shall adopt and enforce rules for the certification and recertification
2576 of individuals who design, inspect, maintain, or conduct percolation or soil tests for
2577 underground wastewater disposal systems.

2578 (b) (i) The rules shall specify requirements for education and training and the type and
2579 duration of experience necessary to obtain certification.

2580 (ii) The rules shall recognize the following in meeting the requirements for
2581 certification:

2582 (A) the experience of a contractor licensed under Title 58, Chapter 55, Utah
2583 Construction Trades Licensing Act, who has five or more years of experience installing
2584 underground wastewater disposal systems;

2585 (B) the experience of an environmental health scientist licensed under Title 58, Chapter
2586 20a, Environmental Health Scientist Act; or

2587 (C) the educational background of a professional engineer licensed under Title 58,
2588 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

2589 (iii) If eligibility for certification is based on experience, the applicant for certification
2590 [~~must~~] shall show proof of experience.

2591 (4) The department may establish fees in accordance with Section 63J-1-504 for the
2592 testing and certification of individuals who design, inspect, maintain, or conduct percolation or
2593 soil tests for underground wastewater disposal systems.

2594 Section 59. Section **19-6-108** is amended to read:

2595 **19-6-108. New nonhazardous solid or hazardous waste operation plans for**
2596 **facility or site -- Administrative and legislative approval required -- Exemptions from**
2597 **legislative and gubernatorial approval -- Time periods for review -- Information required**
2598 **-- Other conditions -- Revocation of approval -- Periodic review.**

2599 (1) For purposes of this section, the following items shall be treated as submission of a
2600 new operation plan:

2601 (a) the submission of a revised operation plan specifying a different geographic site
2602 than a previously submitted plan;

2603 (b) an application for modification of a commercial hazardous waste incinerator if the
2604 construction or the modification would increase the hazardous waste incinerator capacity above
2605 the capacity specified in the operation plan as of January 1, 1990, or the capacity specified in

2606 the operation plan application as of January 1, 1990, if no operation plan approval has been
2607 issued as of January 1, 1990;

2608 (c) an application for modification of a commercial nonhazardous solid waste
2609 incinerator if the construction of the modification would cost 50% or more of the cost of
2610 construction of the original incinerator or the modification would result in an increase in the
2611 capacity or throughput of the incinerator of a cumulative total of 50% above the total capacity
2612 or throughput that was approved in the operation plan as of January 1, 1990, or the initial
2613 approved operation plan if the initial approval is subsequent to January 1, 1990; or

2614 (d) an application for modification of a commercial nonhazardous solid or hazardous
2615 waste treatment, storage, or disposal facility, other than an incinerator, if the modification
2616 would be outside the boundaries of the property owned or controlled by the applicant, as shown
2617 in the application or approved operation plan as of January 1, 1990, or the initial approved
2618 operation plan if the initial approval is subsequent to January 1, 1990.

2619 (2) Capacity under Subsection (1)(b) shall be calculated based on the throughput
2620 tonnage specified for the trial burn in the operation plan or the operation plan application if no
2621 operation plan approval has been issued as of January 1, 1990, and on annual operations of
2622 7,000 hours.

2623 (3) (a) (i) No person may own, construct, modify, or operate any facility or site for the
2624 purpose of disposing of nonhazardous solid waste or treating, storing, or disposing of
2625 hazardous waste without first submitting and receiving the approval of the executive secretary
2626 for an operation plan for that facility or site.

2627 (ii) (A) A permittee who is the current owner of a facility or site that is subject to an
2628 operation plan may submit to the executive secretary information, a report, a plan, or other
2629 request for approval for a proposed activity under an operation plan:

2630 (I) after obtaining the consent of any other permittee who is a current owner of the
2631 facility or site; and

2632 (II) without obtaining the consent of any other permittee who is not a current owner of
2633 the facility or site.

2634 (B) The executive secretary may not:

2635 (I) withhold an approval of an operation plan requested by a permittee who is a current
2636 owner of the facility or site on the grounds that another permittee who is not a current owner of
2637 the facility or site has not consented to the request; or

2638 (II) give an approval of an operation plan requested by a permittee who is not a current
2639 owner before receiving consent of the current owner of the facility or site.

2640 (b) (i) Except for facilities that receive the following wastes solely for the purpose of
2641 recycling, reuse, or reprocessing, no person may own, construct, modify, or operate any
2642 commercial facility that accepts for treatment or disposal, with the intent to make a profit, any
2643 of the wastes listed in Subsection (3)(b)(ii) without first submitting a request to and receiving
2644 the approval of the executive secretary for an operation plan for that facility site.

2645 (ii) Wastes referred to in Subsection (3)(b)(i) are:

2646 (A) fly ash waste, bottom ash waste, slag waste, or flue gas emission control waste
2647 generated primarily from the combustion of coal or other fossil fuels;

2648 (B) wastes from the extraction, beneficiation, and processing of ores and minerals; or

2649 (C) cement kiln dust wastes.

2650 (c) (i) No person may construct any facility listed under Subsection (3)(c)(ii) until ~~he~~
2651 the person receives, in addition to and subsequent to local government approval and subsequent
2652 to the approval required in Subsection (3)(a), approval by the governor and the Legislature.

2653 (ii) Facilities referred to in Subsection (3)(c)(i) are:

2654 (A) commercial nonhazardous solid or hazardous waste treatment or disposal facilities;
2655 and

2656 (B) except for facilities that receive the following wastes solely for the purpose of
2657 recycling, reuse, or reprocessing, any commercial facility that accepts for treatment or disposal,
2658 with the intent to make a profit: fly ash waste, bottom ash waste, slag waste, or flue gas
2659 emission control waste generated primarily from the combustion of coal or other fossil fuels;
2660 wastes from the extraction, beneficiation, and processing of ores and minerals; or cement kiln
2661 dust wastes.

2662 (d) No person need obtain gubernatorial or legislative approval for the construction of
2663 a hazardous waste facility for which an operating plan has been approved by or submitted for
2664 approval to the executive secretary under this section before April 24, 1989, and which has
2665 been determined, on or before December 31, 1990, by the executive secretary to be complete,
2666 in accordance with state and federal requirements for operating plans for hazardous waste
2667 facilities even if a different geographic site is subsequently submitted.

2668 (e) No person need obtain gubernatorial and legislative approval for the construction of
2669 a commercial nonhazardous solid waste disposal facility for which an operation plan has been
2670 approved by or submitted for approval to the executive secretary under this section on or before
2671 January 1, 1990, and which, on or before December 31, 1990, the executive secretary
2672 determines to be complete, in accordance with state and federal requirements applicable to
2673 operation plans for nonhazardous solid waste facilities.

2674 (f) Any person owning or operating a facility or site on or before November 19, 1980,
2675 who has given timely notification as required by Section 3010 of the Resource Conservation
2676 and Recovery Act of 1976, 42 U.S.C. Section 6921, et seq., and who has submitted a proposed
2677 hazardous waste plan under this section for that facility or site, may continue to operate that
2678 facility or site without violating this section until the plan is approved or disapproved under
2679 this section.

2680 (g) (i) The executive secretary shall suspend acceptance of further applications for a
2681 commercial nonhazardous solid or hazardous waste facility upon a finding that ~~he~~ the
2682 executive secretary cannot adequately oversee existing and additional facilities for permit
2683 compliance, monitoring, and enforcement.

2684 (ii) The executive secretary shall report any suspension to the Natural Resources,
2685 Agriculture, and Environment Interim Committee.

2686 (4) The executive secretary shall review each proposed nonhazardous solid or
2687 hazardous waste operation plan to determine whether that plan complies with the provisions of
2688 this part and the applicable rules of the board.

2689 (5) (a) If the facility is a class I or class II facility, the executive secretary shall approve

2690 or disapprove that plan within 270 days from the date it is submitted.

2691 (b) Within 60 days after receipt of the plans, specifications, or other information
2692 required by this section for a class I or II facility, the executive secretary shall determine
2693 whether the plan is complete and contains all information necessary to process the plan for
2694 approval.

2695 (c) (i) If the plan for a class I or II facility is determined to be complete, the executive
2696 secretary shall issue a notice of completeness.

2697 (ii) If the plan is determined by the executive secretary to be incomplete, ~~he~~ the
2698 executive secretary shall issue a notice of deficiency, listing the additional information to be
2699 provided by the owner or operator to complete the plan.

2700 (d) The executive secretary shall review information submitted in response to a notice
2701 of deficiency within 30 days after receipt.

2702 (e) The following time periods may not be included in the 270 day plan review period
2703 for a class I or II facility:

2704 (i) time awaiting response from the owner or operator to requests for information
2705 issued by the executive secretary;

2706 (ii) time required for public participation and hearings for issuance of plan approvals;
2707 and

2708 (iii) time for review of the permit by other federal or state government agencies.

2709 (6) (a) If the facility is a class III or class IV facility, the executive secretary shall
2710 approve or disapprove that plan within 365 days from the date it is submitted.

2711 (b) The following time periods may not be included in the 365 day review period:

2712 (i) time awaiting response from the owner or operator to requests for information
2713 issued by the executive secretary;

2714 (ii) time required for public participation and hearings for issuance of plan approvals;
2715 and

2716 (iii) time for review of the permit by other federal or state government agencies.

2717 (7) If, within 365 days after receipt of a modification plan or closure plan for any

2718 facility, the executive secretary determines that the proposed plan, or any part of it, will not
2719 comply with applicable rules, the executive secretary shall issue an order prohibiting any action
2720 under the proposed plan for modification or closure in whole or in part.

2721 (8) Any person who owns or operates a facility or site required to have an approved
2722 hazardous waste operation plan under this section and who has pending a permit application
2723 before the United States Environmental Protection Agency shall be treated as having an
2724 approved plan until final administrative disposition of the permit application is made under this
2725 section, unless the board determines that final administrative disposition of the application has
2726 not been made because of the failure of the owner or operator to furnish any information
2727 requested, or the facility's interim status has terminated under Section 3005 (e) of the Resource
2728 Conservation and Recovery Act, 42 U.S.C. Section 6925 (e).

2729 (9) No proposed nonhazardous solid or hazardous waste operation plan may be
2730 approved unless it contains the information that the board requires, including:

2731 (a) estimates of the composition, quantities, and concentrations of any hazardous waste
2732 identified under this part and the proposed treatment, storage, or disposal of it;

2733 (b) evidence that the disposal of nonhazardous solid waste or treatment, storage, or
2734 disposal of hazardous waste will not be done in a manner that may cause or significantly
2735 contribute to an increase in mortality, an increase in serious irreversible or incapacitating
2736 reversible illness, or pose a substantial present or potential hazard to human health or the
2737 environment;

2738 (c) consistent with the degree and duration of risks associated with the disposal of
2739 nonhazardous solid waste or treatment, storage, or disposal of specified hazardous waste,
2740 evidence of financial responsibility in whatever form and amount that the executive secretary
2741 determines is necessary to insure continuity of operation and that upon abandonment, cessation,
2742 or interruption of the operation of the facility or site, all reasonable measures consistent with
2743 the available knowledge will be taken to insure that the waste subsequent to being treated,
2744 stored, or disposed of at the site or facility will not present a hazard to the public or the
2745 environment;

2746 (d) evidence that the personnel employed at the facility or site have education and
2747 training for the safe and adequate handling of nonhazardous solid or hazardous waste;

2748 (e) plans, specifications, and other information that the executive secretary considers
2749 relevant to determine whether the proposed nonhazardous solid or hazardous waste operation
2750 plan will comply with this part and the rules of the board; and

2751 (f) compliance schedules, where applicable, including schedules for corrective action
2752 or other response measures for releases from any solid waste management unit at the facility,
2753 regardless of the time the waste was placed in the unit.

2754 (10) The executive secretary may not approve a commercial nonhazardous solid or
2755 hazardous waste operation plan that meets the requirements of Subsection (9) unless it contains
2756 the information required by the board, including:

2757 (a) evidence that the proposed commercial facility has a proven market of
2758 nonhazardous solid or hazardous waste, including:

2759 (i) information on the source, quantity, and price charged for treating, storing, and
2760 disposing of potential nonhazardous solid or hazardous waste in the state and regionally;

2761 (ii) a market analysis of the need for a commercial facility given existing and potential
2762 generation of nonhazardous solid or hazardous waste in the state and regionally; and

2763 (iii) a review of other existing and proposed commercial nonhazardous solid or
2764 hazardous waste facilities regionally and nationally that would compete for the treatment,
2765 storage, or disposal of the nonhazardous solid or hazardous waste;

2766 (b) a description of the public benefits of the proposed facility, including:

2767 (i) the need in the state for the additional capacity for the management of nonhazardous
2768 solid or hazardous waste;

2769 (ii) the energy and resources recoverable by the proposed facility;

2770 (iii) the reduction of nonhazardous solid or hazardous waste management methods,
2771 which are less suitable for the environment, that would be made possible by the proposed
2772 facility; and

2773 (iv) whether any other available site or method for the management of hazardous waste

2774 would be less detrimental to the public health or safety or to the quality of the environment;
2775 and

2776 (c) compliance history of an owner or operator of a proposed commercial
2777 nonhazardous solid or hazardous waste treatment, storage, or disposal facility, which may be
2778 applied by the executive secretary in a nonhazardous solid or hazardous waste operation plan
2779 decision, including any plan conditions.

2780 (11) The executive secretary may not approve a commercial nonhazardous solid or
2781 hazardous waste facility operation plan unless based on the application, and in addition to the
2782 determination required in Subsections (9) and (10), the executive secretary determines that:

2783 (a) the probable beneficial environmental effect of the facility to the state outweighs
2784 the probable adverse environmental effect; and

2785 (b) there is a need for the facility to serve industry within the state.

2786 (12) Approval of a nonhazardous solid or hazardous waste operation plan may be
2787 revoked, in whole or in part, if the person to whom approval of the plan has been given fails to
2788 comply with that plan.

2789 (13) The executive secretary shall review all approved nonhazardous solid and
2790 hazardous waste operation plans at least once every five years.

2791 (14) The provisions of Subsections (10) and (11) do not apply to hazardous waste
2792 facilities in existence or to applications filed or pending in the department prior to April 24,
2793 1989, that are determined by the executive secretary on or before December 31, 1990, to be
2794 complete, in accordance with state and federal requirements applicable to operation plans for
2795 hazardous waste facilities.

2796 (15) The provisions of Subsections (9), (10), and (11) do not apply to a nonhazardous
2797 solid waste facility in existence or to an application filed or pending in the department prior to
2798 January 1, 1990, that is determined by the executive secretary, on or before December 31,
2799 1990, to be complete in accordance with state and federal requirements applicable to operation
2800 plans for nonhazardous solid waste facilities.

2801 (16) Nonhazardous solid waste generated outside of this state that is defined as

2802 hazardous waste in the state where it is generated and which is received for disposal in this
2803 state [~~shall not~~] may not be disposed of at a nonhazardous waste disposal facility owned and
2804 operated by local government or a facility under contract with a local government solely for
2805 disposal of nonhazardous solid waste generated within the boundaries of the local government,
2806 unless disposal is approved by the executive secretary.

2807 (17) This section may not be construed to exempt any facility from applicable
2808 regulation under the federal Atomic Energy Act, 42 U.S.C. Sections 2014 and 2021 through
2809 2114.

2810 Section 60. Section **19-6-116** is amended to read:

2811 **19-6-116. Application of part subject to state assumption of primary**
2812 **responsibility from federal government -- Authority of political subdivisions.**

2813 (1) The requirements of this part applicable to the generation, treatment, storage, or
2814 disposal of hazardous waste, and the rules adopted under this part, [~~shall not~~] do not take effect
2815 until this state is qualified to assume, and does assume, primacy from the federal government
2816 for the control of hazardous wastes.

2817 (2) This part does not alter the authority of political subdivisions of the state to control
2818 solid and hazardous wastes within their local jurisdictions so long as any local laws,
2819 ordinances, or rules are not inconsistent with this part or the rules of the board.

2820 Section 61. Section **19-6-202** is amended to read:

2821 **19-6-202. Definitions.**

2822 As used in this part:

2823 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section
2824 19-1-106.

2825 (2) "Disposal" means the final disposition of hazardous wastes into or onto the lands,
2826 waters, and air of this state.

2827 (3) "Hazardous wastes" means wastes as defined in Section 19-6-102.

2828 (4) "Hazardous waste treatment, disposal, and storage facility" means a facility or site
2829 used or intended to be used for the treatment, storage, or disposal of hazardous waste materials,

2830 including [~~but not limited to~~] physical, chemical, or thermal processing systems, incinerators,
2831 and secure landfills.

2832 (5) "Site" means land used for the treatment, disposal, or storage of hazardous wastes.

2833 (6) "Siting plan" means the state hazardous waste facilities siting plan adopted by the
2834 board pursuant to Sections 19-6-204 and 19-6-205.

2835 (7) "Storage" means the containment of hazardous wastes for a period of more than 90
2836 days.

2837 (8) "Treatment" means any method, technique, or process designed to change the
2838 physical, chemical, or biological character or composition of any hazardous waste to neutralize
2839 or render it nonhazardous, safer for transport, amenable to recovery or storage, convertible to
2840 another usable material, or reduced in volume and suitable for ultimate disposal.

2841 Section 62. Section **19-6-203** is amended to read:

2842 **19-6-203. Other provisions relating to hazardous waste.**

2843 This part [~~shall not~~] may not be construed to supersede any other state or local law
2844 relating to hazardous waste, except as otherwise provided in Section 19-6-207.

2845 Section 63. Section **19-6-205** is amended to read:

2846 **19-6-205. Siting plan -- Procedure for adoption -- Review -- Effect.**

2847 (1) After completion of the guidelines, the board shall prepare and publish a
2848 preliminary siting plan for the state. The preliminary siting plan is not final until adopted by the
2849 board in accordance with Subsection (2) and shall be based upon the guidelines adopted under
2850 Section 19-6-204 and be published within one year after adoption of the guidelines.

2851 (2) (a) After completion of its guidelines, the board shall publish notice of intent to
2852 prepare a siting plan. The notice shall invite all interested persons to nominate sites for
2853 inclusion in the siting plan. It shall be published at least twice in not less than two newspapers
2854 with statewide circulation and shall also be sent to any person, business, or other organization
2855 that has notified the board of an interest or involvement in hazardous waste management
2856 activities.

2857 (b) Nominations for the location of hazardous waste sites shall be accepted by the

2858 board for a period of 120 days after the date of first publication of notice. Nominations may
2859 include a description of the site or sites suggested or may simply suggest a general area. In
2860 addition, any nomination may provide data and reasons in support of inclusion of the site
2861 nominated.

2862 (c) The board, in cooperation with other state agencies and private sources, shall then
2863 prepare an inventory of:

2864 (i) the hazardous wastes generated in the state;

2865 (ii) those likely to be generated in the future;

2866 (iii) those being generated in other states that are likely to be treated, disposed of, or
2867 stored in the state;

2868 (iv) the sites within the state currently being used for hazardous waste and those
2869 suggested through the nomination process;

2870 (v) the treatment, storage, and disposal processes and management practices that are
2871 required to comply with Section 19-6-108; and

2872 (vi) an estimate of the public and private costs for meeting the long-term demand for
2873 hazardous waste treatment, disposal, and storage facilities.

2874 (d) (i) After the hazardous waste inventory and cost estimate are complete, the board,
2875 with the use of the guidelines developed in Section 19-6-204, shall provide for the geographical
2876 distribution of enough sites to fulfill the state's needs for hazardous waste disposal, treatment,
2877 and storage for the next 25 years.

2878 (ii) The board [~~shall not~~] may not exclude any area of the state from consideration in
2879 the selection of potential sites but, to the maximum extent possible, shall give preference to
2880 sites located in areas already dedicated through zoning or other land use regulations to
2881 industrial use or to areas located near industrial uses. However, the board shall give
2882 consideration to excluding an area designated for disposal of uranium mill tailings or for
2883 disposal of nuclear wastes unless the proposed disposal site is approved by the affected county
2884 through its county executive and county legislative body.

2885 (e) The board shall also analyze and identify areas of the state where, due to the

2886 concentration of industrial waste generation processes or to favorable geology or hydrology, the
2887 construction and operation of hazardous waste treatment, disposal, and storage facilities
2888 appears to be technically, environmentally, and economically feasible.

2889 (3) (a) The preliminary siting plan prepared pursuant to Subsection (2) shall, before
2890 adoption, be distributed to all units of local government located near existing or proposed sites.

2891 (b) Notice of the availability of the preliminary siting plan for examination shall be
2892 published at least twice in two newspapers, if available, with general circulation in the areas of
2893 the state that potentially will be affected by the plan.

2894 (c) The board shall also issue a statewide news release that informs persons where
2895 copies of the preliminary siting plan may be inspected or purchased at cost.

2896 (d) After release of the preliminary siting plan, the board shall hold not less than two
2897 public hearings in different areas of the state affected by the proposed siting plan to allow local
2898 officials and other interested persons to express their views and submit information relevant to
2899 the plan. The hearings shall be conducted not less than 60 nor more than 90 days after release
2900 of the plan. Within 30 days after completion of the hearings, the board shall prepare and make
2901 available for public inspection a summary of public comments.

2902 (4) (a) The board, between 30 and 60 days after publication of the public comments,
2903 shall prepare a final siting plan.

2904 (b) The final siting plan shall be widely distributed to members of the public.

2905 (c) The board, at any time between 30 and 60 days after release of the final plan, on its
2906 own initiative or that of interested parties, shall hold not less than two public hearings in each
2907 area of the state affected by the final plan to allow local officials and other interested persons to
2908 express their views.

2909 (d) The board, within 30 days after the last hearing, shall vote to adopt, adopt with
2910 modification, or reject the final siting plan.

2911 (5) (a) Any person adversely affected by the board's decision may seek judicial review
2912 of the decision by filing a petition for review with the district court for Salt Lake County within
2913 90 days after the board's decision.

2914 (b) Judicial review may be had, however, only on the grounds that the board violated
2915 the procedures set forth in this section, that it acted without or in excess of its powers, or that
2916 its actions were arbitrary or capricious and not based on substantial evidence.

2917 (6) If the final siting plan is adopted, the board shall cause it to be published.

2918 (7) After publication of the final siting plan, the board shall engage in a continuous
2919 monitoring and review process to ensure that the long-range needs of hazardous waste
2920 producers likely to dispose of hazardous wastes in this state are met at a reasonable cost. An
2921 annual review of the adequacy of the plan shall be conducted and published by the board.

2922 (8) (a) If necessary, the board may amend the siting plan to provide additional sites or
2923 delete sites which are no longer suitable.

2924 (b) Before any plan amendment adding or deleting a site is adopted, the board, upon
2925 not less than 20 days' public notice, shall hold at least one public hearing in the area where the
2926 affected site is located.

2927 (9) After adoption of the final plan, an applicant for approval of a plan to construct and
2928 operate a hazardous waste treatment, storage, and disposal facility who seeks protection under
2929 this part shall select a site contained on the final site plan.

2930 (10) Nothing in this part, however, shall be construed to prohibit the construction and
2931 operation of an approved hazardous waste treatment, storage, and disposal facility at a site
2932 which is not included within the final site plan, but such a facility is not entitled to the
2933 protections afforded under this part.

2934 Section 64. Section **19-6-413** is amended to read:

2935 **19-6-413. Tank tightness test -- Actions required after testing.**

2936 (1) The owner or operator of any petroleum storage tank registered [~~prior to~~] before
2937 July 1, 1991, [~~must~~] shall submit to the executive secretary the results of a tank tightness test
2938 conducted:

2939 (a) on or after September 1, 1989, and [~~prior to~~] before January 1, 1990, if the test
2940 meets requirements set by rule regarding tank tightness tests that were applicable during that
2941 period; or

2942 (b) on or after January 1, 1990, and [~~prior to~~] before July 1, 1991.

2943 (2) The owner or operator of any petroleum storage tank registered on or after July 1,
2944 1991, [~~must~~] shall submit to the executive secretary the results of a tank tightness test
2945 conducted within the six months before the tank was registered or within 60 days after the date
2946 the tank was registered.

2947 (3) If the tank test performed under Subsection (1) or (2) shows no release of
2948 petroleum, the owner or operator of the petroleum storage tank shall submit a letter to the
2949 executive secretary at the same time the owner or operator submits the test results, stating that
2950 under customary business inventory practices standards, the owner or operator is not aware of
2951 any release of petroleum from the tank.

2952 (4) (a) If the tank test shows a release of petroleum from the petroleum storage tank,
2953 the owner or operator of the tank shall:

- 2954 (i) correct the problem; and
- 2955 (ii) submit evidence of the correction to the executive secretary.

2956 (b) When the executive secretary receives evidence from an owner or operator of a
2957 petroleum storage tank that the problem with the tank has been corrected, the executive
2958 secretary shall:

- 2959 (i) approve or disapprove the correction; and
- 2960 (ii) notify the owner or operator that the correction has been approved or disapproved.

2961 (5) The executive secretary shall review the results of the tank tightness test to
2962 determine compliance with this part and any rules adopted under the authority of Section
2963 19-6-403.

2964 (6) If the owner or operator of the tank is required by 40 C.F.R., Part 280, Subpart D,
2965 to perform release detection on the tank, the owner or operator shall submit the results of the
2966 tank tests in compliance with 40 C.F.R., Part 280, Subpart D.

2967 Section 65. Section **19-6-714** is amended to read:

2968 **19-6-714. Recycling fee on sale of oil.**

2969 (1) On and after October 1, 1993, a recycling fee of \$.04 per quart or \$.16 per gallon is

2970 imposed upon the first sale in Utah by a lubricating oil vendor of lubricating oil. The
2971 lubricating oil vendor shall collect the fee at the time the lubricating oil is sold.

2972 (2) A fee under this section [~~shall not~~] may not be collected on sales of lubricating oil:

2973 (a) shipped outside the state;

2974 (b) purchased in five-gallon or smaller containers and used solely in underground
2975 mining operations; or

2976 (c) in bulk containers of 55 gallons or more.

2977 (3) This fee is in addition to all other state, county, or municipal fees and taxes
2978 imposed on the sale of lubricating oil.

2979 (4) The exemptions from sales and use tax provided in Section 59-12-104 do not apply
2980 to this part.

2981 (5) The commission may make rules to implement and enforce the provisions of this
2982 section.

2983 Section 66. Section **19-6-814** is amended to read:

2984 **19-6-814. Local health department responsibility.**

2985 (1) A local health department that has received an application for partial
2986 reimbursement from a recycler shall within 15 calendar days after receiving the application:

2987 (a) review the application for completeness;

2988 (b) conduct an on-site investigation of the recycler's waste tire use if the application is
2989 the initial application of the recycler; and

2990 (c) submit the recycler's application for partial reimbursement together with a brief
2991 written report of the results of the investigation and the dollar amount approved for payment to
2992 the Division of Finance.

2993 (2) If the local health department approves a dollar amount for partial reimbursement
2994 which is less than the amount requested by the recycler, the local health department [~~must~~]
2995 shall submit its written report of the investigation and recommendation to the recycler at least
2996 five days prior to submitting the report and recommendation to the Division of Finance.

2997 Section 67. Section **19-9-105** is amended to read:

2998 **19-9-105. Powers of authority.**

2999 The authority is a body corporate and politic that may:

3000 (1) sue and be sued in its own name;

3001 (2) have a seal and alter the seal at will;

3002 (3) borrow money and issue obligations, including refunding obligations, and provide
3003 for the rights of holders of those obligations;

3004 (4) establish hazardous waste treatment, disposal, or storage surcharge schedules for
3005 facilities operated by, or under authority of, the authority, and require all private facility
3006 operators who contract with the authority to collect fees for all hazardous waste received for
3007 treatment, disposal, or storage by those private facilities;

3008 (5) promulgate rules pursuant to Title 63G, Chapter 3, Utah Administrative
3009 Rulemaking Act, governing the exercise of its powers and fulfillment of its purposes;

3010 (6) enter into contracts and leases and execute all instruments necessary, convenient, or
3011 desirable;

3012 (7) acquire, purchase, hold, lease, use, or dispose of any property or any interest in
3013 property that is necessary, convenient, or desirable to carry out the purposes of this chapter, and
3014 sell, lease, transfer, and dispose of any property or interest in property at any time required in
3015 the exercise of its power, including~~[-but not limited to,]~~ the sale, transfer, or disposal of any
3016 materials, substances, or sources or forms of energy derived from any activity engaged in by
3017 the authority;

3018 (8) contract with experts, advisers, consultants, and agents for needed services;

3019 (9) appoint officers and employees required for the performance of its duties, and fix
3020 and determine their qualifications and duties;

3021 (10) make, or contract for, plans, surveys, and studies necessary, convenient, or
3022 desirable to effectuate its purposes and powers and prepare any recommendations with respect
3023 to those plans, surveys, or studies;

3024 (11) receive and accept aid or contributions from any source, including the United
3025 States or the state, in the form of money, property, labor, or other things of value to be held,

3026 used, and applied to carry out the purposes of this chapter, subject to the conditions imposed
3027 upon that aid or contributions consistent with this chapter;

3028 (12) enter into agreements with any department, agency, or instrumentality of the
3029 United States or this state, or any financial institution, or contractor for the purpose of leasing
3030 and operating any facility;

3031 (13) consent to the modification of any obligation with the holder of that obligation, to
3032 the extent permitted by the obligation, relating to rates of interest or to the time and payment of
3033 any installment of principal or interest, or to the modification of any other contract, mortgage,
3034 mortgage loan, mortgage loan commitment, or agreement of any kind to which it is a party;

3035 (14) pledge revenues from any hazardous waste treatment, disposal, and storage facility
3036 to secure payment of any obligations relating to that facility, including interest on, and
3037 redemption of, those obligations;

3038 (15) execute or cause to be executed, mortgages, trust deeds, indentures, pledge
3039 agreements, assignments, security agreements, and financing statements that encumber
3040 property acquired, constructed, reconstructed, renovated, or repaired with the proceeds from the
3041 sale of such obligations;

3042 (16) exercise the power of eminent domain;

3043 (17) do all other things necessary to comply with the requirements of 42 U.S.C.
3044 Sections 6901-6986, the Resource Conservation and Recovery Act of 1976, and this part;

3045 (18) contract for the construction, operation, and maintenance of hazardous waste
3046 treatment, storage, and disposal facilities, including plants, works, instrumentalities, or parts
3047 thereof, for the collection, conveyance, treatment, exchange, storage, and disposal of hazardous
3048 waste, subject to approval by the board; and

3049 (19) exercise any other powers or duties necessary or appropriate to carry out and
3050 effectuate this chapter.

3051 Section 68. Section **19-9-109** is amended to read:

3052 **19-9-109. Security for obligations -- Provisions of security instruments.**

3053 (1) The principal and interest on any obligation issued pursuant to this chapter shall be

3054 secured by:

3055 (a) a pledge and assignment of the proceeds earned by the facility built and acquired
3056 with the proceeds of the obligations;

3057 (b) a mortgage or trust deed on the facility built and acquired with the proceeds from
3058 the obligations; and

3059 (c) such other security on the facility as is deemed most advantageous by the authority.

3060 (2) Obligations authorized for issuance under this chapter and any mortgage or other
3061 security given to secure such obligations may contain any provisions customarily contained in
3062 security instruments, including~~[-but not limited to]:~~

3063 (a) the fixing and collection of fees from the facility;

3064 (b) the maintenance of insurance on the facility;

3065 (c) the creation and maintenance of special funds to receive revenues earned by the
3066 facility; and

3067 (d) the rights and remedies available to obligation holders in the event of default.

3068 (3) All mortgages, trust deeds, security agreements, or trust indentures on a facility
3069 shall provide, in the event of foreclosure, that no deficiency judgment may be entered against
3070 the authority, the state, or any of the state's political subdivisions.

3071 (4) Any mortgage or other security instrument securing such obligations may provide
3072 that in the event of a default in the payment of principal or interest or in the performance of any
3073 agreement, that payment or performance may be enforced by the appointment of a receiver with
3074 power to charge and collect fees and to apply the revenues from the facility in accordance with
3075 the provisions of the security instrument.

3076 (5) Any mortgage or other security instrument made pursuant to this chapter may also
3077 provide that in the event of default in payment or breach of a condition, that the mortgage may
3078 be foreclosed or otherwise satisfied in any manner permitted by law, and that the trustee under
3079 the mortgage or the holder of any obligation secured by such mortgage may, if the highest
3080 bidder, purchase the security at foreclosure sale.

3081 Section 69. Section **19-10-104** is amended to read:

3082 **19-10-104. Requirements for creation of institutional control.**

3083 An environmental institutional control shall:

3084 (1) be in writing and shall be recorded by the owner of the real property in the county
3085 recorder's office in the county where the real property is located;

3086 (2) contain a legal description of the area of the real property that is subject to the
3087 institutional control;

3088 (3) include a statement documenting any requirements for maintenance of the
3089 institutional control, including a description of the institutional control and the reason it must
3090 remain in place to protect the public health, safety, or welfare, or the environment;

3091 (4) include a statement that the institutional control runs with the land and is binding
3092 on all successors in interest unless or until the institutional control is removed as provided in
3093 Section 19-10-105;

3094 (5) include a statement acknowledging the department's right of access to the property
3095 at all reasonable times to verify that the institutional controls are being maintained;

3096 (6) include a statement explaining how the institutional control can be modified or
3097 terminated and stating that if any person desires to cancel or modify the institutional control in
3098 the future, the person [~~must~~] shall obtain prior written approval from the executive director
3099 pursuant to this chapter;

3100 (7) include a notarized signature of the executive director indicating approval of the
3101 environmental institutional control; and

3102 (8) include the notarized signature of the property owner indicating approval of the
3103 environmental institutional control.

3104 Section 70. Section **20A-1-401** is amended to read:

3105 **20A-1-401. Interpretation of election laws -- Computation of time.**

3106 (1) Courts and election officers shall construe the provisions of [~~Title 20A, Election~~
3107 ~~Code,~~] this title liberally to carry out the intent of this title.

3108 (2) Except as provided under Subsection (3), Saturdays, Sundays, and holidays shall be
3109 included in all computations of days made under the provisions of [~~Title 20A, Election Code~~]

3110 this title.

3111 (3) Unless otherwise specifically provided for under this title [20A]:

3112 (a) when computing any number of days before or after a specified date or event under
3113 this [~~Title 20A~~] title, the specified date or day of the event [~~shall not be~~] is not included in the
3114 count; and

3115 (b) (i) if the commencement date of a time period preceding a specified date or event
3116 falls on a Saturday, Sunday, or legal holiday, the following business day shall be used;

3117 (ii) if the last day of a time period following a specified date or event falls on a
3118 Saturday, Sunday, or legal holiday, the time period shall be extended to the following business
3119 day; and

3120 (iii) if a deadline that falls before or after a specified date or event falls on a Saturday,
3121 Sunday, or legal holiday, the deadline shall be considered to fall on the following business day.

3122 Section 71. Section **20A-1-508** is amended to read:

3123 **20A-1-508. Midterm vacancies in county elected offices.**

3124 (1) As used in this section:

3125 (a) "County offices" includes the county executive, members of the county legislative
3126 body, the county treasurer, the county sheriff, the county clerk, the county auditor, the county
3127 recorder, the county surveyor, and the county assessor.

3128 (b) "County offices" does not mean the offices of president and vice president of the
3129 United States, United States senators and representatives, members of the Utah Legislature,
3130 state constitutional officers, county attorneys, district attorneys, and judges.

3131 (2) (a) Until a replacement is selected as provided in this section and has qualified, the
3132 county legislative body shall appoint an interim replacement to fill the vacant office by
3133 following the procedures and requirements of this Subsection (2).

3134 (b) (i) To appoint an interim replacement, the county legislative body shall give notice
3135 of the vacancy to the county central committee of the same political party of the prior office
3136 holder and invite that committee to submit the names of three nominees to fill the vacancy.

3137 (ii) That county central committee shall, within 30 days, submit the names of three

3138 nominees for the interim replacement to the county legislative body.

3139 (iii) The county legislative body shall, within 45 days after the vacancy occurs, appoint
3140 one of those nominees to serve out the unexpired term.

3141 (c) (i) If the county legislative body fails to appoint an interim replacement to fill the
3142 vacancy within 45 days, the county clerk shall send to the governor a letter that:

3143 (A) informs the governor that the county legislative body has failed to appoint a
3144 replacement within the statutory time period; and

3145 (B) contains the list of nominees submitted by the party central committee.

3146 (ii) The governor shall appoint an interim replacement from that list of nominees to fill
3147 the vacancy within 30 days after receipt of the letter.

3148 (d) A person appointed as interim replacement under this Subsection (2) shall hold
3149 office until their successor is elected and has qualified.

3150 (3) (a) The requirements of this Subsection (3) apply to all county offices that become
3151 vacant if:

3152 (i) the vacant office has an unexpired term of two years or more; and

3153 (ii) the vacancy occurs after the election at which the person was elected but before
3154 April 10 of the next even-numbered year.

3155 (b) (i) When the conditions established in Subsection (3)(a) are met, the county clerk
3156 shall notify the public and each registered political party that the vacancy exists.

3157 (ii) All persons intending to become candidates for the vacant office shall:

3158 (A) file a declaration of candidacy according to the procedures and requirements of
3159 Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy; and

3160 (B) if nominated as a party candidate or qualified as an independent or write-in
3161 candidate under Chapter 8, Political Party Formation and Procedures, run in the regular general
3162 election.

3163 (4) (a) The requirements of this Subsection (4) apply to all county offices that become
3164 vacant if:

3165 (i) the vacant office has an unexpired term of two years or more; and

3166 (ii) the vacancy occurs after April 9 of the next even-numbered year but more than 50
3167 days before the regular primary election.

3168 (b) (i) When the conditions established in Subsection (4)(a) are met, the county clerk
3169 shall notify the public and each registered political party that:

3170 (A) the vacancy exists; and

3171 (B) identifies the date and time by which a person interested in becoming a candidate
3172 ~~must~~ shall file a declaration of candidacy.

3173 (ii) All persons intending to become candidates for the vacant offices shall, within five
3174 days after the date that the notice is made, ending at the close of normal office hours on the
3175 fifth day, file a declaration of candidacy for the vacant office as required by Chapter 9, Part 2,
3176 Candidate Qualifications and Declarations of Candidacy.

3177 (iii) The county central committee of each party shall:

3178 (A) select a candidate or candidates from among those qualified candidates who have
3179 filed declarations of candidacy; and

3180 (B) certify the name of the candidate or candidates to the county clerk at least 35 days
3181 before the regular primary election.

3182 (5) (a) The requirements of this Subsection (5) apply to all county offices that become
3183 vacant:

3184 (i) if the vacant office has an unexpired term of two years or more; and

3185 (ii) when 50 days or less remain before the regular primary election but more than 50
3186 days remain before the regular general election.

3187 (b) When the conditions established in Subsection (5)(a) are met, the county central
3188 committees of each political party registered under this title that wishes to submit a candidate
3189 for the office shall summarily certify the name of one candidate to the county clerk for
3190 placement on the regular general election ballot.

3191 (6) (a) The requirements of this Subsection (6) apply to all county offices that become
3192 vacant:

3193 (i) if the vacant office has an unexpired term of less than two years; or

3194 (ii) if the vacant office has an unexpired term of two years or more but 50 days or less
3195 remain before the next regular general election.

3196 (b) (i) When the conditions established in Subsection (6)(a) are met, the county
3197 legislative body shall give notice of the vacancy to the county central committee of the same
3198 political party as the prior office holder and invite that committee to submit the names of three
3199 nominees to fill the vacancy.

3200 (ii) That county central committee shall, within 30 days, submit the names of three
3201 nominees to fill the vacancy to the county legislative body.

3202 (iii) The county legislative body shall, within 45 days after the vacancy occurs, appoint
3203 one of those nominees to serve out the unexpired term.

3204 (c) (i) If the county legislative body fails to appoint a person to fill the vacancy within
3205 45 days, the county clerk shall send to the governor a letter that:

3206 (A) informs the governor that the county legislative body has failed to appoint a person
3207 to fill the vacancy within the statutory time period; and

3208 (B) contains the list of nominees submitted by the party central committee.

3209 (ii) The governor shall appoint a person to fill the vacancy from that list of nominees to
3210 fill the vacancy within 30 days after receipt of the letter.

3211 (d) A person appointed to fill the vacancy under this Subsection (6) shall hold office
3212 until their successor is elected and has qualified.

3213 (7) Except as otherwise provided by law, the county legislative body may appoint
3214 replacements to fill all vacancies that occur in those offices filled by appointment of the county
3215 legislative body.

3216 (8) Nothing in this section prevents or prohibits independent candidates from filing a
3217 declaration of candidacy for the office within the same time limits.

3218 (9) (a) Each person elected under Subsection (3), (4), or (5) to fill a vacancy in a
3219 county office shall serve for the remainder of the unexpired term of the person who created the
3220 vacancy and until a successor is elected and qualified.

3221 (b) Nothing in this section may be construed to contradict or alter the provisions of

3222 Section 17-16-6.

3223 Section 72. Section **20A-1-509.1** is amended to read:

3224 **20A-1-509.1. Procedure for filling midterm vacancy in county or district with 15**
3225 **or more attorneys.**

3226 (1) When a vacancy occurs in the office of county or district attorney in a county or
3227 district having 15 or more attorneys who are licensed active members in good standing with the
3228 Utah State Bar and registered voters, the vacancy shall be filled as provided in this section.

3229 (2) (a) The requirements of this Subsection (2) apply when the office of county
3230 attorney or district attorney becomes vacant and:

3231 (i) the vacant office has an unexpired term of two years or more; and

3232 (ii) the vacancy occurs before the third Friday in March of the even-numbered year.

3233 (b) When the conditions established in Subsection (2)(a) are met, the county clerk shall
3234 notify the public and each registered political party that the vacancy exists.

3235 (c) All persons intending to become candidates for the vacant office shall:

3236 (i) file a declaration of candidacy according to the procedures and requirements of
3237 [~~Title 20A,~~] Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy;

3238 (ii) if nominated as a party candidate or qualified as an independent or write-in
3239 candidate under [~~Title 20A,~~] Chapter 9, Candidate Qualifications and Nominating Procedures,
3240 run in the regular general election; and

3241 (iii) if elected, complete the unexpired term of the person who created the vacancy.

3242 (d) If the vacancy occurs after the second Friday in March and before the third Friday
3243 in March, the time for filing a declaration of candidacy under Section 20A-9-202 shall be
3244 extended until seven days after the county clerk gives notice under Subsection (2)(b), but no
3245 later than the fourth Friday in March.

3246 (3) (a) The requirements of this Subsection (3) apply when the office of county
3247 attorney or district attorney becomes vacant and:

3248 (i) the vacant office has an unexpired term of two years or more; and

3249 (ii) the vacancy occurs after the third Friday in March of the even-numbered year but

3250 more than 50 days before the regular primary election.

3251 (b) When the conditions established in Subsection (3)(a) are met, the county clerk
3252 shall:

3253 (i) notify the public and each registered political party that the vacancy exists; and

3254 (ii) identify the date and time by which a person interested in becoming a candidate
3255 [~~must~~] shall file a declaration of candidacy.

3256 (c) All persons intending to become candidates for the vacant office shall:

3257 (i) within five days after the date that the notice is made, ending at at the close of
3258 normal office hours on the fifth day, file a declaration of candidacy for the vacant office as
3259 required by [~~Title 20A,]~~ Chapter 9, Part 2, Candidate Qualifications and [~~Nominating~~
3260 ~~Procedures~~] Declarations of Candidacy; and

3261 (ii) if elected, complete the unexpired term of the person who created the vacancy.

3262 (d) The county central committee of each party shall:

3263 (i) select a candidate or candidates from among those qualified candidates who have
3264 filed declarations of candidacy; and

3265 (ii) certify the name of the candidate or candidates to the county clerk at least 35 days
3266 before the regular primary election.

3267 (4) (a) The requirements of this Subsection (4) apply when the office of county
3268 attorney or district attorney becomes vacant and:

3269 (i) the vacant office has an unexpired term of two years or more; and

3270 (ii) 50 days or less remain before the regular primary election but more than 50 days
3271 remain before the regular general election.

3272 (b) When the conditions established in Subsection (4)(a) are met, the county central
3273 committees of each registered political party that wish to submit a candidate for the office shall
3274 summarily certify the name of one candidate to the county clerk for placement on the regular
3275 general election ballot.

3276 (c) The candidate elected shall complete the unexpired term of the person who created
3277 the vacancy.

3278 (5) (a) The requirements of this Subsection (5) apply when the office of county
3279 attorney or district attorney becomes vacant and:

3280 (i) the vacant office has an unexpired term of less than two years; or

3281 (ii) the vacant office has an unexpired term of two years or more but 50 days or less
3282 remain before the next regular general election.

3283 (b) When the conditions established in Subsection (5)(a) are met, the county legislative
3284 body shall give notice of the vacancy to the county central committee of the same political
3285 party of the prior officeholder and invite that committee to submit the names of three nominees
3286 to fill the vacancy.

3287 (c) That county central committee shall, within 30 days of receiving notice from the
3288 county legislative body, submit to the county legislative body the names of three nominees to
3289 fill the vacancy.

3290 (d) The county legislative body shall, within 45 days after the vacancy occurs, appoint
3291 one of those nominees to serve out the unexpired term.

3292 (e) If the county legislative body fails to appoint a person to fill the vacancy within 45
3293 days, the county clerk shall send to the governor a letter that:

3294 (i) informs the governor that the county legislative body has failed to appoint a person
3295 to fill the vacancy within the statutory time period; and

3296 (ii) contains the list of nominees submitted by the party central committee.

3297 (f) The governor shall appoint a person to fill the vacancy from that list of nominees
3298 within 30 days after receipt of the letter.

3299 (g) A person appointed to fill the vacancy under Subsection (5) shall complete the
3300 unexpired term of the person who created the vacancy.

3301 (6) Nothing in this section prevents or prohibits independent candidates from filing a
3302 declaration of candidacy for the office within the required time limits.

3303 Section 73. Section **20A-1-703** is amended to read:

3304 **20A-1-703. Proceedings by registered voter.**

3305 (1) Any registered voter who has information that any provisions of this title have been

3306 violated by any candidate for whom the registered voter had the right to vote, by any personal
3307 campaign committee of that candidate, by any member of that committee, or by any election
3308 official, may file a verified petition with the lieutenant governor.

3309 (2) (a) The lieutenant governor shall gather information and determine if a special
3310 investigation is necessary.

3311 (b) If the lieutenant governor determines that a special investigation is necessary, the
3312 lieutenant governor shall refer the information to the attorney general, who shall:

3313 (i) bring a special proceeding to investigate and determine whether or not there has
3314 been a violation; and

3315 (ii) appoint special counsel to conduct that proceeding on behalf of the state.

3316 (3) If it appears from the petition or otherwise that sufficient evidence is obtainable to
3317 show that there is probable cause to believe that a violation has occurred, the attorney general
3318 shall:

3319 (a) grant leave to bring the proceeding; and

3320 (b) appoint special counsel to conduct the proceeding.

3321 (4) (a) If leave is granted, the registered voter may, by a special proceeding brought in
3322 the district court in the name of the state upon the relation of the registered voter, investigate
3323 and determine whether or not the candidate, candidate's personal campaign committee, any
3324 member of the candidate's personal campaign committee, or any election officer has violated
3325 any provision of this title.

3326 (b) (i) In the proceeding, the complaint shall:

3327 (A) be served with the summons; and

3328 (B) set forth the name of the person or persons who have allegedly violated this title
3329 and the grounds of those violations in detail.

3330 (ii) The complaint may not be amended except by leave of the court.

3331 (iii) The summons and complaint in the proceeding shall be filed with the court no
3332 later than five days after they are served.

3333 (c) (i) The answer to the complaint shall be served and filed within 10 days after the

3334 service of the summons and complaint.

3335 (ii) Any allegation of new matters in the answer shall be considered controverted by the
3336 adverse party without reply, and the proceeding shall be considered at issue and stand ready for
3337 trial upon five days' notice of trial.

3338 (d) (i) All proceedings initiated under this section have precedence over any other civil
3339 actions.

3340 (ii) The court shall always be considered open for the trial of the issues raised in this
3341 proceeding.

3342 (iii) The proceeding shall be tried and determined as a civil action without a jury, with
3343 the court determining all issues of fact and issues of law.

3344 (iv) If more than one proceeding is pending or the election of more than one person is
3345 investigated and contested, the court may:

3346 (A) order the proceedings consolidated and heard together; and

3347 (B) equitably apportion costs and disbursements.

3348 (e) (i) Either party may request a change of venue as provided by law in civil actions,
3349 but application for a change of venue [~~must~~] shall be made within five days after service of
3350 summons and complaint.

3351 (ii) The judge shall decide the request for a change of venue and issue any necessary
3352 orders within three days after the application is made.

3353 (iii) If a party fails to request a change of venue within five days of service, [~~he~~] that
3354 party has waived [~~his~~] that party's right to a change of venue.

3355 (f) (i) If judgment is in favor of the plaintiff, the relator may petition the judge to
3356 recover his taxable costs and disbursements against the person whose right to the office is
3357 contested.

3358 (ii) The judge may not award costs to the defendant unless it appears that the
3359 proceeding was brought in bad faith.

3360 (iii) Subject to the limitations contained in Subsection (4)(f), the judge may decide
3361 whether or not to award costs and disbursements.

3362 (5) Nothing in this section may be construed to prohibit any other civil or criminal
3363 actions or remedies against alleged violators.

3364 (6) In the event a witness asserts a privilege against self-incrimination, testimony and
3365 evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of
3366 Immunity.

3367 Section 74. Section **20A-2-102.5** is amended to read:

3368 **20A-2-102.5. Voter registration deadline.**

3369 (1) Except as provided in Section 20A-2-201 and in [~~Title 20A,~~] Chapter 3, Part 4,
3370 Voting by Members of the Military and by Other Persons Living or Serving Abroad, a person
3371 who fails to submit a correctly completed voter registration form on or before the voter
3372 registration deadline [~~shall not~~] may not be permitted to vote in the election.

3373 (2) The voter registration deadline shall be the date that is 30 calendar days before the
3374 date of the election.

3375 Section 75. Section **20A-2-105** is amended to read:

3376 **20A-2-105. Determining residency.**

3377 (1) Except as provided in Subsection (4), election officials and judges shall apply the
3378 standards and requirements of this section when determining whether or not a person is a
3379 resident for purposes of interpreting this title or the Utah Constitution.

3380 (2) A "resident" is a person who resides within a specific voting precinct in Utah as
3381 provided in this section.

3382 (3) (a) A person resides in Utah if:

3383 (i) the person's principal place of residence is within Utah; and

3384 (ii) the person has a present intention to continue residency within Utah permanently or
3385 indefinitely.

3386 (b) A person resides within a particular voting precinct if, as of the date of registering
3387 to vote, the person has the person's principal place of residence in that voting precinct.

3388 (4) (a) The principal place of residence of any person shall be determined by applying
3389 the provisions of this Subsection (4).

3390 (b) A person's "principal place of residence" is that place in which the person's
3391 habitation is fixed and to which, whenever the person is absent, the person has the intention of
3392 returning.

3393 (c) A person has not gained or lost a residence solely because the person is present in
3394 Utah or present in a voting precinct or absent from Utah or absent from the person's voting
3395 precinct because the person is:

3396 (i) employed in the service of the United States or of Utah;

3397 (ii) a student at any institution of learning;

3398 (iii) incarcerated in prison or jail; or

3399 (iv) residing upon any Indian or military reservation.

3400 (d) (i) A member of the armed forces of the United States is not a resident of Utah
3401 merely because that member is stationed at any military facility within Utah.

3402 (ii) In order to be a resident of Utah, that member [~~must~~] shall meet the other
3403 requirements of this section.

3404 (e) (i) Except as provided in Subsection (4)(e)(ii), a person has not lost the person's
3405 residence if that person leaves the person's home to go into a foreign country or into another
3406 state or into another voting precinct within Utah for temporary purposes with the intention of
3407 returning.

3408 (ii) If that person has voted in that other state or voting precinct, the person is a resident
3409 of that other state or voting precinct.

3410 (f) A person is not a resident of any county or voting precinct if that person comes for
3411 temporary purposes and does not intend to make that county or voting precinct the person's
3412 home.

3413 (g) If a person removes to another state with the intention of making it the person's
3414 principal place of residence, the person loses the person's residence in Utah.

3415 (h) If a person moves to another state with the intent of remaining there for an
3416 indefinite time as a place of permanent residence, the person loses the person's residence in
3417 Utah, even though the person intends to return at some future time.

3418 (i) (i) Except as provided in Subsection (4)(i)(ii), the place where a person's family
3419 resides is presumed to be the person's place of residence.

3420 (ii) A person may rebut the presumption established in Subsection (4)(i)(i) by proving
3421 the person's intent to remain at a place other than where the person's family resides.

3422 (j) (i) A person has changed [~~his~~] the person's residence if:

3423 (A) the person has acted affirmatively to [~~remove himself~~] move from one geographic
3424 location; and

3425 (B) the person has an intent to remain in another place.

3426 (ii) There can only be one residence.

3427 (iii) A residence cannot be lost until another is gained.

3428 (5) In computing the period of residence, a person shall:

3429 (a) include the day on which the person's residence begins; and

3430 (b) exclude the day of the next election.

3431 (6) (a) There is a presumption that a person is a resident of Utah and of a voting
3432 precinct and intends to remain in Utah permanently or indefinitely if the person makes an oath
3433 or affirmation upon a registration application form that the person's residence address and place
3434 of residence is within a specific voting precinct in Utah.

3435 (b) The election officers and election officials shall allow that person to register and
3436 vote unless, upon a challenge by a registrar or some other person, it is shown by law or by clear
3437 and convincing evidence that:

3438 (i) the person does not intend to remain permanently or indefinitely in Utah; or

3439 (ii) the person is incarcerated in prison or jail.

3440 (7) (a) The rules set forth in this section for determining place of residence for voting
3441 purposes do not apply to a person incarcerated in prison or jail.

3442 (b) For voting registration purposes, a person incarcerated in prison or jail is
3443 considered to reside in the voting precinct in which the person's place of residence was located
3444 before incarceration.

3445 (8) If a person's principal place of residence is a residential parcel of one acre in size or

3446 smaller that is divided by the boundary line between two or more counties, that person shall be
3447 considered a resident of the county in which a majority of the residential parcel lies.

3448 Section 76. Section **20A-2-306** is amended to read:

3449 **20A-2-306. Removing names from the official register -- Determining and**
3450 **confirming change of residence.**

3451 (1) A county clerk may not remove a voter's name from the official register on the
3452 grounds that the voter has changed residence unless the voter:

3453 (a) confirms in writing that the voter has changed residence to a place outside the
3454 county; or

3455 (b) (i) has not voted in an election during the period beginning on the date of the notice
3456 required by Subsection (3), and ending on the day after the date of the second regular general
3457 election occurring after the date of the notice; and

3458 (ii) has failed to respond to the notice required by Subsection (3).

3459 (2) (a) When a county clerk obtains information that a voter's address has changed and
3460 it appears that the voter still resides within the same county, the county clerk shall:

3461 (i) change the official register to show the voter's new address; and

3462 (ii) send to the voter, by forwardable mail, the notice required by Subsection (3)
3463 printed on a postage prepaid, preaddressed return form.

3464 (b) When a county clerk obtains information that a voter's address has changed and it
3465 appears that the voter now resides in a different county, the county clerk shall verify the
3466 changed residence by sending to the voter, by forwardable mail, the notice required by
3467 Subsection (3) printed on a postage prepaid, preaddressed return form.

3468 (3) Each county clerk shall use substantially the following form to notify voters whose
3469 addresses have changed:

3470 "VOTER REGISTRATION NOTICE

3471 We have been notified that your residence has changed. Please read, complete, and
3472 return this form so that we can update our voter registration records. What is your current
3473 street address?

3474

3475 Street City County State Zip

3476 If you have not changed your residence or have moved but stayed within the same
3477 county, you must complete and return this form to the county clerk so that it is received by the
3478 county clerk no later than 30 days before the date of the election. If you fail to return this form
3479 within that time:

3480 - you may be required to show evidence of your address to the poll worker before being
3481 allowed to vote in either of the next two regular general elections; or

3482 - if you fail to vote at least once from the date this notice was mailed until the passing
3483 of two regular general elections, you will no longer be registered to vote. If you have changed
3484 your residence and have moved to a different county in Utah, you may register to vote by
3485 contacting the county clerk in your county.

3486

3487 Signature of Voter"

3488 (4) (a) Except as provided in Subsection (4)(b), the county clerk may not remove the
3489 names of any voters from the official register during the 90 days before a regular primary
3490 election and the 90 days before a regular general election.

3491 (b) The county clerk may remove the names of voters from the official register during
3492 the 90 days before a regular primary election and the 90 days before a regular general election
3493 if:

3494 (i) the voter requests, in writing, that [~~his~~] the voter's name be removed; or

3495 (ii) the voter has died.

3496 (c) (i) After a county clerk mails a notice as required in this section, the clerk may list
3497 that voter as inactive.

3498 (ii) An inactive voter [~~must~~] shall be allowed to vote, sign petitions, and have all other
3499 privileges of a registered voter.

3500 (iii) A county is not required to send routine mailings to inactive voters and is not
3501 required to count inactive voters when dividing precincts and preparing supplies.

3502 Section 77. Section **20A-4-201** is amended to read:

3503 **20A-4-201. Delivery of election returns.**

3504 (1) One poll worker shall deliver the ballot box, the lock, and the key to:

3505 (a) the election officer; or

3506 (b) the location directed by the election officer.

3507 (2) (a) Before they adjourn, the poll workers shall choose one or more of their number
3508 to deliver the election returns to the election officer.

3509 (b) That poll worker or those poll workers shall:

3510 (i) deliver the unopened envelopes or pouches to the election officer or counting center
3511 immediately but no later than 24 hours after the polls close; or

3512 (ii) if the polling place is 15 miles or more from the county seat, mail the election
3513 returns to the election officer by registered mail from the post office most convenient to the
3514 polling place within 24 hours after the polls close.

3515 (3) The election officer shall pay each poll worker reasonable compensation for travel
3516 that is necessary to deliver the election returns and to return to the polling place.

3517 (4) The requirements of this section [~~shall not~~] do not prohibit transmission of the
3518 unofficial vote count to the counting center via electronic means, provided that reasonable
3519 security measures are taken to preserve the integrity and privacy of the transmission.

3520 Section 78. Section **20A-5-403** is amended to read:

3521 **20A-5-403. Polling places -- Booths -- Ballot boxes -- Inspections --**
3522 **Arrangements.**

3523 (1) Each election officer shall:

3524 (a) designate polling places for each voting precinct in the jurisdiction; and

3525 (b) obtain the approval of the county or municipal legislative body or local district
3526 governing board for those polling places.

3527 (2) (a) For each polling place, the election officer shall provide:

3528 (i) an American flag;

3529 (ii) a sufficient number of voting booths or compartments;

3530 (iii) the voting devices, voting booths, ballots, ballot boxes, ballot labels, ballot sheets,
3531 write-in ballots, and any other records and supplies necessary to enable a voter to vote;

3532 (iv) the constitutional amendment cards required by Part 1, Election Notices and
3533 Instructions;

3534 (v) voter information pamphlets required by [~~Title 20A,~~] Chapter 7, Part 7, Voter
3535 Information Pamphlet;

3536 (vi) the instruction cards required by Section 20A-5-102; and

3537 (vii) a sign, to be prominently displayed in the polling place, indicating that valid voter
3538 identification is required for every voter before the voter may vote and listing the forms of
3539 identification that constitute valid voter identification.

3540 (b) Each election officer shall ensure that:

3541 (i) each voting booth is at a convenient height for writing, and is arranged so that the
3542 voter can prepare [~~his~~] the voter's ballot screened from observation;

3543 (ii) there are a sufficient number of voting booths or voting devices to accommodate
3544 the voters at that polling place; and

3545 (iii) there is at least one voting booth or voting device that is configured to
3546 accommodate persons with disabilities.

3547 (c) Each county clerk shall provide a ballot box for each polling place that is large
3548 enough to properly receive and hold the ballots to be cast.

3549 (3) (a) All polling places shall be physically inspected by each county clerk to ensure
3550 access by a person with a disability.

3551 (b) Any issues concerning inaccessibility to polling places by a person with a disability
3552 discovered during the inspections referred to in Subsection (3)(a) or reported to the county
3553 clerk shall be:

3554 (i) forwarded to the Office of the Lieutenant Governor; and

3555 (ii) within six months of the time of the complaint, the issue of inaccessibility shall be
3556 either:

3557 (A) remedied at the particular location by the county clerk;

3558 (B) the county clerk shall designate an alternative accessible location for the particular
3559 precinct; or

3560 (C) if no practical solution can be identified, file with the Office of the Lieutenant
3561 Governor a written explanation identifying the reasons compliance cannot reasonably be met.

3562 (4) (a) The municipality in which the election is held shall pay the cost of conducting
3563 each municipal election, including the cost of printing and supplies.

3564 (b) (i) Costs assessed by a county clerk to a municipality under this section [~~shall not~~]
3565 may not exceed the actual costs incurred by the county clerk.

3566 (ii) The actual costs shall include:

3567 (A) costs of or rental fees associated with the use of election equipment and supplies;
3568 and

3569 (B) reasonable and necessary administrative costs.

3570 (5) The county clerk shall make detailed entries of all proceedings had under this
3571 chapter.

3572 Section 79. Section **20A-6-302** is amended to read:

3573 **20A-6-302. Paper ballots -- Placement of candidates' names.**

3574 (1) Each election officer shall ensure, for paper ballots in regular general elections,
3575 that:

3576 (a) except for candidates for state school board and local school boards:

3577 (i) each candidate is listed by party; and

3578 (ii) candidates' surnames are listed in alphabetical order on the ballots when two or
3579 more candidates' names are required to be listed on a ticket under the title of an office;

3580 (b) the names of candidates for the State Board of Education are placed on the ballot as
3581 certified by the lieutenant governor under Section 20A-14-105;

3582 (c) if candidates for membership on a local board of education were selected in a
3583 regular primary election, the name of the candidate who received the most votes in the regular
3584 primary election is listed first on the ballot; and

3585 (d) if candidates for membership on a local board of education were not selected in the

3586 regular primary election, the names of the candidates are listed on the ballot in the order
3587 determined by a lottery conducted by the county clerk.

3588 (2) (a) The election officer may not allow the name of a candidate who dies or
3589 withdraws before election day to be printed upon the ballots.

3590 (b) If the ballots have already been printed, the election officer:

3591 (i) shall, if possible, cancel the name of the dead or withdrawn candidate by drawing a
3592 line through the candidate's name before the ballots are delivered to voters; and

3593 (ii) may not count any votes for that dead or withdrawn candidate.

3594 (3) (a) When there is only one candidate for county attorney at the regular general
3595 election in counties that have three or fewer registered voters of the county who are licensed
3596 active members in good standing of the Utah State Bar, the county clerk shall cause that
3597 candidate's name and party affiliation, if any, to be placed on a separate section of the ballot
3598 with the following question: "Shall (name of candidate) be elected to the office of county
3599 attorney? Yes ____ No ____."

3600 (b) If the number of "Yes" votes exceeds the number of "No" votes, the candidate is
3601 elected to the office of county attorney.

3602 (c) If the number of "No" votes exceeds the number of "Yes" votes, the candidate is not
3603 elected and may not take office, nor may ~~he~~ the candidate continue in the office past the end
3604 of the term resulting from any prior election or appointment.

3605 (d) When the name of only one candidate for county attorney is printed on the ballot
3606 under authority of this Subsection (3), the county clerk may not count any write-in votes
3607 received for the office of county attorney.

3608 (e) If no qualified person files for the office of county attorney or if the candidate is not
3609 elected by the voters, the county legislative body shall appoint the county attorney as provided
3610 in Section 20A-1-509.2.

3611 (f) If the candidate whose name would, except for this Subsection (3)(f), be placed on
3612 the ballot under Subsection (3)(a) has been elected on a ballot under Subsection (3)(a) to the
3613 two consecutive terms immediately preceding the term for which the candidate is seeking

3614 election, Subsection (3)(a) [~~shall not~~] does not apply and that candidate shall be considered to
3615 be an unopposed candidate the same as any other unopposed candidate for another office,
3616 unless a petition is filed with the county clerk before the date of that year's primary election
3617 that:

3618 (i) requests the procedure set forth in Subsection (3)(a) to be followed; and
3619 (ii) contains the signatures of registered voters in the county representing in number at
3620 least 25% of all votes cast in the county for all candidates for governor at the last election at
3621 which a governor was elected.

3622 (4) (a) When there is only one candidate for district attorney at the regular general
3623 election in a prosecution district that has three or fewer registered voters of the district who are
3624 licensed active members in good standing of the Utah State Bar, the county clerk shall cause
3625 that candidate's name and party affiliation, if any, to be placed on a separate section of the
3626 ballot with the following question: "Shall (name of candidate) be elected to the office of district
3627 attorney? Yes ____ No ____."

3628 (b) If the number of "Yes" votes exceeds the number of "No" votes, the candidate is
3629 elected to the office of district attorney.

3630 (c) If the number of "No" votes exceeds the number of "Yes" votes, the candidate is not
3631 elected and may not take office, nor may ~~he~~ the candidate continue in the office past the end
3632 of the term resulting from any prior election or appointment.

3633 (d) When the name of only one candidate for district attorney is printed on the ballot
3634 under authority of this Subsection (4), the county clerk may not count any write-in votes
3635 received for the office of district attorney.

3636 (e) If no qualified person files for the office of district attorney, or if the only candidate
3637 is not elected by the voters under this subsection, the county legislative body shall appoint a
3638 new district attorney for a four-year term as provided in Section 20A-1-509.2.

3639 (f) If the candidate whose name would, except for this Subsection (4)(f), be placed on
3640 the ballot under Subsection (4)(a) has been elected on a ballot under Subsection (4)(a) to the
3641 two consecutive terms immediately preceding the term for which the candidate is seeking

3642 election, Subsection (4)(a) [~~shall not~~] does not apply and that candidate shall be considered to
3643 be an unopposed candidate the same as any other unopposed candidate for another office,
3644 unless a petition is filed with the county clerk before the date of that year's primary election
3645 that:

- 3646 (i) requests the procedure set forth in Subsection (4)(a) to be followed; and
- 3647 (ii) contains the signatures of registered voters in the county representing in number at
3648 least 25% of all votes cast in the county for all candidates for governor at the last election at
3649 which a governor was elected.

3650 Section 80. Section **20A-7-202** is amended to read:

3651 **20A-7-202. Statewide initiative process -- Application procedures -- Time to**
3652 **gather signatures -- Grounds for rejection.**

3653 (1) Persons wishing to circulate an initiative petition shall file an application with the
3654 lieutenant governor.

3655 (2) The application shall contain:

3656 (a) the name and residence address of at least five sponsors of the initiative petition;

3657 (b) a statement indicating that each of the sponsors:

3658 (i) is a resident of Utah; and

3659 (ii) has voted in a regular general election in Utah within the last three years;

3660 (c) the signature of each of the sponsors, attested to by a notary public;

3661 (d) a copy of the proposed law that includes:

3662 (i) the title of the proposed law, which clearly expresses the subject of the law; and

3663 (ii) the text of the proposed law; and

3664 (e) a statement indicating whether or not persons gathering signatures for the petition
3665 may be paid for doing so.

3666 (3) The application and its contents are public when filed with the lieutenant governor.

3667 (4) (a) The sponsors shall qualify the petition for the regular general election ballot no
3668 later than one year after the application is filed.

3669 (b) If the sponsors fail to qualify the petition for that ballot, the sponsors [~~must~~] shall:

- 3670 (i) submit a new application;
- 3671 (ii) obtain new signature sheets; and
- 3672 (iii) collect signatures again.
- 3673 (5) The lieutenant governor shall reject the application and not issue circulation sheets
- 3674 if:
- 3675 (a) the law proposed by the initiative is patently unconstitutional;
- 3676 (b) the law proposed by the initiative is nonsensical;
- 3677 (c) the proposed law could not become law if passed;
- 3678 (d) the law contains more than one subject;
- 3679 (e) the subject of the law is not clearly expressed in the law's title; or
- 3680 (f) the law proposed by the initiative is identical or substantially similar to a law
- 3681 proposed by an initiative that was submitted to the county clerks and lieutenant governor for
- 3682 certification and evaluation within two years preceding the date on which the application for
- 3683 this initiative was filed.

3684 Section 81. Section **20A-7-204.1** is amended to read:

3685 **20A-7-204.1. Public hearings to be held before initiative petitions are circulated.**

3686 (1) (a) After issuance of the initial fiscal impact estimate by the Governor's Office of

3687 Planning and Budget and before circulating initiative petitions for signature statewide, sponsors

3688 of the initiative petition shall hold at least seven public hearings throughout Utah as follows:

- 3689 (i) one in the Bear River region -- Box Elder, Cache, or Rich County;
- 3690 (ii) one in the Southwest region -- Beaver, Garfield, Iron, Kane, or Washington
- 3691 County;
- 3692 (iii) one in the Mountain region -- Summit, Utah, or Wasatch County;
- 3693 (iv) one in the Central region -- Juab, Millard, Piute, Sanpete, Sevier, or Wayne
- 3694 County;
- 3695 (v) one in the Southeast region -- Carbon, Emery, Grand, or San Juan County;
- 3696 (vi) one in the Uintah Basin region -- Daggett, Duchesne, or Uintah County; and
- 3697 (vii) one in the Wasatch Front region -- Davis, Morgan, Salt Lake, Tooele, or Weber

3698 County.

3699 (b) Of the seven meetings, at least two of the meetings [~~must~~] shall be held in a first or
3700 second class county, but not in the same county.

3701 (2) At least three calendar days before the date of the public hearing, the sponsors
3702 shall:

3703 (a) provide written notice of the public hearing to:

3704 (i) the lieutenant governor for posting on the state's website; and

3705 (ii) each state senator, state representative, and county commission or county council
3706 member who is elected in whole or in part from the region where the public hearing will be
3707 held; and

3708 (b) publish written notice of the public hearing detailing its time, date, and location:

3709 (i) in at least one newspaper of general circulation in each county in the region where
3710 the public hearing will be held; and

3711 (ii) on the Utah Public Notice Website created in Section 63F-1-701.

3712 (3) (a) During the public hearing, the sponsors shall either:

3713 (i) video tape or audio tape the public hearing and, when the hearing is complete,
3714 deposit the complete audio or video tape of the meeting with the lieutenant governor; or

3715 (ii) take comprehensive minutes of the public hearing, detailing the names and titles of
3716 each speaker and summarizing each speaker's comments.

3717 (b) The lieutenant governor shall make copies of the tapes or minutes available to the
3718 public.

3719 Section 82. Section **20A-7-702 (Superseded 01/01/12)** is amended to read:

3720 **20A-7-702 (Superseded 01/01/12). Voter information pamphlet -- Form --**

3721 **Contents -- Distribution.**

3722 (1) The lieutenant governor shall ensure that all information submitted for publication
3723 in the voter information pamphlet is:

3724 (a) printed and bound in a single pamphlet;

3725 (b) printed in clear readable type, no less than 10 point, except that the text of any

- 3726 measure may be set forth in eight-point type; and
- 3727 (c) printed on a quality and weight of paper that best serves the voters.
- 3728 (2) The voter information pamphlet shall contain the following items in this order:
- 3729 (a) a cover title page;
- 3730 (b) an introduction to the pamphlet by the lieutenant governor;
- 3731 (c) a table of contents;
- 3732 (d) a list of all candidates for constitutional offices;
- 3733 (e) a list of candidates for each legislative district;
- 3734 (f) a 100-word statement of qualifications for each candidate for the office of governor,
- 3735 lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the
- 3736 candidate to the lieutenant governor's office before 5 p.m. on the date that falls 105 days before
- 3737 the date of the election;
- 3738 (g) information pertaining to all measures to be submitted to the voters, beginning a
- 3739 new page for each measure and containing, in the following order for each measure:
- 3740 (i) a copy of the number and ballot title of the measure;
- 3741 (ii) the final vote cast by the Legislature on the measure if it is a measure submitted by
- 3742 the Legislature or by referendum;
- 3743 (iii) the impartial analysis of the measure prepared by the Office of Legislative
- 3744 Research and General Counsel;
- 3745 (iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the
- 3746 measure, the arguments against the measure, and the rebuttal to the arguments against the
- 3747 measure, with the name and title of the authors at the end of each argument or rebuttal;
- 3748 (v) for each constitutional amendment, a complete copy of the text of the constitutional
- 3749 amendment, with all new language underlined, and all deleted language placed within brackets;
- 3750 (vi) for each initiative qualified for the ballot, a copy of the measure as certified by the
- 3751 lieutenant governor and a copy of the fiscal impact estimate prepared according to Section
- 3752 20A-7-202.5; and
- 3753 (vii) for each referendum qualified for the ballot, a complete copy of the text of the law

3754 being submitted to the voters for their approval or rejection, with all new language underlined
3755 and all deleted language placed within brackets, as applicable;

3756 (h) a description provided by the Judicial Council of the selection and retention process
3757 for judges, including, in the following order:

3758 (i) a description of the judicial selection process;

3759 (ii) a description of the judicial performance evaluation process;

3760 (iii) a description of the judicial retention election process;

3761 (iv) a list of the criteria and minimum standards of judicial performance evaluation;

3762 (v) the names of the judges standing for retention election; and

3763 (vi) for each judge:

3764 (A) the counties in which the judge is subject to retention election;

3765 (B) a short biography of professional qualifications and a recent photograph;

3766 (C) for each standard of performance, a statement identifying whether or not the judge
3767 met the standard and, if not, the manner in which the judge failed to meet the standard;

3768 (D) a statement provided by the Utah Supreme Court identifying the cumulative
3769 number of informal reprimands, when consented to by the judge in accordance with Title 78A,
3770 Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders of censure and
3771 suspension issued by the Utah Supreme Court under Utah Constitution Article VIII, Section 13
3772 during the judge's current term and the immediately preceding term, and a detailed summary of
3773 the supporting reasons for each violation of the Code of Judicial Conduct that the judge has
3774 received; and

3775 (E) a statement identifying whether or not the judge was certified by the Judicial
3776 Council;

3777 (vii) (A) except as provided in Subsection (2)(h)(vii)(B), for each judge, in graphic
3778 format, the responses for each attorney, jury, and other survey question used by the Judicial
3779 Council for certification of judges, displayed in 1% increments; and

3780 (B) notwithstanding Subsection (2)(h)(vii)(A), if the sample size for the survey for a
3781 particular judge is too small to provide statistically reliable information in 1% increments, the

3782 survey results for that judge shall be reported as being above or below 70% and a statement by
3783 the surveyor explaining why the survey is statistically unreliable shall also be included;

3784 (i) an explanation of ballot marking procedures prepared by the lieutenant governor,
3785 indicating the ballot marking procedure used by each county and explaining how to mark the
3786 ballot for each procedure;

3787 (j) voter registration information, including information on how to obtain an absentee
3788 ballot;

3789 (k) a list of all county clerks' offices and phone numbers; and

3790 (l) on the back cover page, a printed copy of the following statement signed by the
3791 lieutenant governor:

3792 "I, _____ (print name), Lieutenant Governor of Utah, certify that the
3793 measures contained in this pamphlet will be submitted to the voters of Utah at the election to
3794 be held throughout the state on ____ (date of election), and that this pamphlet is complete and
3795 correct according to law. SEAL

3796 Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day
3797 of ____ (month), ____ (year)

3798 (signed) _____
3799 Lieutenant Governor"

3800 [~~(3) The lieutenant governor shall not more than 40 nor less than 15 days before the~~
3801 ~~date voting commences:]~~

3802 (3) No earlier than 40 days, and no later than 15 days, before the day on which voting
3803 commences, the lieutenant governor shall:

3804 (a) (i) distribute one copy of the voter information pamphlet to each household within
3805 the state; or

3806 (ii) ensure that one copy of the voter information pamphlet is placed in one issue of
3807 every newspaper of general circulation in the state;

3808 (b) ensure that a sufficient number of printed voter information pamphlets are available
3809 for distribution as required by this section;

3810 (c) provide voter information pamphlets to each county clerk for free distribution upon
3811 request and for placement at polling places; and

3812 (d) ensure that the distribution of the voter information pamphlets is completed 15 days
3813 before the election.

3814 Section 83. Section **20A-7-702 (Effective 01/01/12)** is amended to read:

3815 **20A-7-702 (Effective 01/01/12). Voter information pamphlet -- Form -- Contents**
3816 **-- Distribution.**

3817 (1) The lieutenant governor shall ensure that all information submitted for publication
3818 in the voter information pamphlet is:

3819 (a) printed and bound in a single pamphlet;

3820 (b) printed in clear readable type, no less than 10 point, except that the text of any
3821 measure may be set forth in eight-point type; and

3822 (c) printed on a quality and weight of paper that best serves the voters.

3823 (2) The voter information pamphlet shall contain the following items in this order:

3824 (a) a cover title page;

3825 (b) an introduction to the pamphlet by the lieutenant governor;

3826 (c) a table of contents;

3827 (d) a list of all candidates for constitutional offices;

3828 (e) a list of candidates for each legislative district;

3829 (f) a 100-word statement of qualifications for each candidate for the office of governor,
3830 lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the
3831 candidate to the lieutenant governor's office before 5 p.m. on the date that falls 105 days before
3832 the date of the election;

3833 (g) information pertaining to all measures to be submitted to the voters, beginning a
3834 new page for each measure and containing, in the following order for each measure:

3835 (i) a copy of the number and ballot title of the measure;

3836 (ii) the final vote cast by the Legislature on the measure if it is a measure submitted by
3837 the Legislature or by referendum;

3838 (iii) the impartial analysis of the measure prepared by the Office of Legislative
3839 Research and General Counsel;

3840 (iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the
3841 measure, the arguments against the measure, and the rebuttal to the arguments against the
3842 measure, with the name and title of the authors at the end of each argument or rebuttal;

3843 (v) for each constitutional amendment, a complete copy of the text of the constitutional
3844 amendment, with all new language underlined, and all deleted language placed within brackets;

3845 (vi) for each initiative qualified for the ballot, a copy of the measure as certified by the
3846 lieutenant governor and a copy of the fiscal impact estimate prepared according to Section
3847 20A-7-202.5; and

3848 (vii) for each referendum qualified for the ballot, a complete copy of the text of the law
3849 being submitted to the voters for their approval or rejection, with all new language underlined
3850 and all deleted language placed within brackets, as applicable;

3851 (h) a description provided by the Judicial Performance Evaluation Commission of the
3852 selection and retention process for judges, including, in the following order:

3853 (i) a description of the judicial selection process;

3854 (ii) a description of the judicial performance evaluation process;

3855 (iii) a description of the judicial retention election process;

3856 (iv) a list of the criteria of the judicial performance evaluation and the minimum
3857 performance standards;

3858 (v) the names of the judges standing for retention election; and

3859 (vi) for each judge:

3860 (A) a list of the counties in which the judge is subject to retention election;

3861 (B) a short biography of professional qualifications and a recent photograph;

3862 (C) for each standard of performance, a statement identifying whether or not the judge
3863 met the standard and, if not, the manner in which the judge failed to meet the standard;

3864 (D) a statement provided by the Utah Supreme Court identifying the cumulative
3865 number of informal reprimands, when consented to by the judge in accordance with Title 78A,

3866 Chapter 11, Judicial Conduct Commission, formal reprimands, and all orders of censure and
3867 suspension issued by the Utah Supreme Court under Utah Constitution Article VIII, Section 13
3868 during the judge's current term and the immediately preceding term, and a detailed summary of
3869 the supporting reasons for each violation of the Code of Judicial Conduct that the judge has
3870 received;

3871 (E) a statement identifying whether or not the Judicial Performance Evaluation
3872 Commission recommends the judge be retained or declines to make a recommendation; and

3873 (F) any statement provided by a judge who is not recommended for retention by the
3874 Judicial Performance Evaluation Commission under Section 78A-12-203;

3875 (vii) for each judge, in a bar graph, the average of responses to each survey category,
3876 displayed with an identification of the minimum acceptable score as set by Section 78A-12-205
3877 and the average score of all judges of the same court level; and

3878 (viii) ~~[an Internet]~~ a website address that contains the Judicial Performance Evaluation
3879 Commission's report on the judge's performance evaluation;

3880 (i) an explanation of ballot marking procedures prepared by the lieutenant governor,
3881 indicating the ballot marking procedure used by each county and explaining how to mark the
3882 ballot for each procedure;

3883 (j) voter registration information, including information on how to obtain an absentee
3884 ballot;

3885 (k) a list of all county clerks' offices and phone numbers; and

3886 (l) on the back cover page, a printed copy of the following statement signed by the
3887 lieutenant governor:

3888 "I, _____ (print name), Lieutenant Governor of Utah, certify that the
3889 measures contained in this pamphlet will be submitted to the voters of Utah at the election to
3890 be held throughout the state on ____ (date of election), and that this pamphlet is complete and
3891 correct according to law. SEAL

3892 Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day
3893 of ____ (month), ____ (year)

3894 (signed) _____
3895 Lieutenant Governor"

3896 [~~(3) The lieutenant governor shall not more than 40 nor less than 15 days before the~~
3897 ~~date voting commences;]~~

3898 (3) No earlier than 40 days, and no later than 15 days, before the day on which voting
3899 commences, the lieutenant governor shall:

3900 (a) (i) distribute one copy of the voter information pamphlet to each household within
3901 the state; or

3902 (ii) ensure that one copy of the voter information pamphlet is placed in one issue of
3903 every newspaper of general circulation in the state;

3904 (b) ensure that a sufficient number of printed voter information pamphlets are available
3905 for distribution as required by this section;

3906 (c) provide voter information pamphlets to each county clerk for free distribution upon
3907 request and for placement at polling places; and

3908 (d) ensure that the distribution of the voter information pamphlets is completed 15 days
3909 before the election.

3910 Section 84. Section **20A-7-706** is amended to read:

3911 **20A-7-706. Copies of arguments to be sent to opposing authors -- Rebuttal**
3912 **arguments.**

3913 (1) When the lieutenant governor has received the arguments for and against a measure
3914 to be submitted to the voters, the lieutenant governor shall immediately send copies of the
3915 arguments in favor of the measure to the authors of the arguments against and copies of the
3916 arguments against to the authors of the arguments in favor.

3917 (2) The authors may prepare and submit rebuttal arguments not exceeding 250 words.

3918 (3) (a) The rebuttal arguments [~~must~~] shall be filed with the lieutenant governor:

3919 (i) for constitutional amendments and referendum petitions, not later than the day that
3920 falls 120 days before the date of the election; and

3921 (ii) for initiatives, not later than August 30.

3922 (b) Except as provided in Subsection (3)(d), the authors may not amend or change the
3923 rebuttal arguments after they are submitted to the lieutenant governor.

3924 (c) Except as provided in Subsection (3)(d), the lieutenant governor may not alter the
3925 arguments in any way.

3926 (d) The lieutenant governor and the authors of a rebuttal argument may jointly modify
3927 a rebuttal argument after it is submitted if:

3928 (i) they jointly agree that changes to the rebuttal argument must be made to correct
3929 spelling or grammatical errors; and

3930 (ii) the rebuttal argument has not yet been submitted for typesetting.

3931 (4) The lieutenant governor shall ensure that:

3932 (a) rebuttal arguments are printed in the same manner as the direct arguments; and

3933 (b) each rebuttal argument follows immediately after the direct argument which it
3934 seeks to rebut.

3935 Section 85. Section **20A-9-403** is amended to read:

3936 **20A-9-403. Regular primary elections.**

3937 (1) (a) The fourth Tuesday of June of each even-numbered year is designated as regular
3938 primary election day.

3939 (b) Each registered political party that chooses to use the primary election process to
3940 nominate some or all of its candidates shall comply with the requirements of this section.

3941 (2) (a) As a condition for using the state's election system, each registered political
3942 party that wishes to participate in the primary election shall:

3943 (i) declare their intent to participate in the primary election;

3944 (ii) identify one or more registered political parties whose members may vote for the
3945 registered political party's candidates and whether or not persons identified as unaffiliated with
3946 a political party may vote for the registered political party's candidates; and

3947 (iii) certify that information to the lieutenant governor no later than 5 p.m. on March 1
3948 of each even-numbered year.

3949 (b) As a condition for using the state's election system, each registered political party

3950 that wishes to participate in the primary election shall:

3951 (i) certify the name and office of all of the registered political party's candidates to the
3952 lieutenant governor no later than 5 p.m. on May 13 of each even-numbered year; and

3953 (ii) certify the name and office of each of its county candidates to the county clerks by
3954 5 p.m. on May 13 of each even-numbered year.

3955 (c) By 5 p.m. on May 16 of each even-numbered year, the lieutenant governor shall
3956 send the county clerks a certified list of the names of all statewide or multicounty candidates
3957 that [~~must~~] shall be printed on the primary ballot.

3958 (d) (i) Except as provided in Subsection (2)(d)(ii), if a registered political party does
3959 not wish to participate in the primary election, it shall submit the names of its county
3960 candidates to the county clerks and the names of all of its candidates to the lieutenant governor
3961 by 5 p.m. on May 30 of each even-numbered year.

3962 (ii) A registered political party's candidates for President and Vice-President of the
3963 United States shall be certified to the lieutenant governor as provided in Subsection
3964 20A-9-202(4).

3965 (e) Each political party shall certify the names of its presidential and vice-presidential
3966 candidates and presidential electors to the lieutenant governor's office no later than September
3967 8 of each presidential election year.

3968 (3) The county clerk shall:

3969 (a) review the declarations of candidacy filed by candidates for local boards of
3970 education to determine if more than two candidates have filed for the same seat;

3971 (b) place the names of all candidates who have filed a declaration of candidacy for a
3972 local board of education seat on the nonpartisan section of the ballot if more than two
3973 candidates have filed for the same seat; and

3974 (c) conduct a lottery to determine the order of the candidates' names on the ballot.

3975 (4) After the county clerk receives the certified list from a registered political party, the
3976 county clerk shall post or publish a primary election notice in substantially the following form:

3977 "Notice is given that a primary election will be held Tuesday, June _____,

3978 _____(year), to nominate party candidates for the parties and nonpartisan offices listed on
 3979 the primary ballot. The polling place for voting precinct ____ is _____. The polls will open at 7
 3980 a.m. and continue open until 8 p.m. of the same day. Attest: county clerk".

3981 (5) (a) Candidates receiving the highest number of votes cast for each office at the
 3982 regular primary election are nominated by their party or nonpartisan group for that office.

3983 (b) If two or more candidates are to be elected to the office at the regular general
 3984 election, those party candidates equal in number to positions to be filled who receive the
 3985 highest number of votes at the regular primary election are the nominees of their party for those
 3986 positions.

3987 (6) (a) When a tie vote occurs in any primary election for any national, state, or other
 3988 office that represents more than one county, the governor, lieutenant governor, and attorney
 3989 general shall, at a public meeting called by the governor and in the presence of the candidates
 3990 involved, select the nominee by lot cast in whatever manner the governor determines.

3991 (b) When a tie vote occurs in any primary election for any county office, the district
 3992 court judges of the district in which the county is located shall, at a public meeting called by
 3993 the judges and in the presence of the candidates involved, select the nominee by lot cast in
 3994 whatever manner the judges determine.

3995 (7) The expense of providing all ballots, blanks, or other supplies to be used at any
 3996 primary election provided for by this section, and all expenses necessarily incurred in the
 3997 preparation for or the conduct of that primary election shall be paid out of the treasury of the
 3998 county or state, in the same manner as for the regular general elections.

3999 Section 86. Section **20A-11-401** is amended to read:

4000 **20A-11-401. Officeholder financial reporting requirements -- Year-end summary**
 4001 **report.**

4002 (1) (a) Each officeholder shall file a summary report by January 10 of each year.

4003 (b) An officeholder that is required to file a summary report both as an officeholder and
 4004 as a candidate for office under the requirements of this chapter may file a single summary
 4005 report as a candidate and an officeholder, provided that the combined report meets the

4006 requirements of:

4007 (i) this section; and

4008 (ii) the section that provides the requirements for the summary report [~~that must be~~
4009 filed by the officeholder in the officeholder's capacity of a candidate for office.

4010 (2) (a) Each summary report shall include the following information as of December 31
4011 of the previous year:

4012 (i) the net balance of the last summary report, if any;

4013 (ii) a single figure equal to the total amount of receipts received since the last summary
4014 report, if any;

4015 (iii) a single figure equal to the total amount of expenditures made since the last
4016 summary report, if any;

4017 (iv) a detailed listing of each contribution and public service assistance received since
4018 the last summary report;

4019 (v) for each nonmonetary contribution:

4020 (A) the fair market value of the contribution with that information provided by the
4021 contributor; and

4022 (B) a specific description of the contribution;

4023 (vi) a detailed listing of each expenditure made since the last summary report;

4024 (vii) for each nonmonetary expenditure, the fair market value of the expenditure; and

4025 (viii) a net balance for the year consisting of the net balance from the last summary
4026 report plus all receipts minus all expenditures.

4027 (b) (i) For all individual contributions or public service assistance of \$50 or less, a
4028 single aggregate figure may be reported without separate detailed listings.

4029 (ii) Two or more contributions from the same source that have an aggregate total of
4030 more than \$50 may not be reported in the aggregate, but shall be reported separately.

4031 (c) In preparing the report, all receipts and expenditures shall be reported as of
4032 December 31 of the previous year.

4033 (3) The summary report shall contain a paragraph signed by the officeholder certifying

4034 that, to the best of the officeholder's knowledge, all receipts and all expenditures have been
4035 reported as of December 31 of the last calendar year and that there are no bills or obligations
4036 outstanding and unpaid except as set forth in that report.

4037 Section 87. Section **20A-11-1603** is amended to read:

4038 **20A-11-1603. Financial disclosure form -- Required when filing for candidacy --**
4039 **Public availability.**

4040 (1) Candidates seeking the following offices shall file a financial disclosure with the
4041 filing officer at the time of filing a declaration of candidacy:

- 4042 (a) state constitutional officer;
- 4043 (b) state legislator; or
- 4044 (c) State Board of Education member.

4045 (2) A filing officer [~~shall not~~] may not accept a declaration of candidacy for an office
4046 listed in Subsection (1) unless the declaration of candidacy is accompanied by the financial
4047 disclosure required by this section.

4048 (3) The financial disclosure form shall contain the same requirements and shall be in
4049 the same format as the financial disclosure form described in Section 76-8-109.

4050 (4) The financial disclosure form shall:

- 4051 (a) be made available for public inspection at the filing officer's place of business;
- 4052 (b) if the filing officer is an individual other than the lieutenant governor, be provided
4053 to the lieutenant governor within five business days of the date of filing and be made publicly
4054 available at the Office of the Lieutenant Governor; and
- 4055 (c) be made publicly available on the Statewide Electronic Voter Information Website
4056 administered by the lieutenant governor.

4057 Section 88. Section **20A-14-103** is amended to read:

4058 **20A-14-103. State Board of Education members -- When elected -- Qualifications**
4059 **-- Avoiding conflicts of interest.**

4060 (1) (a) In 2002 and every four years thereafter, one member each shall be elected from
4061 new Districts 2, 3, 5, 6, 9, 10, 14, and 15 to serve a four-year term.

4062 (b) In 2004 and every four years thereafter, one member each shall be elected from new
4063 Districts 4, 7, 8, 11, 12, and 13 to serve a four-year term.

4064 (c) (i) Because of the combination of certain former districts, the state school board
4065 members elected from old Districts 2 and 4 who will reside in new District 1 may not serve out
4066 the term for which they were elected, but shall stand for election in 2002 for a term of office of
4067 four years from the realigned district in which each resides.

4068 (ii) If one of the incumbent state school board members from new District 1 indicates
4069 in writing to the lieutenant governor that the school board member will not seek reelection, that
4070 incumbent state school board member may serve until January 1, 2003 and the other incumbent
4071 state school board member shall serve out the term for which the member was elected, which is
4072 until January 1, 2005.

4073 (2) (a) A person seeking election to the state school board [~~must~~] shall have been a
4074 resident of the state school board district in which the person is seeking election for at least one
4075 year as of the date of the election.

4076 (b) A person who has resided within the state school board district, as the boundaries
4077 of the district exist on the date of the election, for one year immediately preceding the date of
4078 the election shall be considered to have met the requirements of this Subsection (2).

4079 (3) A member shall:

4080 (a) be and remain a registered voter in the state board district from which the member
4081 was elected or appointed; and

4082 (b) maintain the member's primary residence within the state board district from which
4083 the member was elected or appointed during the member's term of office.

4084 (4) A member of the State Board of Education may not, during the member's term of
4085 office, also serve as an employee of:

4086 (a) the board;

4087 (b) the Utah State Office of Education; or

4088 (c) the Utah State Office of Rehabilitation.

4089 Section 89. Section **20A-14-201** is amended to read:

4090 **20A-14-201. Boards of education -- School board districts -- Creation --**
4091 **Reapportionment.**

4092 (1) (a) The county legislative body, for local school districts whose boundaries
4093 encompass more than a single municipality, and the municipal legislative body, for school
4094 districts contained completely within a municipality, shall divide the local school district into
4095 local school board districts as required under Subsection 20A-14-202(1)(a).

4096 (b) The county and municipal legislative bodies shall divide the school district so that
4097 the local school board districts are substantially equal in population and are as contiguous and
4098 compact as practicable.

4099 (2) (a) County and municipal legislative bodies shall reapportion district boundaries to
4100 meet the population, compactness, and contiguity requirements of this section:

4101 (i) at least once every 10 years;

4102 (ii) if a new district is created:

4103 (A) within 45 days after the canvass of an election at which voters approve the creation
4104 of a new district; and

4105 (B) at least 60 days before the candidate filing deadline for a school board election;

4106 (iii) whenever districts are consolidated;

4107 (iv) whenever a district loses more than 20% of the population of the entire school
4108 district to another district;

4109 (v) whenever a district loses more than 50% of the population of a local school board
4110 district to another district;

4111 (vi) whenever a district receives new residents equal to at least 20% of the population
4112 of the district at the time of the last reapportionment because of a transfer of territory from
4113 another district; and

4114 (vii) whenever it is necessary to increase the membership of a board from five to seven
4115 members as a result of changes in student membership under Section 20A-14-202.

4116 (b) If a school district receives territory containing less than 20% of the population of
4117 the transferee district at the time of the last reapportionment, the local school board may assign

4118 the new territory to one or more existing school board districts.

4119 (3) (a) Reapportionment does not affect the right of any school board member to
4120 complete the term for which the member was elected.

4121 (b) (i) After reapportionment, representation in a local school board district shall be
4122 determined as provided in this Subsection (3).

4123 (ii) If only one board member whose term extends beyond reapportionment lives
4124 within a reapportioned local school board district, that board member shall represent that local
4125 school board district.

4126 (iii) (A) If two or more members whose terms extend beyond reapportionment live
4127 within a reapportioned local school board district, the members involved shall select one
4128 member by lot to represent the local school board district.

4129 (B) The other members shall serve at-large for the remainder of their terms.

4130 (C) The at-large board members shall serve in addition to the designated number of
4131 board members for the board in question for the remainder of their terms.

4132 (iv) If there is no board member living within a local school board district whose term
4133 extends beyond reapportionment, the seat shall be treated as vacant and filled as provided in
4134 this part.

4135 (4) (a) If, before an election affected by reapportionment, the county or municipal
4136 legislative body that conducted the reapportionment determines that one or more members
4137 [~~must~~] shall be elected to terms of two years to meet this part's requirements for staggered
4138 terms, the legislative body shall determine by lot which of the reapportioned local school board
4139 districts will elect members to two-year terms and which will elect members to four-year terms.

4140 (b) All subsequent elections are for four-year terms.

4141 (5) Within 10 days after any local school board district boundary change, the county or
4142 municipal legislative body making the change shall send an accurate map or plat of the
4143 boundary change to the Automated Geographic Reference Center created under Section
4144 63F-1-506.

4145 Section 90. Section **20A-14-202** is amended to read:

4146 **20A-14-202. Local boards of education -- Membership -- When elected --**
4147 **Qualifications -- Avoiding conflicts of interest.**

4148 (1) (a) Except as provided in Subsection (1)(b), the board of education of a school
4149 district with a student population of up to 24,000 students shall consist of five members.

4150 (b) The board of education of a school district with a student population of more than
4151 10,000 students but fewer than 24,000 students shall increase from five to seven members
4152 beginning with the 2004 regular general election.

4153 (c) The board of education of a school district with a student population of 24,000 or
4154 more students shall consist of seven members.

4155 (d) Student population is based on the October 1 student count submitted by districts to
4156 the State Office of Education.

4157 (e) If the number of members of a local school board is required to change under
4158 Subsection (1)(b), the board shall be reapportioned and elections conducted as provided in
4159 Sections 20A-14-201 and 20A-14-203.

4160 (f) A school district which now has or increases to a seven-member board shall
4161 maintain a seven-member board regardless of subsequent changes in student population.

4162 (g) (i) Members of a local board of education shall be elected at each regular general
4163 election.

4164 (ii) Except as provided in Subsection (1)(g)(iii), no more than three members of a local
4165 board of education may be elected to a five-member board, nor more than four members
4166 elected to a seven-member board, in any election year.

4167 (iii) More than three members of a local board of education may be elected to a
4168 five-member board and more than four members elected to a seven-member board in any
4169 election year only when required by reapportionment or to fill a vacancy or to implement
4170 Subsection (1)(b).

4171 (h) One member of the local board of education shall be elected from each local school
4172 board district.

4173 (2) (a) For an election held after the 2008 general election, a person seeking election to

4174 a local school board [~~must~~] shall have been a resident of the local school board district in
4175 which the person is seeking election for at least one year as of the date of the election.

4176 (b) A person who has resided within the local school board district, as the boundaries
4177 of the district exist on the date of the election, for one year immediately preceding the date of
4178 the election shall be considered to have met the requirements of this Subsection (2).

4179 (3) A member of a local school board shall:

4180 (a) be and remain a registered voter in the local school board district from which the
4181 member is elected or appointed; and

4182 (b) maintain the member's primary residence within the local school board district from
4183 which the member is elected or appointed during the member's term of office.

4184 (4) A member of a local school board may not, during the member's term in office, also
4185 serve as an employee of that board.

4186 Section 91. Section **22-1-11** is amended to read:

4187 **22-1-11. Transactions prior to May 12, 1925, excepted.**

4188 The provisions of this chapter [~~shall not~~] do not apply to transactions taking place prior
4189 to May 12, 1925.

4190 Section 92. Section **22-3-104** is amended to read:

4191 **22-3-104. Trustee's power to adjust.**

4192 (1) A trustee may adjust between principal and income to the extent the trustee
4193 considers necessary if the trustee invests and manages trust assets as a prudent investor, the
4194 terms of the trust describe the amount that may or [~~must~~] shall be distributed to a beneficiary
4195 by referring to the trust's income, and the trustee determines, after applying the rules in
4196 Subsection 22-3-103(1), that the trustee is unable to comply with Subsection 22-3-103(2).

4197 (2) In deciding whether and to what extent to exercise the power conferred by
4198 Subsection (1), a trustee shall consider all factors relevant to the trust and its beneficiaries,
4199 including the following factors to the extent they are relevant:

4200 (a) the nature, purpose, and expected duration of the trust;

4201 (b) the intent of the settlor;

- 4202 (c) the identity and circumstances of the beneficiaries;
- 4203 (d) the needs for liquidity, regularity of income, and preservation and appreciation of
- 4204 capital;
- 4205 (e) (i) the assets held in the trust;
- 4206 (ii) the extent to which [~~they~~] the assets consist of financial assets, interests in closely
- 4207 held enterprises, tangible and intangible personal property, or real property;
- 4208 (iii) the extent to which an asset is used by a beneficiary; and
- 4209 (iv) whether an asset was purchased by the trustee or received from the settlor;
- 4210 (f) the net amount allocated to income under the other sections of this chapter and the
- 4211 increase or decrease in the value of the principal assets, which the trustee may estimate as to
- 4212 assets for which market values are not readily available;
- 4213 (g) whether and to what extent the terms of the trust give the trustee the power to
- 4214 invade principal or accumulate income or prohibit the trustee from invading principal or
- 4215 accumulating income, and the extent to which the trustee has exercised a power from time to
- 4216 time to invade principal or accumulate income;
- 4217 (h) the actual and anticipated effect of economic conditions on principal and income
- 4218 and effects of inflation and deflation; and
- 4219 (i) the anticipated tax consequences of an adjustment.
- 4220 (3) A trustee may not make an adjustment:
- 4221 (a) that diminishes the income interest in a trust that requires all of the income to be
- 4222 paid at least annually to a spouse and for which an estate tax or gift tax marital deduction
- 4223 would be allowed, in whole or in part, if the trustee did not have the power to make the
- 4224 adjustment;
- 4225 (b) that reduces the actuarial value of the income interest in a trust to which a person
- 4226 transfers property with the intent to qualify for a gift tax exclusion;
- 4227 (c) that changes the amount payable to a beneficiary as a fixed annuity or a fixed
- 4228 fraction of the value of the trust assets;
- 4229 (d) from any amount that is permanently set aside for charitable purposes under a will

4230 or the terms of a trust unless both income and principal are so set aside;

4231 (e) if possessing or exercising the power to make an adjustment causes an individual to
4232 be treated as the owner of all or part of the trust for income tax purposes, and the individual
4233 would not be treated as the owner if the trustee did not possess the power to make an
4234 adjustment;

4235 (f) if possessing or exercising the power to make an adjustment causes all or part of the
4236 trust assets to be included for estate tax purposes in the estate of an individual who has the
4237 power to remove a trustee or appoint a trustee, or both, and the assets would not be included in
4238 the estate of the individual if the trustee did not possess the power to make an adjustment;

4239 (g) if the trustee is a beneficiary of the trust; or

4240 (h) if the trustee is not a beneficiary, but the adjustment would benefit the trustee
4241 directly or indirectly.

4242 (4) If Subsection (3)(e), (f), (g), or (h) applies to a trustee and there is more than one
4243 trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the
4244 exercise of the power by the remaining trustee or trustees is not permitted by the terms of the
4245 trust.

4246 (5) A trustee may release the entire power conferred by Subsection (1) or may release
4247 only the power to adjust from income to principal or the power to adjust from principal to
4248 income if the trustee is uncertain about whether possessing or exercising the power will cause a
4249 result described in Subsections (3)(a) through (f) or Subsection (3)(h) or if the trustee
4250 determines that possessing or exercising the power will or may deprive the trust of a tax benefit
4251 or impose a tax burden not described in Subsection (3). The release may be permanent or for a
4252 specified period, including a period measured by the life of an individual.

4253 (6) Terms of a trust that limit the power of a trustee to make an adjustment between
4254 principal and income do not affect the application of this section unless it is clear from the
4255 terms of the trust that the terms are intended to deny the trustee the power of adjustment
4256 conferred by Subsection (1).

4257 Section 93. Section **22-3-202** is amended to read:

4258 **22-3-202. Distribution to residuary and remainder beneficiaries.**

4259 (1) Each beneficiary described in Subsection 22-3-201(4) is entitled to receive a
4260 portion of the net income equal to the beneficiary's fractional interest in undistributed principal
4261 assets, using values as of the distribution date. If a fiduciary makes more than one distribution
4262 of assets to beneficiaries to whom this section applies, each beneficiary, including one who
4263 does not receive part of the distribution, is entitled, as of each distribution date, to the net
4264 income the fiduciary has received after the date of death or terminating event or earlier
4265 distribution date but has not distributed as of the current distribution date.

4266 (2) In determining a beneficiary's share of net income, the following rules apply:

4267 (a) The beneficiary is entitled to receive a portion of the net income equal to the
4268 beneficiary's fractional interest in the undistributed principal assets immediately before the
4269 distribution date, including assets that later may be sold to meet principal obligations.

4270 (b) The beneficiary's fractional interest in the undistributed principal assets [~~must~~] shall
4271 be calculated without regard to property specifically given to a beneficiary and property
4272 required to pay pecuniary amounts not in trust.

4273 (c) The beneficiary's fractional interest in the undistributed principal assets [~~must~~] shall
4274 be calculated on the basis of the aggregate value of those assets as of the distribution date
4275 without reducing the value by any unpaid principal obligation.

4276 (d) The distribution date for purposes of this section may be the date as of which the
4277 fiduciary calculates the value of the assets if that date is reasonably near the date on which
4278 assets are actually distributed.

4279 (3) If a fiduciary does not distribute all of the collected but undistributed net income to
4280 each person as of a distribution date, the fiduciary shall maintain appropriate records showing
4281 the interest of each beneficiary in that net income.

4282 (4) A fiduciary may apply the rules in this section, to the extent that the fiduciary
4283 considers it appropriate, to net gain or loss realized after the date of death or terminating event
4284 or earlier distribution date from the disposition of a principal asset if this section applies to the
4285 income from the asset.

4286 Section 94. Section **22-3-302** is amended to read:

4287 **22-3-302. Apportionment of receipts and disbursements when decedent dies or**
4288 **income interest begins.**

4289 (1) A trustee shall allocate an income receipt or disbursement other than one to which
4290 Subsection 22-3-201(1) applies to principal if its due date occurs before a decedent dies in the
4291 case of an estate or before an income interest begins in the case of a trust or successive income
4292 interest.

4293 (2) A trustee shall allocate an income receipt or disbursement to income if its due date
4294 occurs on or after the date on which a decedent dies or an income interest begins and it is a
4295 periodic due date. An income receipt or disbursement [~~must~~] shall be treated as accruing from
4296 day to day if its due date is not periodic or it has no due date. The portion of the receipt or
4297 disbursement accruing before the date on which a decedent dies or an income interest begins
4298 [~~must~~] shall be allocated to principal and the balance [~~must~~] shall be allocated to income.

4299 (3) An item of income or an obligation is due on the date the payer is required to make
4300 a payment. If a payment date is not stated, there is no due date for the purposes of this chapter.
4301 Distributions to shareholders or other owners from an entity to which Section 22-3-401 applies
4302 are considered to be due on the date fixed by the entity for determining who is entitled to
4303 receive the distribution or, if no date is fixed, on the declaration date for the distribution. A
4304 due date is periodic for receipts or disbursements that must be paid at regular intervals under a
4305 lease or an obligation to pay interest or if an entity customarily makes distributions at regular
4306 intervals.

4307 Section 95. Section **22-3-303** is amended to read:

4308 **22-3-303. Apportionment when income interest ends.**

4309 (1) In this section, "undistributed income" means net income received before the date
4310 on which an income interest ends. The term does not include an item of income or expense
4311 that is due or accrued or net income that has been added or is required to be added to principal
4312 under the terms of the trust.

4313 (2) When a mandatory income interest ends, the trustee shall pay to a mandatory

4314 income beneficiary who survives that date, or the estate of a deceased mandatory income
4315 beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed
4316 income that is not disposed of under the terms of the trust unless the beneficiary has an
4317 unqualified power to revoke more than 5% of the trust immediately before the income interest
4318 ends. In the latter case, the undistributed income from the portion of the trust that may be
4319 revoked [~~must~~] shall be added to principal.

4320 (3) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of
4321 the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by
4322 applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate,
4323 or other tax requirements.

4324 Section 96. Section ~~22-3-403~~ is amended to read:

4325 **22-3-403. Receipts from entities -- Business and other activities conducted by**
4326 **trustee.**

4327 (1) If a trustee who conducts a business or other activity determines that it is in the best
4328 interest of all the beneficiaries to account separately for the business or activity instead of
4329 accounting for it as part of the trust's general accounting records, the trustee may maintain
4330 separate accounting records for its transactions, whether or not its assets are segregated from
4331 other trust assets.

4332 (2) A trustee who accounts separately for a business or other activity may determine
4333 the extent to which its net cash receipts [~~must~~] shall be retained for working capital, the
4334 acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the
4335 business or activity, and the extent to which the remaining net cash receipts are accounted for
4336 as principal or income in the trust's general accounting records. If a trustee sells assets of the
4337 business or other activity, other than in the ordinary course of the business or activity, the
4338 trustee shall account for the net amount received as principal in the trust's general accounting
4339 records to the extent the trustee determines that the amount received is no longer required in
4340 the conduct of the business.

4341 (3) Activities for which a trustee may maintain separate accounting records include:

- 4342 (a) retail, manufacturing, service, and other traditional business activities;
- 4343 (b) farming;
- 4344 (c) raising and selling livestock and other animals;
- 4345 (d) management of rental properties;
- 4346 (e) extraction of minerals and other natural resources;
- 4347 (f) timber operations; and
- 4348 (g) activities to which Section 22-3-414 applies.

4349 Section 97. Section **22-3-405** is amended to read:

4350 **22-3-405. Receipts not normally apportioned -- Rental property.**

4351 To the extent that a trustee accounts for receipts from rental property pursuant to this
4352 section, the trustee shall allocate to income an amount received as rent of real or personal
4353 property, including an amount received for cancellation or renewal of a lease. An amount
4354 received as a refundable deposit, including a security deposit or a deposit that is to be applied
4355 as rent for future periods, [~~must~~] shall be added to principal and held subject to the terms of the
4356 lease and is not available for distribution to a beneficiary until the trustee's contractual
4357 obligations have been satisfied with respect to that amount.

4358 Section 98. Section **22-3-406** is amended to read:

4359 **22-3-406. Receipts not normally apportioned -- Obligation to pay money.**

4360 (1) An amount received as interest, whether determined at a fixed, variable, or floating
4361 rate, on an obligation to pay money to the trustee, including an amount received as
4362 consideration for prepaying principal, [~~must~~] shall be allocated to income without any
4363 provision for amortization of premium.

4364 (2) A trustee shall allocate to principal an amount received from the sale, redemption,
4365 or other disposition of an obligation to pay money to the trustee more than one year after it is
4366 purchased or acquired by the trustee, including an obligation whose purchase price or value
4367 when it is acquired is less than its value at maturity. If the obligation matures within one year
4368 after it is purchased or acquired by the trustee, an amount received in excess of its purchase
4369 price or its value when acquired by the trust [~~must~~] shall be allocated to income.

4370 (3) This section does not apply to an obligation to which Section 22-3-409, 22-3-410,
4371 22-3-411, 22-3-412, 22-3-414, or 22-3-415 applies.

4372 Section 99. Section **22-3-411** is amended to read:

4373 **22-3-411. Receipts normally apportioned -- Minerals, water, and other natural**
4374 **resources.**

4375 (1) To the extent that a trustee accounts for receipts from an interest in minerals or
4376 other natural resources pursuant to this section, the trustee shall allocate them as follows:

4377 (a) If received as nominal delay rental or nominal annual rent on a lease, a receipt
4378 [~~must~~] shall be allocated to income.

4379 (b) If received from a production payment, a receipt [~~must~~] shall be allocated to income
4380 if and to the extent that the agreement creating the production payment provides a factor for
4381 interest or its equivalent. The balance [~~must~~] shall be allocated to principal.

4382 (c) If an amount received as a royalty, shut-in-well payment, take-or-pay payment,
4383 bonus, or delay rental is more than nominal, 90% [~~must~~] shall be allocated to principal and the
4384 balance to income.

4385 (d) If an amount is received from a working interest or any other interest not provided
4386 for in Subsection (1)(a), (b), or (c), 90% of the net amount received [~~must~~] shall be allocated to
4387 principal and the balance to income.

4388 (2) An amount received on account of an interest in water that is renewable [~~must~~]
4389 shall be allocated to income. If the water is not renewable, 90% of the amount [~~must~~] shall be
4390 allocated to principal and the balance to income.

4391 (3) This chapter applies whether or not a decedent or donor was extracting minerals,
4392 water, or other natural resources before the interest became subject to the trust.

4393 (4) If a trust owns an interest in minerals, water, or other natural resources on May 3,
4394 2004, the trustee may allocate receipts from the interest as provided in this chapter or in the
4395 manner used by the trustee before May 3, 2004. If the trust acquires an interest in minerals,
4396 water, or other natural resources after May 3, 2004, the trustee shall allocate receipts from the
4397 interest as provided in this chapter.

4398 Section 100. Section **22-3-414** is amended to read:

4399 **22-3-414. Receipts normally apportioned -- Derivatives and options.**

4400 (1) In this section, "derivative" means a contract or financial instrument or a
4401 combination of contracts and financial instruments which gives a trust the right or obligation to
4402 participate in some or all changes in the price of a tangible or intangible asset or group of
4403 assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or
4404 a group of assets.

4405 (2) To the extent that a trustee does not account under Section 22-3-403 for
4406 transactions in derivatives, the trustee shall allocate to principal receipts from and
4407 disbursements made in connection with those transactions.

4408 (3) If a trustee grants an option to buy property from the trust, whether or not the trust
4409 owns the property when the option is granted, grants an option that permits another person to
4410 sell property to the trust, or acquires an option to buy property for the trust or an option to sell
4411 an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the
4412 asset if the option is exercised, an amount received for granting the option [~~must~~] shall be
4413 allocated to principal. An amount paid to acquire the option [~~must~~] shall be paid from
4414 principal. A gain or loss realized upon the exercise of an option, including an option granted to
4415 a settlor of the trust for services rendered, [~~must~~] shall be allocated to principal.

4416 Section 101. Section **22-3-505** is amended to read:

4417 **22-3-505. Income taxes.**

4418 (1) A tax required to be paid by a trustee based on receipts allocated to income [~~must~~]
4419 shall be paid from income.

4420 (2) A tax required to be paid by a trustee based on receipts allocated to principal [~~must~~]
4421 shall be paid from principal, even if the tax is called an income tax by the taxing authority.

4422 (3) A tax required to be paid by a trustee on the trust's share of an entity's taxable
4423 income [~~must~~] shall be paid:

4424 (a) from income to the extent that receipts from the entity are allocated only to income;

4425 (b) from principal to the extent that receipts from the entity are allocated only to

4426 principal;

4427 (c) proportionately from principal and income to the extent that receipts from the entity
4428 are allocated to both income and principal; and

4429 (d) from principal to the extent that the tax exceeds the total receipts from the entity.

4430 (4) After applying Subsections (1) through (3), the trustee shall adjust income or
4431 principal receipts to the extent that the trust's taxes are reduced because the trust receives a
4432 deduction for payments made to a beneficiary.

4433 Section 102. Section **22-3-506** is amended to read:

4434 **22-3-506. Adjustments between principal and income because of taxes.**

4435 (1) A fiduciary may make adjustments between principal and income to offset the
4436 shifting of economic interests or tax benefits between income beneficiaries and remainder
4437 beneficiaries which arise from:

4438 (a) elections and decisions, other than those described in Subsection (2), that the
4439 fiduciary makes from time to time regarding tax matters;

4440 (b) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as
4441 a result of a transaction involving or a distribution from the estate or trust; or

4442 (c) the ownership by an estate or trust of an interest in an entity whose taxable income,
4443 whether or not distributed, is includable in the taxable income of the estate, trust, or a
4444 beneficiary.

4445 (2) If the amount of an estate tax marital deduction or charitable contribution deduction
4446 is reduced because a fiduciary deducts an amount paid from principal for income tax purposes
4447 instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal
4448 are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each
4449 estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the
4450 principal from which the increase in estate tax is paid. The total reimbursement [~~must~~] shall
4451 equal the increase in the estate tax to the extent that the principal used to pay the increase
4452 would have qualified for a marital deduction or charitable contribution deduction but for the
4453 payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary

4454 whose income taxes are reduced [~~must~~] shall be the same as its proportionate share of the total
4455 decrease in income tax. An estate or trust shall reimburse principal from income.

4456 Section 103. Section **22-3-601** is amended to read:

4457 **22-3-601. Uniformity of application and construction.**

4458 In applying and construing this chapter, consideration [~~must~~] shall be given to the need
4459 to promote uniformity of the law with respect to its subject matter among states that enact it.

4460 Section 104. Section **23-13-2** is amended to read:

4461 **23-13-2. Definitions.**

4462 As used in this title:

4463 (1) "Activity regulated under this title" means any act, attempted act, or activity
4464 prohibited or regulated under any provision of Title 23, Wildlife Resources Code of Utah, or
4465 the rules, and proclamations promulgated thereunder pertaining to protected wildlife including:

4466 (a) fishing;

4467 (b) hunting;

4468 (c) trapping;

4469 (d) taking;

4470 (e) permitting any dog, falcon, or other domesticated animal to take;

4471 (f) transporting;

4472 (g) possessing;

4473 (h) selling;

4474 (i) wasting;

4475 (j) importing;

4476 (k) exporting;

4477 (l) rearing;

4478 (m) keeping;

4479 (n) utilizing as a commercial venture; and

4480 (o) releasing to the wild.

4481 (2) "Aquatic animal" has the meaning provided in Section 4-37-103.

4482 (3) "Aquatic wildlife" means species of fish, mollusks, crustaceans, aquatic insects, or
4483 amphibians.

4484 (4) "Aquaculture facility" has the meaning provided in Section 4-37-103.

4485 (5) "Bag limit" means the maximum limit, in number or amount, of protected wildlife
4486 that one person may legally take during one day.

4487 (6) "Big game" means species of hoofed protected wildlife.

4488 (7) "Carcass" means the dead body of an animal or its parts.

4489 (8) "Certificate of registration" means a document issued under this title, or any rule or
4490 proclamation of the Wildlife Board granting authority to engage in activities not covered by a
4491 license, permit, or tag.

4492 (9) "Closed season" means the period of time during which the taking of protected
4493 wildlife is prohibited.

4494 (10) "Conservation officer" means a full-time, permanent employee of the Division of
4495 Wildlife Resources who is POST certified as a peace or a special function officer.

4496 (11) "Dedicated hunter program" means a program that provides:

4497 (a) expanded hunting opportunities;

4498 (b) opportunities to participate in projects that are beneficial to wildlife; and

4499 (c) education in hunter ethics and wildlife management principles.

4500 (12) "Division" means the Division of Wildlife Resources.

4501 (13) (a) "Domicile" means the place:

4502 (i) where an individual has a fixed permanent home and principal establishment;

4503 (ii) to which the individual if absent, intends to return; and

4504 (iii) in which the individual, and the individual's family voluntarily reside, not for a
4505 special or temporary purpose, but with the intention of making a permanent home.

4506 (b) To create a new domicile an individual [~~must~~] shall:

4507 (i) abandon the old domicile; and

4508 (ii) be able to prove that a new domicile has been established.

4509 (14) "Endangered" means wildlife designated as endangered according to Section 3 of

4510 the federal Endangered Species Act of 1973.

4511 (15) "Fee fishing facility" has the meaning provided in Section 4-37-103.

4512 (16) "Feral" means an animal that is normally domesticated but has reverted to the
4513 wild.

4514 (17) "Fishing" means to take fish or crayfish by any means.

4515 (18) "Furbearer" means species of the Bassariscidae, Canidae, Felidae, Mustelidae, and
4516 Castoridae families, except coyote and cougar.

4517 (19) "Game" means wildlife normally pursued, caught, or taken by sporting means for
4518 human use.

4519 (20) "Guide" means a person who receives compensation or advertises services for
4520 assisting another person to take protected wildlife, including the provision of food, shelter, or
4521 transportation, or any combination of these.

4522 (21) "Guide's agent" means a person who is employed by a guide to assist another
4523 person to take protected wildlife.

4524 (22) "Hunting" means to take or pursue a reptile, amphibian, bird, or mammal by any
4525 means.

4526 (23) "Intimidate or harass" means to physically interfere with or impede, hinder, or
4527 diminish the efforts of an officer in the performance of the officer's duty.

4528 (24) "Nonresident" means a person who does not qualify as a resident.

4529 (25) "Open season" means the period of time during which protected wildlife may be
4530 legally taken.

4531 (26) "Pecuniary gain" means the acquisition of money or something of monetary value.

4532 (27) "Permit" means a document, including a stamp, that grants authority to engage in
4533 specified activities under this title or a rule or proclamation of the Wildlife Board.

4534 (28) "Person" means an individual, association, partnership, government agency,
4535 corporation, or an agent of the foregoing.

4536 (29) "Possession" means actual or constructive possession.

4537 (30) "Possession limit" means the number of bag limits one individual may legally

4538 possess.

4539 (31) (a) "Private fish pond" means a body of water where privately owned, protected
4540 aquatic wildlife are propagated or kept for a noncommercial purpose.

4541 (b) "Private fish pond" does not include an aquaculture facility or fee fishing facility.

4542 (32) "Private wildlife farm" means an enclosed place where privately owned birds or
4543 furbearers are propagated or kept and that restricts the birds or furbearers from:

4544 (a) commingling with wild birds or furbearers; and

4545 (b) escaping into the wild.

4546 (33) "Proclamation" means the publication used to convey a statute, rule, policy, or
4547 pertinent information as it relates to wildlife.

4548 (34) (a) "Protected aquatic wildlife" means aquatic wildlife as defined in Subsection
4549 (3), except as provided in Subsection (34)(b).

4550 (b) "Protected aquatic wildlife" does not include aquatic insects.

4551 (35) (a) "Protected wildlife" means wildlife as defined in Subsection (49), except as
4552 provided in Subsection (35)(b).

4553 (b) "Protected wildlife" does not include coyote, field mouse, gopher, ground squirrel,
4554 jack rabbit, muskrat, and raccoon.

4555 (36) "Released to the wild" means to be turned loose from confinement.

4556 (37) (a) "Resident" means a person who:

4557 (i) has been domiciled in the state for six consecutive months immediately preceding
4558 the purchase of a license; and

4559 (ii) does not claim residency for hunting, fishing, or trapping in any other state or
4560 country.

4561 (b) A Utah resident retains Utah residency if that person leaves this state:

4562 (i) to serve in the armed forces of the United States or for religious or educational
4563 purposes; and

4564 (ii) the person complies with Subsection (37)(a)(ii).

4565 (c) (i) A member of the armed forces of the United States and dependents are residents

4566 for the purposes of this chapter as of the date the member reports for duty under assigned
4567 orders in the state if the member:

4568 (A) is not on temporary duty in this state; and

4569 (B) complies with Subsection (37)(a)(ii).

4570 (ii) A copy of the assignment orders [~~must~~] shall be presented to a wildlife division
4571 office to verify the member's qualification as a resident.

4572 (d) A nonresident attending an institution of higher learning in this state as a full-time
4573 student may qualify as a resident for purposes of this chapter if the student:

4574 (i) has been present in this state for 60 consecutive days immediately preceding the
4575 purchase of the license; and

4576 (ii) complies with Subsection (37)(a)(ii).

4577 (e) A Utah resident license is invalid if a resident license for hunting, fishing, or
4578 trapping is purchased in any other state or country.

4579 (f) An absentee landowner paying property tax on land in Utah does not qualify as a
4580 resident.

4581 (38) "Sell" means to offer or possess for sale, barter, exchange, or trade, or the act of
4582 selling, bartering, exchanging, or trading.

4583 (39) "Small game" means species of protected wildlife:

4584 (a) commonly pursued for sporting purposes; and

4585 (b) not classified as big game, aquatic wildlife, or furbearers and excluding turkey,
4586 cougar, and bear.

4587 (40) "Spoiled" means impairment of the flesh of wildlife which renders it unfit for
4588 human consumption.

4589 (41) "Spotlighting" means throwing or casting the rays of any spotlight, headlight, or
4590 other artificial light on any highway or in any field, woodland, or forest while having in
4591 possession a weapon by which protected wildlife may be killed.

4592 (42) "Tag" means a card, label, or other identification device issued for attachment to
4593 the carcass of protected wildlife.

- 4594 (43) "Take" means to:
- 4595 (a) hunt, pursue, harass, catch, capture, possess, angle, seine, trap, or kill any protected
- 4596 wildlife; or
- 4597 (b) attempt any action referred to in Subsection (43)(a).
- 4598 (44) "Threatened" means wildlife designated as such pursuant to Section 3 of the
- 4599 federal Endangered Species Act of 1973.
- 4600 (45) "Trapping" means taking protected wildlife with a trapping device.
- 4601 (46) "Trophy animal" means an animal described as follows:
- 4602 (a) deer - a buck with an outside antler measurement of 24 inches or greater;
- 4603 (b) elk - a bull with six points on at least one side;
- 4604 (c) bighorn, desert, or rocky mountain sheep - a ram with a curl exceeding half curl;
- 4605 (d) moose - a bull with at least one antler exceeding five inches in length;
- 4606 (e) mountain goat - a male or female;
- 4607 (f) pronghorn antelope - a buck with horns exceeding 14 inches; or
- 4608 (g) bison - a bull.
- 4609 (47) "Waste" means to abandon protected wildlife or to allow protected wildlife to
- 4610 spoil or to be used in a manner not normally associated with its beneficial use.
- 4611 (48) "Water pollution" means the introduction of matter or thermal energy to waters
- 4612 within this state that:
- 4613 (a) exceeds state water quality standards; or
- 4614 (b) could be harmful to protected wildlife.
- 4615 (49) "Wildlife" means:
- 4616 (a) crustaceans, including brine shrimp and crayfish;
- 4617 (b) mollusks; and
- 4618 (c) vertebrate animals living in nature, except feral animals.
- 4619 Section 105. Section **23-13-17** is amended to read:
- 4620 **23-13-17. Spotlighting of coyote, red fox, striped skunk, and raccoon -- County**
- 4621 **ordinances -- Permits.**

4622 (1) Spotlighting may be used to hunt coyote, red fox, striped skunk, or raccoon where
4623 allowed by a county ordinance enacted pursuant to this section.

4624 (2) The ordinance shall provide that:

4625 (a) any artificial light used to spotlight coyote, red fox, striped skunk, or raccoon
4626 [~~must~~] shall be carried by the hunter;

4627 (b) a motor vehicle headlight or light attached to or powered by a motor vehicle may
4628 not be used to spotlight the animal; and

4629 (c) while hunting with the use of an artificial light, the hunter may not occupy or
4630 operate any motor vehicle.

4631 (3) For purposes of the county ordinance, "motor vehicle" shall have the meaning as
4632 defined in Section 41-6a-102.

4633 (4) The ordinance may specify:

4634 (a) the time of day and seasons when spotlighting is permitted;

4635 (b) areas closed or open to spotlighting within the unincorporated area of the county;

4636 (c) safety zones within which spotlighting is prohibited;

4637 (d) the weapons permitted; and

4638 (e) penalties for violation of the ordinance.

4639 (5) (a) A county may restrict the number of hunters engaging in spotlighting by
4640 requiring a permit to spotlight and issuing a limited number of permits.

4641 (b) (i) A fee may be charged for a spotlighting permit.

4642 (ii) Any permit fee shall be established by the county ordinance.

4643 (iii) Revenues generated by the permit fee shall be remitted to the Division of Wildlife
4644 Resources for deposit into the Wildlife Resources Account, except the Wildlife Board may
4645 allow any county that enacts an ordinance pursuant to this section to retain a reasonable amount
4646 to pay for the costs of administering and enforcing the ordinance, provided this use of the
4647 permit revenues does not affect federal funds received by the state under 16 U.S.C. Sec. 669 et
4648 seq., Wildlife Restoration Act and 16 U.S.C. Sec. 777 et seq., Sport Fish Restoration Act.

4649 (6) A county may require hunters to notify the county sheriff of the time and place they

4650 will be engaged in spotlighting.

4651 (7) The requirement that a county ordinance [~~must~~] shall be enacted before a person
4652 may use spotlighting to hunt coyote, red fox, striped skunk, or raccoon does not apply to:

4653 (a) a person or [~~his~~] the person's agent who is lawfully acting to protect [~~his~~] the
4654 person's crops or domestic animals from predation by those animals; or

4655 (b) an animal damage control agent acting in [~~his~~] the agent's official capacity under a
4656 memorandum of agreement with the division.

4657 Section 106. Section **23-14-2** is amended to read:

4658 **23-14-2. Wildlife Board -- Creation -- Membership -- Terms -- Quorum --**
4659 **Meetings -- Per diem and expenses.**

4660 (1) There is created a Wildlife Board which shall consist of seven members appointed
4661 by the governor with the consent of the Senate.

4662 (2) (a) In addition to the requirements of Section 79-2-203, the members of the board
4663 shall have expertise or experience in at least one of the following areas:

4664 (i) wildlife management or biology;

4665 (ii) habitat management, including range or aquatic;

4666 (iii) business, including knowledge of private land issues; and

4667 (iv) economics, including knowledge of recreational wildlife uses.

4668 (b) Each of the areas of expertise under Subsection (2)(a) shall be represented by at
4669 least one member of the Wildlife Board.

4670 (3) (a) The governor shall select each board member from a list of nominees submitted
4671 by the nominating committee pursuant to Section 23-14-2.5.

4672 (b) No more than two members shall be from a single wildlife region described in
4673 Subsection 23-14-2.6(1).

4674 (c) The governor may request an additional list of at least two nominees from the
4675 nominating committee if the initial list of nominees for a given position is unacceptable.

4676 (d) (i) If the governor fails to appoint a board member within 60 days after receipt of
4677 the initial or additional list, the nominating committee shall make an interim appointment by

4678 majority vote.

4679 (ii) The interim board member shall serve until the matter is resolved by the committee
4680 and the governor or until the board member is replaced pursuant to this chapter.

4681 (4) (a) Except as required by Subsection (4)(b), as terms of current board members
4682 expire, the governor shall appoint each new member or reappointed member to a six-year term.

4683 (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the
4684 time of appointment or reappointment, adjust the length of terms to ensure that:

4685 (i) the terms of board members are staggered so that approximately [~~1/3~~] one-third of
4686 the board is appointed every two years; and

4687 (ii) members serving from the same region have staggered terms.

4688 (c) If a vacancy occurs, the nominating committee shall submit two names, as provided
4689 in Subsection 23-14-2.5(4), to the governor and the governor shall appoint a replacement for
4690 the unexpired term.

4691 (d) Board members may serve only one term unless:

4692 (i) the member is among the first board members appointed to serve four years or less;

4693 or

4694 (ii) the member filled a vacancy under Subsection (4)(c) for four years or less.

4695 (5) (a) The board shall elect a chair and a vice chair from its membership.

4696 (b) Four members of the board shall constitute a quorum.

4697 (c) The director of the Division of Wildlife Resources shall act as secretary to the
4698 board but [~~shall not be~~] is not a voting member of the board.

4699 (6) (a) The Wildlife Board shall hold a sufficient number of public meetings each year
4700 to expeditiously conduct its business.

4701 (b) Meetings may be called by the chair upon five days notice or upon shorter notice in
4702 emergency situations.

4703 (c) Meetings may be held at the Salt Lake City office of the Division of Wildlife
4704 Resources or elsewhere as determined by the Wildlife Board.

4705 (7) A member may not receive compensation or benefits for the member's service, but

4706 may receive per diem and travel expenses in accordance with:

4707 (a) Section 63A-3-106;

4708 (b) Section 63A-3-107; and

4709 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

4710 63A-3-107.

4711 (8) (a) The members of the Wildlife Board shall complete an orientation course to
4712 assist them in the performance of the duties of their office.

4713 (b) The Department of Natural Resources shall provide the course required under
4714 Subsection (8)(a).

4715 Section 107. Section **23-15-2** is amended to read:

4716 **23-15-2. Jurisdiction of division over public or private land and waters.**

4717 All wildlife within this state, including [~~but not limited to~~] wildlife on public or private
4718 land or in public or private waters within this state, shall fall within the jurisdiction of the
4719 Division of Wildlife Resources.

4720 Section 108. Section **23-15-9** is amended to read:

4721 **23-15-9. Possession or transportation of live aquatic wildlife unlawful except as**
4722 **authorized -- Exceptions.**

4723 It is unlawful for any person to possess or transport live protected aquatic wildlife
4724 except as provided by this code or the rules and regulations of the Wildlife Board. This section
4725 [~~shall not~~] does not apply to tropical and goldfish species intended for exhibition or
4726 commercial purposes. Operators of a properly registered private fish pond may transport live
4727 aquatic wildlife specified by the Wildlife Board in the operator's certificate of registration.

4728 Section 109. Section **23-16-3** is amended to read:

4729 **23-16-3. Damage to cultivated crops, livestock forage, fences, or irrigation**
4730 **equipment by big game animals -- Notice to division.**

4731 (1) (a) If big game animals are damaging cultivated crops, livestock forage, fences, or
4732 irrigation equipment on private land, the landowner or lessee shall immediately, upon
4733 discovery of the damage, request that the division take action to alleviate the depredation

4734 problem.

4735 (b) The landowner or lessee shall allow division personnel reasonable access to the
4736 property sustaining damage to verify and alleviate the depredation problem.

4737 (2) (a) Within 72 hours after receiving the request for action under Subsection (1)(a),
4738 the division shall investigate the situation, and if it appears that depredation by big game
4739 animals may continue, the division shall:

4740 (i) remove the big game animals causing depredation; or

4741 (ii) implement a depredation mitigation plan which has been approved, in writing, by
4742 the landowner or lessee.

4743 (b) A depredation mitigation plan may provide for any or all of the following:

4744 (i) the scheduling of a depredation hunt;

4745 (ii) issuing permits to the landowners or lessees, to take big game animals causing
4746 depredation during a general or special season hunt authorized by the Wildlife Board;

4747 (iii) allowing landowners or lessees to designate recipients who may obtain a
4748 mitigation permit to take big game animals on the landowner's or lessee's land during a general
4749 or special season hunt authorized by the Wildlife Board; or

4750 (iv) a description of how the division will assess and compensate the landowner or
4751 lessee under Section 23-16-4 for damage to cultivated crops, fences, or irrigation equipment.

4752 (c) (i) The division shall specify the number and sex of the big game animals that may
4753 be taken pursuant to Subsections (2)(b)(ii) and (iii).

4754 (ii) Control efforts shall be directed toward antlerless animals, if possible.

4755 (d) A permit issued for an antlered animal [~~must~~] shall be approved by the division
4756 director or the director's designee.

4757 (e) The division and the landowner or lessee shall jointly determine the number of
4758 animals taken pursuant to Subsection (2)(b)(ii) of which the landowner or lessee may retain
4759 possession.

4760 (f) In determining appropriate remedial action under this Subsection (2), the division
4761 shall consider:

- 4762 (i) the extent of damage experienced or expected; and
- 4763 (ii) any revenue the landowner derives from:
 - 4764 (A) participation in a cooperative wildlife management unit;
 - 4765 (B) use of landowner association permits;
 - 4766 (C) use of mitigation permits; and
 - 4767 (D) charging for hunter access.
- 4768 (3) Any fee for accessing the owner's or lessee's land shall be determined by the
- 4769 landowner or lessee.
- 4770 (4) (a) If the landowner or lessee who approved the depredation mitigation plan under
- 4771 Subsection (2)(a)(ii) subsequently determines that the plan is not acceptable, the landowner or
- 4772 lessee may revoke his or her approval of the plan and again request that the division take action
- 4773 pursuant to Subsection (2)(a)(i).
- 4774 (b) A subsequent request for action provided under Subsection (4)(a) shall be
- 4775 considered to be a new request for purposes of the 72-hour time limit specified in Subsection
- 4776 (2)(a).
- 4777 (5) (a) The division may enter into a conservation lease with the owner or lessee of
- 4778 private lands for a fee or other remuneration as compensation for depredation.
- 4779 (b) Any conservation lease entered into under this section shall provide that the
- 4780 claimant may not unreasonably restrict hunting on the land or passage through the land to
- 4781 access public lands for the purpose of hunting, if those actions are necessary to control or
- 4782 mitigate damage by big game.
- 4783 Section 110. Section **23-16-4** is amended to read:
- 4784 **23-16-4. Compensation for damage to crops, fences, or irrigation equipment --**
- 4785 **Limitations -- Appeals.**
- 4786 (1) The division may provide compensation to claimants for damage caused by big
- 4787 game to:
 - 4788 (a) cultivated crops from or on cleared and planted land;
 - 4789 (b) fences on private land; or

- 4790 (c) irrigation equipment on private land.
- 4791 (2) To be eligible to receive compensation as provided in this section, the claimant
- 4792 shall:
- 4793 (a) [~~must~~] notify the division of the damage within 72 hours after the damage is
- 4794 discovered; and
- 4795 (b) allow division personnel reasonable access to the property to verify and alleviate
- 4796 the depredation problem.
- 4797 (3) (a) The appraisal of the damage shall be made by the claimant and the division as
- 4798 soon after notification as possible.
- 4799 (b) In determining damage payment, the division and claimant shall consider:
- 4800 (i) the extent of damage experienced; and
- 4801 (ii) any revenue the landowner derives from:
- 4802 (A) participation in a cooperative wildlife management unit;
- 4803 (B) use of landowner association permits;
- 4804 (C) use of mitigation permits; and
- 4805 (D) charging for hunter access.
- 4806 (c) In determining how to assess and compensate for damages to cultivated crops, the
- 4807 division's determination shall be based on the:
- 4808 (i) full replacement value in the local market of the cultivated crops that actually have
- 4809 been or will be damaged or consumed by big game animals; and
- 4810 (ii) cost of delivery of a replacement crop to the location of the damaged crop or other
- 4811 location that is not farther from the source of the replacement crop.
- 4812 (d) If the claimant and the division are unable to agree on a fair and equitable damage
- 4813 payment, they shall designate a third party, consisting of one or more persons familiar with the
- 4814 crops, fences, or irrigation equipment and the type of game animals doing the damage, to
- 4815 appraise the damage.
- 4816 (4) (a) Notwithstanding Section 63J-1-504, the total amount of compensation that may
- 4817 be provided by the division pursuant to this section and the total cost of fencing materials

4818 provided by the division to prevent crop damage may not exceed the legislative appropriation
4819 for fencing material and compensation for damaged crops, fences, and irrigation equipment.

4820 (b) (i) Any claim of \$1,000 or less may be paid after appraisal of the damage as
4821 provided in Subsection (3), unless the claim brings the total amount of claims submitted by the
4822 claimant in the fiscal year to an amount in excess of \$1,000.

4823 (ii) Any claim for damage to irrigation equipment may be paid after appraisal of the
4824 damage as provided in Subsection (3).

4825 (c) (i) Any claim in excess of \$1,000, or claim that brings the total amount of claims
4826 submitted by the claimant in the fiscal year to an amount in excess of \$1,000, shall be treated
4827 as follows:

4828 (A) \$1,000 may be paid pursuant to the conditions of this section; and

4829 (B) the amount in excess of \$1,000 may not be paid until the total amount of the
4830 approved claims of all the claimants and expenses for fencing materials for the fiscal year are
4831 determined.

4832 (ii) If the total exceeds the amount appropriated by the Legislature pursuant to
4833 Subsection (4)(a), claims in excess of \$1,000, or any claim that brings the total amount of a
4834 claimant's claims in a fiscal year to an amount in excess of \$1,000, shall be prorated.

4835 (5) The division may deny or limit compensation if the claimant:

4836 (a) has failed to exercise reasonable care and diligence to avoid the loss or minimize
4837 the damage; or

4838 (b) has unreasonably restricted hunting on land under the claimant's control or passage
4839 through the land to access public lands for the purpose of hunting, after receiving written
4840 notification from the division of the necessity of allowing such hunting or access to control or
4841 mitigate damage by big game.

4842 (6) (a) The Wildlife Board shall make rules specifying procedures for the appeal of
4843 division actions under this section.

4844 (b) Upon the petition of an aggrieved party to a final division action, the Wildlife
4845 Board may review the action on the record and issue an order modifying or rescinding the

4846 division action.

4847 (c) A qualified hearing examiner may be appointed for purposes of taking evidence and
4848 making recommendations for a board order. The board shall consider the recommendations of
4849 the examiner in making decisions.

4850 (d) Board review of final agency action and judicial review of final board action shall
4851 be governed by Title 63G, Chapter 4, Administrative Procedures Act.

4852 Section 111. Section **23-17-4** is amended to read:

4853 **23-17-4. Crop damage by pheasants -- Notice to division.**

4854 Whenever pheasants are damaging cultivated crops on cleared and planted land, the
4855 owner of such crops shall immediately upon discovery of such damage notify the Division of
4856 Wildlife Resources. This notice [~~must~~] shall be made both orally and in writing. Upon being
4857 notified of such damage, the Division of Wildlife Resources shall, as far as possible, control
4858 such damage.

4859 Section 112. Section **23-17-6** is amended to read:

4860 **23-17-6. Commercial hunting area -- Registration -- Requirements for hunters.**

4861 (1) (a) Any person desiring to operate a commercial hunting area within this state to
4862 permit the releasing and shooting of pen-raised birds may apply to the Wildlife Board for
4863 authorization to do so.

4864 (b) The Wildlife Board may issue the applicant a certificate of registration to operate a
4865 commercial hunting area in accordance with rules prescribed by the board.

4866 (c) The Wildlife Board may determine the number of commercial hunting areas that
4867 may be established in each county of the state.

4868 (2) Any certificate of registration issued under Subsection (1) shall specify the species
4869 of birds that the applicant may propagate, keep, and release for shooting on the area covered by
4870 the certificate of registration. The applicant may charge a fee for harvesting these birds.

4871 (3)(a) Any person hunting within the state on any commercial hunting area [~~must~~]
4872 shall:

4873 (i) be at least 12 years old;

4874 (ii) possess proof of passing a division-approved hunter education course, if the person
 4875 was born after December 31, 1965; and

4876 (iii) have the permission of the owner or operator of the commercial hunting area.

4877 (b) The operator of a commercial hunting area shall verify that each hunter on the
 4878 commercial hunting area meets the requirements of Subsections (3)(a)(i) and (3)(a)(ii).

4879 (4) Hunting on commercial hunting areas shall be permitted only during the
 4880 commercial hunting area season prescribed by the Wildlife Board.

4881 Section 113. Section **23-17-8** is amended to read:

4882 **23-17-8. Dog field meets.**

4883 It is lawful within the state [~~of Utah~~] to hold dog field meets or trials where dogs are
 4884 permitted to work in exhibition or contest where the skill of dogs is demonstrated by locating
 4885 or retrieving birds which have been obtained from a legal source. Before any meet or trial is
 4886 held, application [~~must~~] shall be made in writing to the Division of Wildlife Resources, which
 4887 may authorize the meet or trial under rules and regulations promulgated by the Wildlife Board.

4888 Section 114. Section **23-18-5** is amended to read:

4889 **23-18-5. Fur dealer and fur dealer's agent -- Definitions -- Certificates of**
 4890 **registration required -- Receipts required.**

4891 (1) Any person engaging in, carrying on, or conducting, wholly or in part, the business
 4892 of buying, selling, trading, or dealing, within the state [~~of Utah~~], in the skins or pelts of
 4893 furbearing mammals shall be deemed a fur dealer within the meaning of this code. All fur
 4894 dealers [~~must~~] shall secure a fur dealer certificate of registration from the Division of Wildlife
 4895 Resources, but no certificate of registration shall be required for a licensed trapper or fur farmer
 4896 selling skins or pelts which [~~he~~] the licensed trapper or fur farmer has lawfully taken, or raised,
 4897 nor for any person not a fur dealer who purchases any such skins or pelts exclusively for [~~his~~]
 4898 the person's own use and not for sale.

4899 (2) Any person who is employed by a resident or nonresident fur dealer as a fur buyer,
 4900 in the field, is deemed a fur dealer's agent. Application for a fur dealer's agent certificate of
 4901 registration [~~must~~] shall be made by the fur dealer employing the agent, and no agent certificate

4902 of registration shall be issued until the necessary fur dealer certificate of registration has been
4903 first secured by the employer of the agent.

4904 (3) Receipts [~~must~~] shall be issued by the vendor to the vendee whenever the skins or
4905 pelts of furbearing mammals [~~shall~~] change ownership by virtue of sale, exchange, barter or
4906 gift; and both the vendor and vendee shall produce this receipt or evidence of legal transaction
4907 upon request by the Division of Wildlife Resources or other person authorized to enforce the
4908 provisions of this code.

4909 Section 115. Section **23-19-9** is amended to read:

4910 **23-19-9. Suspension of license or permit privileges -- Suspension of certificates of**
4911 **registration.**

4912 (1) As used in this section, "license or permit privileges" means the privilege of
4913 applying for, purchasing, and exercising the benefits conferred by a license or permit issued by
4914 the division.

4915 (2) A hearing officer, appointed by the division, may suspend a person's license or
4916 permit privileges if:

4917 (a) in a court of law, the person:

4918 (i) is convicted of:

4919 (A) violating this title or a rule of the Wildlife Board;

4920 (B) killing or injuring domestic livestock while engaged in an activity regulated under
4921 this title; or

4922 (C) violating Section 76-10-508 while engaged in an activity regulated under this title;

4923 (ii) enters into a plea in abeyance agreement, in which the person pleads guilty or no
4924 contest to an offense listed in Subsection (2)(a)(i), and the plea is held in abeyance; or

4925 (iii) is charged with committing an offense listed in Subsection (2)(a)(i), and the person
4926 enters into a diversion agreement which suspends the prosecution of the offense; and

4927 (b) the hearing officer determines the person committed the offense intentionally,
4928 knowingly, or recklessly, as defined in Section 76-2-103.

4929 (3) (a) The Wildlife Board shall make rules establishing guidelines that a hearing

4930 officer shall consider in determining:

4931 (i) the type of license or permit privileges to suspend; and

4932 (ii) the duration of the suspension.

4933 (b) The Wildlife Board shall ensure that the guidelines established under Subsection

4934 (3)(a) are consistent with Subsections (4), (5), and (6).

4935 (4) Except as provided in Subsections (5) and (6), a hearing officer may suspend a

4936 person's license or permit privileges according to Subsection (2) for a period of time not to

4937 exceed:

4938 (a) seven years for:

4939 (i) a felony conviction;

4940 (ii) a plea of guilty or no contest to an offense punishable as a felony, which plea is

4941 held in abeyance pursuant to a plea in abeyance agreement; or

4942 (iii) being charged with an offense punishable as a felony, the prosecution of which is

4943 suspended pursuant to a diversion agreement;

4944 (b) five years for:

4945 (i) a class A misdemeanor conviction;

4946 (ii) a plea of guilty or no contest to an offense punishable as a class A misdemeanor,

4947 which plea is held in abeyance pursuant to a plea in abeyance agreement; or

4948 (iii) being charged with an offense punishable as a class A misdemeanor, the

4949 prosecution of which is suspended pursuant to a diversion agreement;

4950 (c) three years for:

4951 (i) a class B misdemeanor conviction;

4952 (ii) a plea of guilty or no contest to an offense punishable as a class B misdemeanor

4953 when the plea is held in abeyance according to a plea in abeyance agreement; or

4954 (iii) being charged with an offense punishable as a class B misdemeanor, the

4955 prosecution of which is suspended pursuant to a diversion agreement; and

4956 (d) one year for:

4957 (i) a class C misdemeanor conviction;

4958 (ii) a plea of guilty or no contest to an offense punishable as a class C misdemeanor,
4959 when the plea is held in abeyance according to a plea in abeyance agreement; or

4960 (iii) being charged with an offense punishable as a class C misdemeanor, the
4961 prosecution of which is suspended according to a diversion agreement.

4962 (5) The hearing officer may double a suspension period established in Subsection (4)
4963 for offenses:

4964 (a) committed in violation of an existing suspension or revocation order issued by the
4965 courts, division, or Wildlife Board; or

4966 (b) involving the unlawful taking of a trophy animal, as defined in Section 23-13-2.

4967 (6) (a) A hearing officer may suspend, according to Subsection (2), a person's license
4968 or permit privileges for a particular license or permit only once for each single criminal
4969 episode, as defined in Section 76-1-401.

4970 (b) If a hearing officer addresses two or more single criminal episodes in a hearing, the
4971 suspension periods of any license or permit privileges of the same type suspended, according to
4972 Subsection (2), may run consecutively.

4973 (c) If a hearing officer suspends, according to Subsection (2), license or permit
4974 privileges of the type that have been previously suspended by a court, a hearing officer, or the
4975 Wildlife Board and the suspension period has not expired, the suspension periods may run
4976 consecutively.

4977 (7) (a) A hearing officer, appointed by the division, may suspend a person's privilege of
4978 applying for, purchasing, and exercising the benefits conferred by a certificate of registration if:

4979 (i) the hearing officer determines the person intentionally, knowingly, or recklessly, as
4980 defined in Section 76-2-103, violated:

4981 (A) this title;

4982 (B) a rule or order of the Wildlife Board;

4983 (C) the terms of a certificate of registration; or

4984 (D) the terms of a certificate of registration application or agreement; or

4985 (ii) the person, in a court of law:

4986 (A) is convicted of an offense that the hearing officer determines bears a reasonable
4987 relationship to the person's ability to safely and responsibly perform the activities authorized by
4988 the certificate of registration;

4989 (B) pleads guilty or no contest to an offense that the hearing officer determines bears a
4990 reasonable relationship to the person's ability to safely and responsibly perform the activities
4991 authorized by the certificate of registration, and the plea is held in abeyance in accordance with
4992 a plea in abeyance agreement; or

4993 (C) is charged with an offense that the hearing officer determines bears a reasonable
4994 relationship to the person's ability to safely and responsibly perform the activities authorized by
4995 the certificate of registration, and prosecution of the offense is suspended in accordance with a
4996 diversion agreement.

4997 (b) All certificates of registration for the harvesting of brine shrimp eggs, as defined in
4998 Section 59-23-3, shall be suspended by a hearing officer, if the hearing officer determines the
4999 holder of the certificates of registration has violated Section 59-23-5.

5000 (8) (a) The director shall appoint a qualified person as a hearing officer to perform the
5001 adjudicative functions provided in this section.

5002 (b) The director may not appoint a division employee who investigates or enforces
5003 wildlife violations.

5004 (9) (a) The courts may suspend, in criminal sentencing, a person's privilege to apply
5005 for, purchase, or exercise the benefits conferred by a license, permit, or certificate of
5006 registration.

5007 (b) The courts shall promptly notify the division of any suspension orders or
5008 recommendations entered.

5009 (c) The division, upon receiving notification of suspension from the courts, shall
5010 prohibit the person from applying for, purchasing, or exercising the benefits conferred by a
5011 license, permit, or certification of registration for the duration and of the type specified in the
5012 court order.

5013 (d) The hearing officer shall consider any recommendation made by a sentencing court

5014 concerning suspension before issuing a suspension order.

5015 (10) (a) A person may not apply for, purchase, possess, or attempt to exercise the
5016 benefits conferred by any permit, license, or certificate of registration specified in an order of
5017 suspension while that order is in effect.

5018 (b) Any license possessed or obtained in violation of the order shall be considered
5019 invalid.

5020 (c) A person who violates Subsection (10)(a) is guilty of a class B misdemeanor.

5021 (11) Before suspension under this section, a person [~~must~~] shall be:

5022 (a) given written notice of any action the division intends to take; and

5023 (b) provided with an opportunity for a hearing.

5024 (12) (a) A person may file an appeal of a hearing officer's decision with the Wildlife
5025 Board.

5026 (b) The Wildlife Board shall review the hearing officer's findings and conclusions and
5027 any written documentation submitted at the hearing.

5028 (c) The Wildlife Board may:

5029 (i) take no action;

5030 (ii) vacate or remand the decision; or

5031 (iii) amend the period or type of suspension.

5032 (13) The division shall suspend and reinstate all hunting, fishing, trapping, and
5033 falconry privileges consistent with Title 23, Chapter 25, Wildlife Violator Compact.

5034 (14) The Wildlife Board may make rules to implement this section in accordance with
5035 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

5036 Section 116. Section **23-19-14** is amended to read:

5037 **23-19-14. Persons residing in certain institutions authorized to fish without**
5038 **license.**

5039 (1) The Division of Wildlife Resources shall permit a person to fish without a license
5040 if:

5041 (a) (i) the person resides in:

- 5042 (A) the Utah State Developmental Center in American Fork;
- 5043 (B) the state hospital;
- 5044 (C) a veteran's hospital;
- 5045 (D) a veteran's nursing home;
- 5046 (E) a mental health center;
- 5047 (F) an intermediate care facility for the mentally retarded;
- 5048 (G) a group home licensed by the Department of Human Services and operated under
- 5049 contract with the Division of Services for People with Disabilities;
- 5050 (H) a group home or other community-based placement licensed by the Department of
- 5051 Human Services and operated under contract with the Division of Juvenile Justice Services;
- 5052 (I) a private residential facility for at-risk youth licensed by the Department of Human
- 5053 Services; or
- 5054 (J) another similar institution approved by the division; or
- 5055 (ii) the person is a youth who participates in a work camp operated by the Division of
- 5056 Juvenile Justice Services;
- 5057 (b) the person is properly supervised by a representative of the institution; and
- 5058 (c) the institution obtains from the division a certificate of registration that specifies:
- 5059 (i) the date and place where the person will fish; and
- 5060 (ii) the name of the institution's representative who will supervise the person fishing.
- 5061 (2) The institution [~~must~~] shall apply for the certificate of registration at least 10 days
- 5062 before the fishing outing.
- 5063 (3) (a) An institution that receives a certificate of registration authorizing at-risk youth
- 5064 to fish shall provide instruction to the youth on fishing laws and regulations.
- 5065 (b) The division shall provide educational materials to the institution to assist it in
- 5066 complying with Subsection (3)(a).
- 5067 Section 117. Section **23-19-17.5** is amended to read:
- 5068 **23-19-17.5. Lifetime hunting and fishing licenses.**
- 5069 (1) Lifetime licensees born after December 31, 1965, [~~must~~] shall be certified under

5070 Section 23-19-11 before engaging in hunting.

5071 (2) A lifetime license shall remain valid if the residency of the lifetime licensee
5072 changes to another state or country.

5073 (3) (a) A lifetime license may be used in lieu of a hunting or fishing license.

5074 (b) Each year, a lifetime licensee is entitled to receive without charge a permit and tag
5075 of the lifetime licensee's choice for one of the following general season deer hunts:

5076 (i) archery;

5077 (ii) rifle; or

5078 (iii) muzzleloader.

5079 (c) A lifetime licensee is subject to each requirement for special hunting and fishing
5080 permits and tags, except as provided in Subsections (3)(a) and (b).

5081 (4) The Wildlife Board may adopt rules necessary to carry out the provisions of this
5082 section.

5083 Section 118. Section **23-19-38.2** is amended to read:

5084 **23-19-38.2. Refunds for armed forces or public health or safety organization**
5085 **members -- Criteria.**

5086 (1) A member of the United States Armed Forces or public health or public safety
5087 organization who is mobilized or deployed on order in the interest of national defense or
5088 emergency and is precluded from using a purchased license, certificate, tag, or permit, may, as
5089 provided in Subsection (2):

5090 (a) receive a refund from the division; and

5091 (b) if the person has drawn a permit, have all opportunities to draw that permit in a
5092 future draw reinstated.

5093 (2) To qualify, the person or a legal representative [~~must~~] shall:

5094 (a) notify the division within a reasonable amount of time that the person is applying
5095 for a refund;

5096 (b) surrender the license, certificate, tag, or permit to the division; and

5097 (c) furnish satisfactory proof to the division that the person:

5098 (i) is a member of:
5099 (A) the United States Armed Forces;
5100 (B) a public health organization; or
5101 (C) a public safety organization; and
5102 (ii) was precluded from using the license, certificate, tag, or permit as a result of being
5103 called to active duty.

5104 (3) The Wildlife Board may adopt rules in accordance with Title 63G, Chapter 3, Utah
5105 Administrative Rulemaking Act, necessary to administer this section including allowing
5106 retroactive refund to September 11, 2001.

5107 Section 119. Section **23-20-1** is amended to read:

5108 **23-20-1. Enforcement authority of conservation officers -- Seizure and disposition**
5109 **of property.**

5110 (1) Conservation officers of the division shall enforce the provisions of this title with
5111 the same authority and following the same procedures as other law enforcement officers.

5112 (2) (a) Conservation officers shall seize any protected wildlife illegally taken or held.

5113 (b) (i) Upon determination of a defendant's guilt by the court, the protected wildlife
5114 shall be confiscated by the court and sold or otherwise disposed of by the division.

5115 (ii) Proceeds of the sales shall be deposited in the Wildlife Resources Account.

5116 (iii) Migratory wildfowl may not be sold, but [~~must~~] shall be given to a charitable
5117 institution or used for other charitable purposes.

5118 (3) Materials and devices used for the unlawful taking or possessing of protected
5119 wildlife shall be seized, and upon a finding by the court that they were used in the unlawful
5120 taking or possessing of protected wildlife, the materials and devices shall be subject to criminal
5121 or civil forfeiture under the procedures and substantive protections established in Title 24,
5122 Chapter 1, Utah Uniform Forfeiture Procedures Act.

5123 (4) (a) Conservation officers may seize and impound a vehicle used for the unlawful
5124 taking or possessing of protected wildlife for any of the following purposes:

5125 (i) to provide for the safekeeping of the vehicle, if the owner or operator is arrested;

5126 (ii) to search the vehicle as provided in Subsection (2)(a) or as provided by a search
5127 warrant; or

5128 (iii) to inspect the vehicle for evidence that protected wildlife was unlawfully taken or
5129 possessed.

5130 (b) The division shall store any seized vehicle in a public or private garage, state
5131 impound lot, or other secured storage facility.

5132 (5) A seized vehicle shall be released to the owner no later than 30 days after the date
5133 the vehicle is seized, unless the vehicle was used for the unlawful taking or possessing of
5134 wildlife by a person who is charged with committing a felony under this title.

5135 (6) (a) Upon a finding by a court that the person who used the vehicle for the unlawful
5136 taking or possessing of wildlife is guilty of a felony under this title, the vehicle may be subject
5137 to criminal or civil forfeiture under the procedures and substantive protections established in
5138 Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

5139 (b) The owner of a seized vehicle is liable for the payment of any impound fee if [~~he~~]
5140 the owner used the vehicle for the unlawful taking or possessing of wildlife and is found by a
5141 court to be guilty of a violation of this title.

5142 (c) The owner of a seized vehicle is not liable for the payment of any impound fee or, if
5143 the fees have been paid, is entitled to reimbursement of the fees paid, if:

5144 (i) no charges are filed or all charges are dropped which involve the use of the vehicle
5145 for the unlawful taking or possessing of wildlife;

5146 (ii) the person charged with using the vehicle for the unlawful taking or possessing of
5147 wildlife is found by a court to be not guilty; or

5148 (iii) the owner did not consent to a use of the vehicle which violates this chapter.

5149 Section 120. Section **23-20-9** is amended to read:

5150 **23-20-9. Donating protected wildlife.**

5151 (1) A person may only donate protected wildlife or their parts to another person at:

5152 (a) the residence of the donor;

5153 (b) the residence of the person receiving protected wildlife or their parts;

- 5154 (c) a meat locker;
- 5155 (d) a storage plant;
- 5156 (e) a meat processing facility; or
- 5157 (f) a location authorized by the Wildlife Board in rule, proclamation, or order.
- 5158 (2) A written statement of donation [~~must~~] shall be kept with the protected wildlife or
- 5159 parts showing:

- 5160 (a) the number and species of protected wildlife or parts donated;
- 5161 (b) the date of donation;
- 5162 (c) the license or permit number of the donor; and
- 5163 (d) the signature of the donor.

5164 (3) Notwithstanding Subsections (1) and (2), a person may donate the hide of a big
5165 game animal to another person or organization at any place without a donation slip.

5166 Section 121. Section **23-20-14** is amended to read:

5167 **23-20-14. Definitions -- Posted property -- Hunting by permission -- Entry on**
5168 **private land while hunting or fishing -- Violations -- Penalty -- Prohibitions inapplicable**
5169 **to officers -- Promotion of respect for private property.**

5170 (1) As used in this section:

5171 [~~(b)~~] (a) "Cultivated land" means land which is readily identifiable as:

- 5172 (i) land whose soil is loosened or broken up for the raising of crops;
- 5173 (ii) land used for the raising of crops; or
- 5174 (iii) pasturage which is artificially irrigated.

5175 [~~(a)~~] (b) "Division" means the Division of Wildlife Resources.

5176 (c) "Permission" means written authorization from the owner or person in charge to
5177 enter upon private land that is either cultivated or properly posted, and [~~must~~] shall include:

- 5178 (i) the signature of the owner or person in charge;
- 5179 (ii) the name of the person being given permission;
- 5180 (iii) the appropriate dates; and
- 5181 (iv) a general description of the property.

5182 (d) "Properly posted" means that "No Trespassing" signs or a minimum of 100 square
5183 inches of bright yellow, bright orange, or fluorescent paint are displayed at all corners, fishing
5184 streams crossing property lines, roads, gates, and rights-of-way entering the land. If metal
5185 fence posts are used, the entire exterior side [~~must~~] shall be painted.

5186 (2) (a) While taking wildlife or engaging in wildlife related activities, a person may
5187 not:

5188 (i) without the permission of the owner or person in charge, enter upon privately
5189 owned land that is cultivated or properly posted;

5190 (ii) refuse to immediately leave the private land if requested to do so by the owner or
5191 person in charge; or

5192 (iii) obstruct any entrance or exit to private property.

5193 (b) "Hunting by permission cards" will be provided to landowners by the division upon
5194 request.

5195 (c) A person may not post:

5196 (i) private property [~~he~~] the person does not own or legally control; or

5197 (ii) land that is open to the public as provided by Section 23-21-4.

5198 (3) (a) A person convicted of violating any provision of Subsection (2) may have [~~his~~]
5199 the person's license, tag, certificate of registration, or permit, relating to the activity engaged in
5200 at the time of the violation, revoked by a hearing officer.

5201 (b) A hearing officer may construe any subsequent conviction which occurs within a
5202 five-year period as a flagrant violation and may prohibit the person from obtaining a new
5203 license, tag, certificate of registration, or permit for a period of up to five years.

5204 (4) Subsection (2)(a) does not apply to peace or conservation officers in the
5205 performance of their duties.

5206 (5) (a) The division shall provide information regarding owners' rights and sportsmen's
5207 duties:

5208 (i) to anyone holding licenses, certificates of registration, tags, or permits to take
5209 wildlife; and

5210 (ii) by using the public media and other sources.

5211 (b) The restrictions in this section relating to trespassing shall be stated in all hunting
5212 and fishing proclamations issued by the Wildlife Board.

5213 (6) Any person who violates any provision of Subsection (2) is guilty of a class B
5214 misdemeanor.

5215 Section 122. Section **23-20-20** is amended to read:

5216 **23-20-20. Children accompanied by adults while hunting with weapon.**

5217 (1) As used in this section:

5218 (a) "Accompanied" means at a distance within which visual and verbal communication
5219 is maintained for the purposes of advising and assisting.

5220 (b) (i) "Electronic device" means a mechanism powered by electricity that allows
5221 communication between two or more people.

5222 (ii) "Electronic device" includes a mobile telephone or two-way radio.

5223 (c) "Verbal communication" means the conveyance of information through speech that
5224 does not involve an electronic device.

5225 (2) A person younger than 14 years old who is hunting with any weapon [~~must~~] shall
5226 be accompanied by:

5227 (a) the person's parent or legal guardian; or

5228 (b) a responsible person who is at least 21 years old and who is approved by the
5229 person's parent or guardian.

5230 (3) A person younger than 16 years old who is hunting big game with any weapon
5231 [~~must~~] shall be accompanied by:

5232 (a) the person's parent or legal guardian; or

5233 (b) a responsible person who is at least 21 years old and who is approved by the
5234 person's parent or guardian.

5235 (4) A person who is at least 14 years old but younger than 16 years old [~~must~~] shall be
5236 accompanied by a person who is at least 21 years old while hunting wildlife, other than big
5237 game, with any weapon.

5238 Section 123. Section **23-20-28** is amended to read:

5239 **23-20-28. Search warrants.**

5240 (1) A search warrant may be issued by a magistrate to search for any property which
5241 may constitute evidence of any violation of the provisions of this code, rules, regulations, or
5242 proclamations of the Wildlife Board upon an affidavit of any person.

5243 (2) The search warrant shall be directed to a conservation officer or a peace officer,
5244 directing [~~him~~] the officer to search for evidence and to bring it before the magistrate.

5245 (3) A search warrant [~~shall not~~] may not be issued except upon probable cause
5246 supported by oath or affirmation, particularly describing the place, person, or thing to be
5247 searched for and the person or thing to be seized.

5248 (4) The warrant shall be served in the daytime, unless there is reason to believe that the
5249 service of the search warrant is required immediately because a person may:

5250 (a) flee the jurisdiction to avoid prosecution or discovery of a violation noted above;

5251 (b) destroy or conceal evidence of the commission of any violation; or

5252 (c) injure another person or damage property.

5253 (5) The search warrant may be served at night if:

5254 (a) there is reason to believe that a violation may occur at night; or

5255 (b) the evidence of the violation may not be available to the officers serving the
5256 warrant during the day.

5257 Section 124. Section **23-20-29** is amended to read:

5258 **23-20-29. Interference with hunting prohibited -- Action to recover damages --**
5259 **Exceptions.**

5260 (1) A person is guilty of a class B misdemeanor who intentionally interferes with the
5261 right of a person licensed and legally hunting under [~~Title 23,~~] Chapter 19, Licenses, Permits,
5262 and Tags to take wildlife by driving, harassing, or intentionally disturbing any species of
5263 wildlife for the purpose of disrupting a legal hunt, trapping, or predator control.

5264 (2) Any directly affected person or the state may bring an action to recover civil
5265 damages resulting from a violation of Subsection (1) or a restraining order to prevent a

5266 potential violation of Subsection (1).

5267 (3) This section does not apply to incidental interference with a hunt caused by lawful
5268 activities including~~[, but not limited to,]~~ ranching, mining, and recreation.

5269 Section 125. Section **23-20-30** is amended to read:

5270 **23-20-30. Tagging requirements.**

5271 (1) The Wildlife Board may make rules that require the carcass of certain species of
5272 protected wildlife to be tagged.

5273 (2) The carcass of any species of protected wildlife required to be tagged [~~must~~] shall
5274 be tagged before the carcass is moved from or the hunter leaves the site of kill.

5275 (3) To tag a carcass, a person shall:

5276 (a) completely detach the tag from the license or permit;

5277 (b) completely remove the appropriate notches to correspond with:

5278 (i) the date the animal was taken; and

5279 (ii) the sex of the animal; and

5280 (c) attach the tag to the carcass so that the tag remains securely fastened and visible.

5281 (4) A person may not:

5282 (a) remove more than one notch indicating date or sex; or

5283 (b) tag more than one carcass using the same tag.

5284 Section 126. Section **23-20-31** is amended to read:

5285 **23-20-31. Requirement to wear hunter orange -- Exceptions.**

5286 (1) As used in this section:

5287 (a) (i) "Centerfire rifle hunt" means a hunt for which a hunter may use a centerfire rifle,
5288 except as provided in Subsection (1)(a)(ii).

5289 (ii) "Centerfire rifle hunt" does not include:

5290 (A) a bighorn sheep hunt;

5291 (B) a mountain goat hunt;

5292 (C) a bison hunt;

5293 (D) a moose hunt;

- 5294 (E) a hunt requiring the hunter to possess a statewide conservation permit; or
5295 (F) a hunt requiring the hunter to possess a statewide sportsman permit.
5296 (b) "Statewide conservation permit" means a permit:
5297 (i) issued by the division;
5298 (ii) distributed through a nonprofit organization founded for the purpose of promoting
5299 wildlife conservation; and
5300 (iii) valid:
5301 (A) on open hunting units statewide; and
5302 (B) for the species of big game and time period designated by the Wildlife Board.
5303 (c) "Statewide sportsman permit" means a permit:
5304 (i) issued by the division through a public draw; and
5305 (ii) valid:
5306 (A) on open hunting units statewide; and
5307 (B) for the species of big game and time period designated by the Wildlife Board.
5308 (2) (a) A person shall wear a minimum of 400 square inches of hunter orange material
5309 while hunting any species of big game, except as provided in Subsection (3).
5310 (b) Hunter orange material [~~must~~] shall be worn on the head, chest, and back.
5311 (3) A person is not required to wear the hunter orange material described in Subsection
5312 (2):
5313 (a) during the following types of hunts, unless a centerfire rifle hunt is in progress in
5314 the same area:
5315 (i) archery;
5316 (ii) muzzle-loader;
5317 (iii) mountain goat;
5318 (iv) bighorn sheep;
5319 (v) bison; or
5320 (vi) moose; or
5321 (b) as provided by a rule of the Wildlife Board.

5322 Section 127. Section **23-21-2** is amended to read:

5323 **23-21-2. Payments in lieu of property taxes on property purchased by division.**

5324 Prior to the purchase of any real property held in private ownership, the Division of
5325 Wildlife Resources shall first submit the proposition to the county legislative body in a regular
5326 open public meeting in the county where the property is located and shall by contractual
5327 agreement with the county legislative body, approved by the executive director of the
5328 Department of Natural Resources, agree to pay an amount of money in lieu of property taxes to
5329 the county. The division shall, by contractual agreement with the county legislative body in
5330 which any property previously acquired from private ownership and now owned by the division
5331 is located, agree to pay annually an amount of money in lieu of wildlife resource fine money,
5332 previously paid to the county. Payments provided for in this section will not exceed what the
5333 regularly assessed real property taxes would be if the land had remained in private ownership;
5334 and these payments [~~shall not~~] may not include any amount for buildings, installations,
5335 fixtures, improvements or personal property located upon the land or for those acquired,
5336 constructed or placed by the division after it acquires the land.

5337 Section 128. Section **23-22-1** is amended to read:

5338 **23-22-1. Cooperative agreements and programs authorized.**

5339 (1) The Division of Wildlife Resources may enter into cooperative agreements and
5340 programs with other state agencies, federal agencies, states, educational institutions,
5341 municipalities, counties, corporations, organized clubs, landowners, associations, and
5342 individuals for purposes of wildlife conservation.

5343 (2) Cooperative agreements that are policy in nature [~~must~~] shall be:

- 5344 (a) approved by the executive director of the Department of Natural Resources; and
- 5345 (b) reviewed by the Wildlife Board.

5346 Section 129. Section **23-22-3** is amended to read:

5347 **23-22-3. Reciprocal agreements with other states.**

5348 (1) The Wildlife Board is authorized to enter into reciprocal agreements with other
5349 states to:

5350 (a) license and regulate fishing, hunting, and related activities; and

5351 (b) promote and implement wildlife management programs.

5352 (2) Reciprocal agreements ~~[must]~~ shall be approved by the executive director of the
5353 Department of Natural Resources.

5354 Section 130. Section **23-23-11** is amended to read:

5355 **23-23-11. Failure to comply with rules and requirements.**

5356 A person ~~[must]~~ shall leave private property within a cooperative wildlife management
5357 unit immediately, upon request of a landowner, landowner association operator, or cooperative
5358 wildlife management unit agent, if that person:

5359 (1) does not have in ~~[his or her]~~ that person's possession a cooperative wildlife
5360 management unit authorization or permit;

5361 (2) endangers or has endangered human safety;

5362 (3) damages or has damaged private property within a cooperative wildlife
5363 management unit; or

5364 (4) fails or has failed to comply with reasonable rules of a landowner association.

5365 Section 131. Section **23-24-1** is amended to read:

5366 **23-24-1. Procedure to obtain compensation for livestock damage done by bear,**
5367 **mountain lion, wolf, or eagle.**

5368 (1) As used in this section:

5369 (a) "Damage" means injury to or loss of livestock.

5370 (b) "Division" means the Division of Wildlife Resources.

5371 (c) "Livestock" means cattle, sheep, goats, or turkeys.

5372 (d) (i) "Wolf" means the gray wolf *Canis lupus*.

5373 (ii) "Wolf" does not mean a wolf hybrid with a domestic dog.

5374 (2) (a) (i) Except as provided by Subsection (2)(a)(ii), if livestock are damaged by a
5375 bear, mountain lion, wolf, or an eagle, the owner may receive compensation for the fair market
5376 value of the damage.

5377 (ii) The owner may not receive compensation if the livestock is damaged by a wolf

5378 within an area where a wolf is endangered or threatened under the Endangered Species Act of
5379 1973, 16 U.S.C. Sec. 1531, et seq.

5380 (b) To obtain this compensation, the owner of the damaged livestock shall notify the
5381 division of the damage as soon as possible, but no later than four days after the damage is
5382 discovered.

5383 (c) The owner [~~must~~] shall notify the division each time any damage is discovered.

5384 (3) The livestock owner shall file a proof of loss form, provided by the division, no
5385 later than 30 days after the original notification of damage was given to the division by the
5386 owner.

5387 (4) (a) (i) The division, with the assistance of the Department of Agriculture and Food
5388 shall:

5389 (A) within 30 days after the owner files the proof of loss form, either accept or deny the
5390 claim for damages; and

5391 (B) subject to Subsections (4)(a)(ii) through (4)(a)(iv), pay all accepted claims to the
5392 extent money appropriated by the Legislature is available for this purpose.

5393 (ii) Money appropriated from the Wildlife Resources Account may be used to provide
5394 compensation for only up to 50% of the fair market value of any damaged livestock.

5395 (iii) Money appropriated from the Wildlife Resources Account may not be used to
5396 provide compensation for livestock damaged by an eagle or a wolf.

5397 (iv) The division may not pay any eagle damage claim until the division has paid all
5398 accepted mountain lion and bear damage claims for the fiscal year.

5399 (b) The division may not pay mountain lion, bear, wolf, or eagle damage claims to a
5400 livestock owner unless the owner has filed a completed livestock form and the appropriate fee
5401 as outlined in Section 4-23-7 for the immediately preceding and current year.

5402 (c) (i) Unless the division denies a claim for the reason identified in Subsection (4)(b),
5403 the owner may appeal the decision to a panel consisting of one person selected by the owner,
5404 one person selected by the division, and a third person selected by the first two panel members.

5405 (ii) The panel shall decide whether the division should pay all of the claim, a portion of

5406 the claim, or none of the claim.

5407 (5) By following the procedures and requirements of Title 63G, Chapter 3, Utah
5408 Administrative Rulemaking Act, the Wildlife Board may make and enforce rules to administer
5409 and enforce this section.

5410 Section 132. Section **24-1-8** is amended to read:

5411 **24-1-8. Criminal procedures.**

5412 (1) In cases where an owner is criminally prosecuted for conduct giving rise to
5413 forfeiture, the prosecuting attorney may elect to forfeit the owner's interest in the property
5414 civilly or criminally, provided that no civil forfeiture judgment may be entered with respect to
5415 the property of a defendant who is acquitted of the offense on which the forfeiture claim is
5416 based.

5417 (2) If the prosecuting attorney elects to criminally forfeit the owner's interest in the
5418 property, the information or indictment [~~must~~] shall state that the owner's interest in the
5419 specifically described property is subject to criminal forfeiture and the basis for the forfeiture.

5420 (3) (a) Upon application of the prosecuting attorney, the court may enter restraining
5421 orders or injunctions, or take other reasonable action to preserve for forfeiture under this
5422 section any forfeitable property if, after notice to persons known, or discoverable after due
5423 diligence, to have an interest in the property and after affording them an opportunity for a
5424 hearing, the court determines that:

5425 (i) there is a substantial probability that the state will prevail on the issue of forfeiture
5426 and that failure to enter the order will result in the property being sold, transferred, destroyed,
5427 or removed from the jurisdiction of the court or otherwise made unavailable for forfeiture; and

5428 (ii) the need to preserve the availability of the property or prevent its sale, transfer,
5429 destruction, or removal through the entry of the requested order outweighs the hardship against
5430 any party against whom the order is to be entered.

5431 (b) A temporary restraining order may be entered ex parte upon application of the
5432 prosecuting attorney before or after an information or indictment has been filed with respect to
5433 the property, if the prosecuting attorney demonstrates that:

5434 (i) there is probable cause to believe that the property with respect to which the order is
5435 sought would, in the event of a conviction, be subject to forfeiture under this section; and

5436 (ii) provision of notice would jeopardize the availability of the property for forfeiture
5437 or would jeopardize an ongoing criminal investigation.

5438 (c) The temporary order expires not more than 10 days after entry unless extended for
5439 good cause shown or unless the party against whom it is entered consents to an extension. An
5440 adversarial hearing concerning an order entered under this section shall be held as soon as
5441 practicable and prior to the expiration of the temporary order.

5442 (d) The court is not bound by the Utah Rules of Evidence regarding evidence it may
5443 receive and consider at any hearing under this section.

5444 (4) (a) Upon conviction by a jury of an owner for conduct giving rise to criminal
5445 forfeiture, the jury shall be instructed and asked to return a special verdict as to the extent of
5446 the property identified in the information or indictment, if any, that is forfeitable.

5447 (b) Whether property is forfeitable shall be proven beyond a reasonable doubt.

5448 (5) (a) Upon conviction of a person for violating any provision of state law subjecting
5449 an owner's property to forfeiture and upon the jury's special verdict that the property is
5450 forfeitable, the court shall enter a judgment and order the property forfeited to the state upon
5451 the terms stated by the court in its order.

5452 (b) Following the entry of an order declaring property forfeited, the court may, upon
5453 application of the prosecuting attorney, enter appropriate restraining orders or injunctions,
5454 require the execution of satisfactory performance bonds, appoint receivers, conservators,
5455 appraisers, accountants, or trustees, or take any other action to protect the interest of the state in
5456 property ordered forfeited.

5457 (6) (a) After property is ordered forfeited under this section, the seizing agency shall
5458 direct the disposition of the property under Section 24-1-17. Any property right or interest not
5459 exercisable by or transferable for value to the state expires and does not revert to the defendant.
5460 The defendant or any person acting in concert with or on behalf of the defendant is not eligible
5461 to purchase forfeited property at any sale held by the seizing agency unless approved by the

5462 judge.

5463 (b) The court may stay the sale or disposition of the property pending the conclusion of
5464 any appeal of the criminal case giving rise to the forfeiture if the defendant demonstrates that
5465 proceeding with the sale or disposition of the property may result in irreparable injury, harm or
5466 loss to [~~him~~] the defendant.

5467 (7) Except under Subsection (3) or (10), a party claiming an interest in property subject
5468 to criminal forfeiture under this section:

5469 (a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of
5470 property under this section; and

5471 (b) may not commence an action at law or equity against the state or the county
5472 concerning the validity of [~~his~~] the party's alleged interests in the property subsequent to the
5473 filing of an indictment or an information alleging that the property is subject to forfeiture under
5474 this section.

5475 (8) The district court of the state which has jurisdiction of a case under this part may
5476 enter orders under this section without regard to the location of any property which may be
5477 subject to forfeiture under this section, or which has been ordered forfeited under this section.

5478 (9) To facilitate the identification or location of property declared forfeited and to
5479 facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of
5480 an order declaring property forfeited to the state, the court may upon application of the
5481 prosecuting attorney order that the testimony of any witness relating to the property forfeited be
5482 taken by deposition, and that any book, paper, document, record, recording, or other material
5483 not privileged shall be produced as provided for depositions and discovery under the Utah
5484 Rules of Civil Procedure.

5485 (10) (a) Following the entry of an order of forfeiture under this section, the prosecuting
5486 attorney shall publish notice of the order's intent to dispose of the property as the court may
5487 direct. The prosecuting attorney shall also provide direct written notice to any person known to
5488 have an alleged interest in the property subject to the order of forfeiture.

5489 (b) Any person, other than the defendant, asserting a legal interest in property which

5490 has been ordered forfeited to the state under this section may, within 30 days of the final
5491 publication of notice or ~~his~~ the person's receipt of written notice under Subsection (10)(a),
5492 whichever is earlier, petition the court for a hearing to adjudicate the validity of ~~his~~ the
5493 person's alleged interest in the property. Any genuine issue of material fact, including issues of
5494 standing, is triable to a jury upon demand of any party.

5495 (c) The petition shall be in writing and signed by the petitioner under penalty of
5496 perjury. It shall set forth the nature and extent of the petitioner's right, title, or interest in the
5497 property, the time and circumstances of the petitioner's acquisition of the right, title, or interest
5498 in the property, and any additional facts supporting the petitioner's claim and the relief sought.

5499 (d) The trial or hearing on the petition shall be expedited to the extent practicable. The
5500 court may consolidate a trial or hearing on the petition and any petition filed by any other
5501 person under this section other than the defendant. The court shall permit the parties to
5502 conduct pretrial discovery pursuant to the Utah Rules of Civil Procedure.

5503 (e) At the trial or hearing, the petitioner may testify and present evidence and witnesses
5504 on ~~his~~ the petitioner's own behalf and cross-examine witnesses who appear at the hearing.
5505 The prosecuting attorney may present evidence and witnesses in rebuttal and in defense of the
5506 claim to the property and cross-examine witnesses who appear. In addition to testimony and
5507 evidence presented at the trial or hearing, the court may consider the relevant portion of the
5508 record of the criminal case which resulted in the order of forfeiture. Any trial or hearing shall
5509 be conducted pursuant to the Utah Rules of Evidence.

5510 (f) The court shall amend the order of forfeiture in accordance with its determination, if
5511 after the trial or hearing, the court or jury determines that the petitioner has established by a
5512 preponderance of the evidence that:

5513 (i) the petitioner has a legal right, title, or interest in the property, and the right, title, or
5514 interest renders the order of forfeiture invalid in whole or in part because the right, title, or
5515 interest was vested in the petitioner rather than the defendant or was superior to any right, title,
5516 or interest of the defendant at the time of the commission of the acts or conduct which gave rise
5517 to the forfeiture of the property under this section; or

5518 (ii) the petitioner acquired the right, title or interest in the property in a bona fide
5519 transaction for value and, at the time of such acquisition, the petitioner did not know that the
5520 property was subject to forfeiture.

5521 (g) Following the court's disposition of all petitions filed under this Subsection (10), or
5522 if no petitions are filed following the expiration of the period provided in Subsection (10)(b)
5523 for the filing of petitions, the state has clear title to property subject to the order of forfeiture
5524 and may warrant good title to any subsequent purchaser or transferee.

5525 Section 133. Section **25-5-2** is amended to read:

5526 **25-5-2. Wills and implied trusts excepted.**

5527 Section 25-5-1 [~~shall not~~] may not be construed to affect the power of a testator in the
5528 disposition of [~~his~~] the testator's real estate by last will and testament; nor to prevent any trust
5529 from arising or being extinguished by implication or operation of law.

5530 Section 134. Section **25-6-9** is amended to read:

5531 **25-6-9. Good faith transfer.**

5532 (1) A transfer or obligation is not voidable under Subsection 25-6-5(1)(a) against a
5533 person who took in good faith and for a reasonably equivalent value or against any subsequent
5534 transferee or obligee.

5535 (2) Except as otherwise provided in this section, to the extent a transfer is voidable in
5536 an action by a creditor under Subsection 25-6-8(1)(a), the creditor may recover judgment for
5537 the value of the asset transferred, as adjusted under Subsection (3), or the amount necessary to
5538 satisfy the creditor's claim, whichever is less. The judgment may be entered against:

5539 (a) the first transferee of the asset or the person for whose benefit the transfer was
5540 made; or

5541 (b) any subsequent transferee other than a good faith transferee who took for value or
5542 from any subsequent transferee.

5543 (3) If the judgment under Subsection (2) is based upon the value of the asset
5544 transferred, the judgment [~~must~~] shall be for an amount equal to the value of the asset at the
5545 time of the transfer, subject to an adjustment as equities may require.

5546 (4) Notwithstanding voidability of a transfer or an obligation under this chapter, a
5547 good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the
5548 transfer or obligation, to:

- 5549 (a) a lien on or a right to retain any interest in the asset transferred;
- 5550 (b) enforcement of any obligation incurred; or
- 5551 (c) a reduction in the amount of the liability on the judgment.

5552 (5) A transfer is not voidable under Subsection 25-6-5(1)(b) or Section 25-6-6 if the
5553 transfer results from:

- 5554 (a) termination of a lease upon default by the debtor when the termination is pursuant
5555 to the lease and applicable law; or
- 5556 (b) enforcement of a security interest in compliance with Title 70A, Chapter 9a,
5557 Uniform Commercial Code - Secured Transactions.

5558 (6) A transfer is not voidable under Subsection 25-6-6(2):

- 5559 (a) to the extent the insider gave new value to or for the benefit of the debtor after the
5560 transfer was made unless the new value was secured by a valid lien;
- 5561 (b) if made in the ordinary course of business or financial affairs of the debtor and the
5562 insider; or
- 5563 (c) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer
5564 secured present value given for that purpose as well as an antecedent debt of the debtor.

5565 Section 135. Section **26-1-5** is amended to read:

5566 **26-1-5. Rules of department.**

5567 (1) Except in areas regulated by statutory committees created by this title, the
5568 department shall have the power to adopt, amend, or rescind rules necessary to carry out the
5569 provisions of this title.

5570 (2) Rules shall have the force and effect of law and may deal with matters which
5571 materially affect the security of health or the preservation and improvement of public health in
5572 the state, and any matters as to which jurisdiction is conferred upon the department by this title.

5573 (3) Every rule adopted by the department pursuant to this section, or a committee

5574 established under Section 26-1-7 or 26-1-7.5, shall be subject to Title 63G, Chapter 3, Utah
5575 Administrative Rulemaking Act and shall become effective at the time and in the manner
5576 provided in that act.

5577 (4) If, at the next general session of the Legislature following the filing of a rule with
5578 the legislative research director, the Legislature passes a bill disapproving such rule, the rule
5579 shall be null and void.

5580 (5) The department or a committee created under Section 26-1-7 or 26-1-7.5, [~~shall~~
5581 ~~not~~] may not adopt a rule identical to a rule disapproved under Subsection (4) of this section,
5582 before the beginning of the next general session of the Legislature following the general
5583 session at which the rule was disapproved.

5584 Section 136. Section **26-1-7.5** is amended to read:

5585 **26-1-7.5. Health advisory council.**

5586 (1) (a) There is created the Utah Health Advisory Council, comprised of nine persons
5587 appointed by the governor.

5588 (b) The governor shall ensure that:

5589 (i) members of the council:

5590 (A) broadly represent the public interest;

5591 (B) have an interest in or knowledge of public health, environmental health, health
5592 planning, health care financing, or health care delivery systems; and

5593 (C) include health professionals;

5594 (ii) the majority of the membership are nonhealth professionals;

5595 (iii) no more than five persons are from the same political party; and

5596 (iv) geography, sex, and ethnicity balance are considered when selecting the members.

5597 (2) (a) Except as required by Subsection (2)(b), members of the council shall be
5598 appointed to four-year terms.

5599 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
5600 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
5601 council members are staggered so that approximately half of the council is appointed every two

5602 years.

5603 (c) Terms of office for subsequent appointments shall commence on July 1 of the year
5604 in which the appointment occurs.

5605 (3) (a) When a vacancy occurs in the membership for any reason, the replacement shall
5606 be appointed for the unexpired term.

5607 (b) No person shall be appointed to the council for more than two consecutive terms.

5608 (c) The chair of the council shall be appointed by the governor from the membership of
5609 the council.

5610 (4) The council shall meet at least quarterly or more frequently as determined necessary
5611 by the chair. A quorum for conducting business shall consist of four members of the council.

5612 (5) A member may not receive compensation or benefits for the member's service, but,
5613 at the executive director's discretion, may receive per diem and travel expenses in accordance
5614 with:

5615 (a) Section 63A-3-106;

5616 (b) Section 63A-3-107; and

5617 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
5618 63A-3-107.

5619 (6) The council shall be empowered to advise the department on any subject deemed to
5620 be appropriate by the council except that the council [~~shall not~~] may not become involved in
5621 administrative matters. The council shall also advise the department as requested by the
5622 executive director.

5623 (7) The executive director shall ensure that the council has adequate staff support and
5624 shall provide any available information requested by the council necessary for their
5625 deliberations. The council shall observe confidential requirements placed on the department in
5626 the use of such information.

5627 Section 137. Section **26-1-11** is amended to read:

5628 **26-1-11. Executive director -- Power to amend, modify, or rescind committee**
5629 **rules.**

5630 The executive director pursuant to the requirements of the Administrative Rulemaking
5631 Act may amend, modify, or rescind any rule of any committee created pursuant to Section
5632 26-1-7 if the rule creates a clear present hazard or clear potential hazard to the public health
5633 except that the executive director [~~shall not~~] may not act until after discussion with the
5634 appropriate committee.

5635 Section 138. Section **26-1-25** is amended to read:

5636 **26-1-25. Principal and branch offices of department.**

5637 The principal office of the department shall be in Salt Lake County. The department
5638 may establish branch offices at other places in the state to furnish comprehensive and effective
5639 health programs and to render additional assistance to local health officials. This section [~~shall~~
5640 ~~not~~] does not limit the powers of local health agencies.

5641 Section 139. Section **26-1-32** is amended to read:

5642 **26-1-32. Severability of code provisions.**

5643 If any provision of this code or the application of any such provision to any person or
5644 circumstance is held invalid, the invalidity [~~shall not~~] does not affect other provisions or
5645 applications of this code which can be given effect without the invalid provision or application,
5646 and to this end the provisions of this code are declared to be severable.

5647 Section 140. Section **26-3-8** is amended to read:

5648 **26-3-8. Disclosure of health data -- Discretion of department.**

5649 Any disclosure provided for in Section 26-3-7 shall be made at the discretion of the
5650 department, except that the disclosure provided for in Subsection 26-3-7(4) [~~must~~] shall be
5651 made when the requirements of that paragraph [~~have been~~] are met.

5652 Section 141. Section **26-4-2** is amended to read:

5653 **26-4-2. Definitions.**

5654 As used in this chapter:

5655 (1) "Dead body" is as defined in Section 26-2-2.

5656 (2) "Death by violence" means death that resulted by the decedent's exposure to
5657 physical, mechanical, or chemical forces, and includes death which appears to have been due to

5658 homicide, death which occurred during or in an attempt to commit rape, mayhem, kidnapping,
5659 robbery, burglary, housebreaking, extortion, or blackmail accompanied by threats of violence,
5660 assault with a dangerous weapon, assault with intent to commit any offense punishable by
5661 imprisonment for more than one year, arson punishable by imprisonment for more than one
5662 year, or any attempt to commit any of the foregoing offenses.

5663 (3) "Medical examiner" means the state medical examiner appointed pursuant to
5664 Section 26-4-4 or a deputy appointed by the medical examiner.

5665 (4) "Regional pathologist" means a trained pathologist licensed to practice medicine
5666 and surgery in the state, appointed by the medical examiner pursuant to Subsection 26-4-4(3).

5667 (5) "Sudden death while in apparent good health" means apparently instantaneous
5668 death without obvious natural cause, death during or following an unexplained syncope or
5669 coma, or death during an acute or unexplained rapidly fatal illness.

5670 (6) "Sudden infant death syndrome" means the death of a child who was thought to be
5671 in good health or whose terminal illness appeared to be so mild that the possibility of a fatal
5672 outcome was not anticipated.

5673 (7) "Suicide" means death caused by an intentional and voluntary act of a person who
5674 understands the physical nature of the act and intends by such act to accomplish
5675 self-destruction.

5676 (8) "Unattended death" means the death of a person who has not been seen by a
5677 physician within the scope of the physician's professional capacity within 30 days immediately
5678 prior to the date of death. This definition [~~shall not~~] does not require an investigation, autopsy,
5679 or inquest in any case where death occurred without medical attendance solely because the
5680 deceased was under treatment by prayer or spiritual means alone in accordance with the tenets
5681 and practices of a well-recognized church or religious denomination.

5682 (9) (a) "Unavailable for postmortem investigation" means that a dead body is:

5683 (i) transported out of state;

5684 (ii) buried at sea;

5685 (iii) cremated; or

5686 (iv) otherwise made unavailable to the medical examiner for postmortem investigation
5687 or autopsy.

5688 (b) "Unavailable for postmortem investigation" does not include embalming or burial
5689 of a dead body pursuant to the requirements of law.

5690 (10) "Within the scope of the decedent's employment" means all acts reasonably
5691 necessary or incident to the performance of work, including matters of personal convenience
5692 and comfort not in conflict with specific instructions.

5693 Section 142. Section **26-4-9** is amended to read:

5694 **26-4-9. Custody of dead body and personal effects -- Examination of scene of**
5695 **death -- Preservation of body -- Autopsies.**

5696 (1) Upon notification of a death under Section 26-4-8, the medical examiner shall
5697 assume custody of the deceased body, clothing on the body, biological samples taken, and any
5698 article on or near the body which may aid ~~[him]~~ the medical examiner in determining the cause
5699 of death except those articles which will assist the investigative agency to proceed without
5700 delay with the investigation. In all cases the scene of the event ~~[shall not]~~ may not be disturbed
5701 until authorization is given by the senior ranking peace officer from the law enforcement
5702 agency having jurisdiction of the case and conducting the investigation. Where death appears to
5703 have occurred under circumstances listed in Section 26-4-7, the person or persons finding or
5704 having custody of the body, or jurisdiction over the investigation of the death, shall take
5705 reasonable precautions to preserve the body and body fluids so that minimum deterioration
5706 takes place. The body ~~[shall not]~~ may not be moved without permission of the medical
5707 examiner, district attorney, or county attorney having criminal jurisdiction, or his authorized
5708 deputy except in cases of affront to public decency or circumstances where it is not practical to
5709 leave the body where found, or in such cases where the cause of death is clearly due to natural
5710 causes. The body can under direction of a licensed physician or the medical examiner or his
5711 designated representative be moved to a place specified by a funeral director, the attending
5712 physician, the medical examiner, or his representative.

5713 (2) In the event the body, where referred to the medical examiner, is moved, no

5714 cleansing or embalming of the body shall occur without the permission of the medical
5715 examiner. An intentional or knowing violation of this Subsection (2) is a class B misdemeanor.

5716 (3) When the medical examiner assumes lawful custody of a body under Subsection
5717 26-4-7(3) solely because the death was unattended, an autopsy [~~shall not~~] may not be
5718 performed unless requested by the district attorney, county attorney having criminal
5719 jurisdiction, or law enforcement agency having jurisdiction of the place where the body is
5720 found, or a licensed physician, or a spouse, child, parent or guardian of the deceased, and a
5721 licensed physician. The county attorney or district attorney and law enforcement agency having
5722 jurisdiction shall consult with the medical examiner to determine the need for an autopsy. In
5723 any such case concerning unattended deaths qualifying as exempt from autopsy, a death
5724 certificate may be certified by a licensed physician. In this case the physician may be
5725 established as the medical examiner's designated representative. Requested autopsies [~~shall~~
5726 ~~not~~] may not be performed when the medical examiner or [~~his~~] the medical examiner's
5727 designated representative determines the autopsy to be unnecessary, provided that an autopsy
5728 requested by a district or county attorney or law enforcement agency may only be determined to
5729 be unnecessary if the cause of death can be ascertained without an autopsy being performed.

5730 Section 143. Section **26-4-12** is amended to read:

5731 **26-4-12. Order to exhume body -- Procedure.**

5732 (1) In case of any death described in Section 26-4-7, when a body is buried without an
5733 investigation by the medical examiner as to the cause and manner of death, it shall be the duty
5734 of the medical examiner, upon being advised of the fact, to notify the district attorney or county
5735 attorney having criminal jurisdiction where the body is buried or death occurred. Upon
5736 notification, the district attorney or county attorney having criminal jurisdiction may file an
5737 action in the district court to obtain an order to exhume the body. A district judge may order the
5738 body exhumed upon an ex parte hearing.

5739 (2) (a) A body [~~shall not~~] may not be exhumed until notice of the order has been served
5740 upon the executor or administrator of the deceased's estate, or if no executor or administrator
5741 has been appointed, upon the nearest heir of the deceased, determined as if the deceased had

5742 died intestate. If the nearest heir of the deceased cannot be located within the jurisdiction, then
5743 the next heir in succession within the jurisdiction may be served.

5744 (b) The executor, administrator, or heir shall have 24 hours to notify the issuing court
5745 of any objection to the order prior to the time the body is exhumed. If no heirs can be located
5746 within the jurisdiction within 24 hours, the facts shall be reported to the issuing court which
5747 may order that the body be exhumed forthwith.

5748 (c) Notification to the executor, administrator, or heir shall specifically state the nature
5749 of the action and the fact that any objection [~~must~~] shall be filed with the issuing court within
5750 24 hours of the time of service.

5751 (d) In the event an heir files an objection, the court shall set hearing on the matter at the
5752 earliest possible time and issue an order on the matter immediately at the conclusion of the
5753 hearing. Upon the receipt of notice of objection, the court shall immediately notify the county
5754 attorney who requested the order, so that the interest of the state may be represented at the
5755 hearing.

5756 (e) When there is reason to believe that death occurred in a manner described in
5757 Section 26-4-7, the district attorney or county attorney having criminal jurisdiction may make a
5758 motion that the court, upon ex parte hearing, order the body exhumed forthwith and without
5759 notice. Upon a showing of exigent circumstances the court may order the body exhumed
5760 forthwith and without notice. In any event, upon motion of the district attorney or county
5761 attorney having criminal jurisdiction and upon the personal appearance of the medical
5762 examiner, the court for good cause may order the body exhumed forthwith and without notice.

5763 (3) An order to exhume a body shall be directed to the medical examiner, commanding
5764 [~~him~~] the medical examiner to cause the body to be exhumed, perform the required autopsy,
5765 and properly cause the body to be reburied upon completion of the examination.

5766 (4) The examination shall be completed and the complete autopsy report shall be made
5767 to the district attorney or county attorney having criminal jurisdiction for any action the
5768 attorney considers appropriate. The district attorney or county attorney shall submit the return
5769 of the order to exhume within 10 days in the manner prescribed by the issuing court.

5770 Section 144. Section **26-4-20** is amended to read:

5771 **26-4-20. Officials not liable for authorized acts.**

5772 Except as provided in this chapter, a criminal or civil action [~~shall not~~] may not arise
5773 against the county attorney, district attorney, or his deputies, the medical examiner or his
5774 deputies, or regional pathologists for authorizing or performing autopsies authorized by this
5775 chapter or for any other act authorized by this chapter.

5776 Section 145. Section **26-6-3** is amended to read:

5777 **26-6-3. Authority to investigate and control epidemic infections and**
5778 **communicable disease.**

5779 (1) The department has authority to investigate and control the causes of epidemic
5780 infections and communicable disease, and shall provide for the detection, reporting,
5781 prevention, and control of communicable diseases and epidemic infections or any other health
5782 hazard which may affect the public health.

5783 (2) (a) As part of the requirements of Subsection (1), the department shall distribute to
5784 the public and to health care professionals:

5785 (i) medically accurate information about sexually transmitted diseases that may cause
5786 infertility and sterility if left untreated, including descriptions of:

5787 (A) the probable side effects resulting from an untreated sexually transmitted disease,
5788 including infertility and sterility;

5789 (B) medically accepted treatment for sexually transmitted diseases;

5790 (C) the medical risks commonly associated with the medical treatment of sexually
5791 transmitted diseases; and

5792 (D) suggest screening by a private physician; and

5793 (ii) information about:

5794 (A) public services and agencies available to assist individuals with obtaining
5795 treatment for the sexually transmitted disease;

5796 (B) medical assistance benefits that may be available to the individual with the
5797 sexually transmitted disease; and

5798 (C) abstinence before marriage and fidelity after marriage being the surest prevention
5799 of sexually transmitted disease.

5800 (b) The information required by Subsection (2)(a):

5801 (i) shall be distributed by the department and by local health departments free of
5802 charge;

5803 (ii) shall be relevant to the geographic location in which the information is distributed
5804 by:

5805 (A) listing addresses and telephone numbers for public clinics and agencies providing
5806 services in the geographic area in which the information is distributed; and

5807 (B) providing the information in English as well as other languages that may be
5808 appropriate for the geographic area.

5809 (c) (i) Except as provided in Subsection (2)(c)(ii), the department shall develop written
5810 material that includes the information required by this Subsection (2).

5811 (ii) In addition to the written materials required by Subsection (2)(c)(i), the department
5812 may distribute the information required by this Subsection (2) by any other methods the
5813 department determines is appropriate to educate the public, excluding public schools, including
5814 websites, toll free telephone numbers, and the media.

5815 (iii) If the information required by Subsection (2)(b)(ii)(A) is not included in the
5816 written pamphlet developed by the department, the written material [~~must~~] shall include either
5817 a website, or a 24-hour toll free telephone number that the public may use to obtain that
5818 information.

5819 Section 146. Section **26-6-18** is amended to read:

5820 **26-6-18. Venereal disease -- Consent of minor to treatment.**

5821 (1) A consent to medical care or services by a hospital or public clinic or the
5822 performance of medical care or services by a licensed physician executed by a minor who is or
5823 professes to be afflicted with a sexually transmitted disease, shall have the same legal effect
5824 upon the minor and the same legal obligations with regard to the giving of consent as a consent
5825 given by a person of full legal age and capacity, the infancy of the minor and any contrary

5826 provision of law notwithstanding.

5827 (2) The consent of the minor [~~shall not be~~] is not subject to later disaffirmance by
5828 reason of minority at the time it was given and the consent of no other person or persons shall
5829 be necessary to authorize hospital or clinical care or services to be provided to the minor by a
5830 licensed physician.

5831 (3) The provisions of this section shall apply also to minors who profess to be in need
5832 of hospital or clinical care and services or medical care or services provided by a physician for
5833 suspected sexually transmitted disease, regardless of whether such professed suspicions are
5834 subsequently substantiated on a medical basis.

5835 Section 147. Section **26-6-20** is amended to read:

5836 **26-6-20. Serological testing of pregnant or recently delivered women.**

5837 (1) Every licensed physician and surgeon attending a pregnant or recently delivered
5838 woman for conditions relating to her pregnancy shall take or cause to be taken a sample of
5839 blood of the woman at the time of first examination or within 10 days thereafter. The blood
5840 sample shall be submitted to an approved laboratory for a standard serological test for syphilis.
5841 The provisions of this section [~~shall not~~] do not apply to any female who objects thereto on the
5842 grounds that she is a bona fide member of a specified, well recognized religious organization
5843 whose teachings are contrary to the tests.

5844 (2) Every other person attending a pregnant or recently delivered woman, who is not
5845 permitted by law to take blood samples, shall within 10 days from the time of first attendance
5846 cause a sample of blood to be taken by a licensed physician. The blood sample shall be
5847 submitted to an approved laboratory for a standard serological test for syphilis.

5848 (3) An approved laboratory is a laboratory approved by the department according to its
5849 rules governing the approval of laboratories for the purpose of this title. In submitting the
5850 sample to the laboratory the physician shall designate whether it is a prenatal test or a test
5851 following recent delivery.

5852 (4) For the purpose of this chapter, a "standard serological test" means a test for
5853 syphilis approved by the department and made at an approved laboratory.

5854 (5) The laboratory shall transmit a detailed report of the standard serological test,
5855 showing the result thereof to the physician.

5856 Section 148. Section **26-6b-3** is amended to read:

5857 **26-6b-3. Order of restriction.**

5858 (1) The department having jurisdiction over the location where an individual or a group
5859 of individuals who are subject to restriction are found may:

5860 (a) issue a written order of restriction for the individual or group of individuals
5861 pursuant to Subsection 26-1-30(2) or 26A-1-114(1)(b) upon compliance with the requirements
5862 of this chapter; and

5863 (b) issue a verbal order of restriction for an individual or group of individuals pursuant
5864 to Subsection (2)(c).

5865 (2) (a) A department's determination to issue an order of restriction shall be based upon
5866 the totality of circumstances reported to and known by the department, including:

5867 (i) observation;

5868 (ii) information that the department determines is credible and reliable information;

5869 and

5870 (iii) knowledge of current public health risks based on medically accepted guidelines as
5871 may be established by the Department of Health by administrative rule.

5872 (b) An order of restriction issued by a department [~~must~~] shall:

5873 (i) in the opinion of the public health official, be for the shortest reasonable period of
5874 time necessary to protect the public health;

5875 (ii) use the least intrusive method of restriction that, in the opinion of the department,
5876 is reasonable based on the totality of circumstances known to the health department issuing the
5877 order of restriction;

5878 (iii) be in writing unless the provisions of Subsection (2)(c) apply; and

5879 (iv) contain notice of an individual's rights as required in Section 26-6b-3.3.

5880 (c) (i) A department may issue a verbal order of restriction, without prior notice to the
5881 individual or group of individuals if the delay in imposing a written order of restriction would

5882 significantly jeopardize the department's ability to prevent or limit:

5883 (A) the transmission of a communicable or possibly communicable disease that poses a
5884 threat to public health;

5885 (B) the transmission of an infectious agent or possibly infectious agent that poses a
5886 threat to public health;

5887 (C) the exposure or possible exposure of a chemical or biological agent that poses a
5888 threat to public health; or

5889 (D) the exposure or transmission of a condition that poses a threat to public health.

5890 (ii) A verbal order of restriction issued under the provisions of Subsection (2)(c)(i):

5891 (A) is valid for 24 hours from the time the order of restriction is issued;

5892 (B) may be verbally communicated to the individuals or group of individuals subject to
5893 restriction by a first responder;

5894 (C) may be enforced by the first responder until the department is able to establish and
5895 maintain the place of restriction; and

5896 (D) may only be continued beyond the initial 24 hours if a written order of restriction is
5897 issued pursuant to the provisions of Section 26-6b-3.3.

5898 (3) Pending issuance of a written order of restriction under Section 26-6b-3.3, or
5899 judicial review of an order of restriction by the district court pursuant to Section 26-6b-6, an
5900 individual who is subject to the order of restriction may be required to submit to involuntary
5901 examination, quarantine, isolation, or treatment in ~~[his]~~ the individual's home, a hospital, or
5902 any other suitable facility under reasonable conditions prescribed by the department.

5903 (4) The department that issued the order of restriction shall take reasonable measures,
5904 including the provision of medical care, as may be necessary to assure proper care related to the
5905 reason for the involuntary examination, treatment, isolation, or quarantine of an individual
5906 ordered to submit to an order of restriction.

5907 Section 149. Section **26-6b-3.1** is amended to read:

5908 **26-6b-3.1. Consent to order of restriction -- Periodic review.**

5909 (1) (a) The department shall either seek judicial review of an order of restriction under

5910 Sections 26-6b-4 through 26-6b-6, or obtain the consent of an individual subject to an order of
5911 restriction.

5912 (b) If the department obtains consent, the consent [must] shall be in writing and [must]
5913 shall inform the individual or group of individuals:

5914 (i) of the terms and duration of the order of restriction;

5915 (ii) of the importance of complying with the order of restriction to protect the public's
5916 health;

5917 (iii) that each individual has the right to agree to the order of restriction, or refuse to
5918 agree to the order of restriction and seek a judicial review of the order of restriction;

5919 (iv) that for any individual who consents to the order of restriction:

5920 (A) the order of restriction will not be reviewed by the district court unless the
5921 individual withdraws consent to the order of restriction in accordance with Subsection
5922 (1)(b)(iv)(B); and

5923 (B) the individual [must] shall notify the department in writing, with at least five
5924 business day's notice, if the individual intends to withdraw consent to the order of restriction;
5925 and

5926 (v) that a breach of a consent agreement prior to the end of the order of restriction may
5927 subject the individual to an involuntary order of restriction under Section 26-6b-3.2.

5928 (2) (a) The department responsible for the care of an individual who has consented to
5929 the order of restriction shall periodically reexamine the reasons upon which the order of
5930 restriction was based. This reexamination [must] shall occur at least once every six months.

5931 (b) (i) If at any time, the department determines that the conditions justifying the order
5932 of restriction for either a group or an individual no longer exist, the department shall
5933 immediately discharge the individual or group from the order of restriction.

5934 (ii) If the department determines that the conditions justifying the order of restriction
5935 continue to exist, the department shall send to the individual a written notice of:

5936 (A) the department's findings, the expected duration of the order of restriction, and the
5937 reason for the decision; and

5938 (B) the individual's right to a judicial review of the order of restriction by the district
5939 court if requested by the individual.

5940 (iii) Upon request for judicial review by an individual, the department shall:

5941 (A) file a petition in district court within five business days after the individual's
5942 request for a judicial review; and

5943 (B) proceed under Sections 26-6b-4 through 26-6b-6.

5944 Section 150. Section **26-7-1** is amended to read:

5945 **26-7-1. Identification of major risk factors by department -- Education of public**
5946 **-- Establishment of programs.**

5947 The department shall identify the major risk factors contributing to injury, sickness,
5948 death, and disability within the state and where it determines that a need exists, educate the
5949 public regarding these risk factors, and the department may establish programs to reduce or
5950 eliminate these factors except that such programs [~~shall not~~] may not be established if adequate
5951 programs exist in the private sector.

5952 Section 151. Section **26-8a-103** is amended to read:

5953 **26-8a-103. State Emergency Medical Services Committee -- Membership --**
5954 **Report -- Expenses.**

5955 (1) The State Emergency Medical Services Committee created by Section 26-1-7 shall
5956 be composed of the following 16 members appointed by the governor, at least five of whom
5957 [~~must~~] shall reside in a county of the third, fourth, fifth, or sixth class:

5958 (a) five physicians licensed under Title 58, Chapter 67, Utah Medical Practice Act, or
5959 Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, as follows:

5960 (i) one surgeon who actively provides trauma care at a hospital;

5961 (ii) one rural physician involved in emergency medical care;

5962 (iii) two physicians who practice in the emergency department of a general acute
5963 hospital; and

5964 (iv) one pediatrician who practices in the emergency department or critical care unit of
5965 a general acute hospital or a children's specialty hospital;

- 5966 (b) one representative from a private ambulance provider;
- 5967 (c) one representative from an ambulance provider that is neither privately owned nor
5968 operated by a fire department;
- 5969 (d) two chief officers from fire agencies operated by the following classes of licensed
5970 or designated emergency medical services providers: municipality, county, and fire district,
5971 provided that no class of medical services providers may have more than one representative
5972 under this Subsection (1)(d);
- 5973 (e) one director of a law enforcement agency that provides emergency medical
5974 services;
- 5975 (f) one hospital administrator;
- 5976 (g) one emergency care nurse;
- 5977 (h) one paramedic in active field practice;
- 5978 (i) one emergency medical technician in active field practice;
- 5979 (j) one certified emergency medical dispatcher affiliated with an emergency medical
5980 dispatch center; and
- 5981 (k) one consumer.
- 5982 (2) (a) Except as provided in Subsection (2)(b), members shall be appointed to a
5983 four-year term beginning July 1.
- 5984 (b) Notwithstanding Subsection (2)(a), the governor shall, at the time of appointment
5985 or reappointment, adjust the length of terms to ensure that the terms of committee members are
5986 staggered so that approximately half of the committee is appointed every two years.
- 5987 (c) When a vacancy occurs in the membership for any reason, the replacement shall be
5988 appointed by the governor for the unexpired term.
- 5989 (3) (a) Each January, the committee shall organize and select one of its members as
5990 chair and one member as vice chair. The committee may organize standing or ad hoc
5991 subcommittees, which shall operate in accordance with guidelines established by the
5992 committee.
- 5993 (b) The chair shall convene a minimum of four meetings per year. The chair may call

5994 special meetings. The chair shall call a meeting upon request of five or more members of the
5995 committee.

5996 (c) Nine members of the committee constitute a quorum for the transaction of business
5997 and the action of a majority of the members present is the action of the committee.

5998 (4) The committee shall submit a report in a form acceptable to the committee each
5999 November at the Law Enforcement and Criminal Justice Interim Committee meeting
6000 concerning its:

6001 (a) funding priorities and recommended sources;

6002 (b) closest responder recommendations;

6003 (c) centralized dispatch;

6004 (d) duplication of services and any taxing consequences;

6005 (e) appropriate providers for emergency medical services; and

6006 (f) recommendations and suggested legislation.

6007 (5) A member may not receive compensation or benefits for the member's service, but
6008 may receive per diem and travel expenses in accordance with:

6009 (a) Section 63A-3-106;

6010 (b) Section 63A-3-107; and

6011 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
6012 63A-3-107.

6013 (6) Administrative services for the committee shall be provided by the department.

6014 Section 152. Section **26-8a-203** is amended to read:

6015 **26-8a-203. Data collection.**

6016 (1) The committee shall specify the information that [~~must~~] shall be collected for the
6017 emergency medical services data system established pursuant to Subsection (2).

6018 (2) The department shall establish an emergency medical services data system which
6019 shall provide for the collection of information, as defined by the committee, relating to the
6020 treatment and care of patients who use or have used the emergency medical services system.

6021 (3) Persons providing emergency medical services shall provide information to the

6022 department for the emergency medical services data system established pursuant to Subsection
6023 (2).

6024 Section 153. Section **26-8a-207** is amended to read:

6025 **26-8a-207. Emergency medical services grant program.**

6026 (1) (a) The department shall receive as dedicated credits the amount established in
6027 Section 51-9-403. That amount shall be transferred to the department by the Division of
6028 Finance from funds generated by the surcharge imposed under Title 51, Chapter 9, Part 4,
6029 Criminal Conviction Surcharge Allocation.

6030 (b) Funds transferred to the department under this section shall be used for
6031 improvement of delivery of emergency medical services and administrative costs as described
6032 in Subsection (2)(a). Appropriations to the department for the purposes enumerated in this
6033 section shall be made from those dedicated credits.

6034 (c) All funding for the program created by this section shall be nonlapsing.

6035 (2) (a) The department may use the funds transferred to it under Subsection (1):

6036 (i) to provide staff support; and

6037 (ii) for other expenses incurred in:

6038 (A) administration of grant funds; and

6039 (B) other department administrative costs under this chapter.

6040 (b) After funding staff support, administrative expenses, and trauma system
6041 development, the department and the committee shall make emergency medical services grants
6042 from the remaining funds received as dedicated credits under Subsection (1). A recipient of a
6043 grant under this Subsection (2)(b) [~~must~~] shall actively provide emergency medical services
6044 within the state.

6045 (c) The department shall distribute not less than 25% of the funds, with the percentage
6046 being authorized by a majority vote of the committee, as per capita block grants for use
6047 specifically related to the provision of emergency medical services to nonprofit prehospital
6048 emergency medical services providers that are either licensed or designated and to emergency
6049 medical services that are the primary emergency medical services for a service area. The

6050 department shall determine the grant amounts by prorating available funds on a per capita basis
6051 by county as described in department rule.

6052 (d) The committee shall award the remaining funds as competitive grants for use
6053 specifically related to the provision of emergency medical services based upon rules
6054 established by the committee.

6055 Section 154. Section **26-8a-253** is amended to read:

6056 **26-8a-253. Statewide trauma registry and quality assurance program.**

6057 (1) The department shall:

6058 (a) establish and fund a statewide trauma registry to collect and analyze information on
6059 the incidence, severity, causes, and outcomes of trauma;

6060 (b) establish, by rule, the data elements, the medical care providers that ~~[must]~~ shall
6061 report, and the time frame and format for reporting;

6062 (c) use the data collected to:

6063 (i) improve the availability and delivery of prehospital and hospital trauma care;

6064 (ii) assess trauma care delivery, patient care outcomes, and compliance with the
6065 requirements of this chapter and applicable department rules; and

6066 (iii) regularly produce and disseminate reports to data providers, state government, and
6067 the public; and

6068 (d) support data collection and abstraction by providing:

6069 (i) a data collection system and technical assistance to each hospital that submits data;
6070 and

6071 (ii) funding or, at the discretion of the department, personnel for collection and
6072 abstraction for each hospital not designated as a trauma center under the standards established
6073 pursuant to Section 26-8a-254.

6074 (2) (a) Each hospital shall submit trauma data in accordance with rules established
6075 under Subsection (1).

6076 (b) A hospital designated as a trauma center shall submit data as part of the ongoing
6077 quality assurance program established in Section 26-8a-252.

6078 (3) The department shall assess:

6079 (a) the effectiveness of the data collected pursuant to Subsection (1); and

6080 (b) the impact of the statewide trauma system on the provision of trauma care.

6081 (4) Data collected under this section shall be subject to [~~File 26,~~] Chapter 3, Health
6082 Statistics.

6083 (5) No person may be held civilly liable for having provided data to the department in
6084 accordance with this section.

6085 Section 155. Section **26-8a-405.2** is amended to read:

6086 **26-8a-405.2. Selection of provider -- Request for competitive sealed proposal --**
6087 **Public convenience and necessity.**

6088 (1) (a) A political subdivision may contract with an applicant approved under Section
6089 26-8a-404 to provide services for the geographic service area that is approved by the
6090 department in accordance with Subsection (2), if:

6091 (i) the political subdivision complies with the provisions of this section and Section
6092 26-8a-405.3 if the contract is for 911 ambulance or paramedic services; or

6093 (ii) the political subdivision complies with Sections 26-8a-405.3 and 26-8a-405.4, if
6094 the contract is for non-911 services.

6095 (b) (i) The provisions of this section and Sections 26-8a-405.1, 26-8a-405.3, and
6096 26-8a-405.4 do not require a political subdivision to issue a request for proposal for ambulance
6097 or paramedic services or non-911 services.

6098 (ii) If a political subdivision does not contract with an applicant in accordance with this
6099 section and Section 26-8a-405.3, the provisions of Sections 26-8a-406 through 26-8a-409 apply
6100 to the issuance of a license for ambulance or paramedic services in the geographic service area
6101 that is within the boundaries of the political subdivision.

6102 (iii) If a political subdivision does not contract with an applicant in accordance with
6103 this section, Section 26-8a-405.3 and Section 26-8a-405.4, a license for the non-911 services in
6104 the geographic service area that is within the boundaries of the political subdivision may be
6105 issued:

6106 (A) under the public convenience and necessity provisions of Sections 26-8a-406
6107 through 26-8a-409; or

6108 (B) by a request for proposal issued by the department under Section 26-8a-405.5.

6109 (c) (i) For purposes of this Subsection (1)(c):

6110 (A) "Fire district" means a local district under Title 17B, Limited Purpose Local
6111 Government Entities - Local Districts, that:

6112 (I) is located in a county of the first or second class; and

6113 (II) provides fire protection, paramedic, and emergency services.

6114 (B) "Participating municipality" means a city or town whose area is partly or entirely
6115 included within a county service area or fire district.

6116 (C) "Participating county" means a county whose unincorporated area is partly or
6117 entirely included within a fire district.

6118 (ii) A participating municipality or participating county may as provided in this section
6119 and Section 26-8a-405.3, contract with a provider for 911 ambulance or paramedic service.

6120 (iii) If the participating municipality or participating county contracts with a provider
6121 for services under this section and Section 26-8a-405.3:

6122 (A) the fire district is not obligated to provide the services that are included in the
6123 contract between the participating municipality or the participating county and the provider;

6124 (B) the fire district may impose taxes and obligations within the fire district in the same
6125 manner as if the participating municipality or participating county were receiving all services
6126 offered by the fire district; and

6127 (C) the participating municipality's and participating county's obligations to the fire
6128 district are not diminished.

6129 (2) (a) The political subdivision shall submit the request for proposal and the exclusive
6130 geographic service area to be included in a request for proposal issued under Subsections
6131 (1)(a)(i) or (ii) to the department for approval prior to issuing the request for proposal. The
6132 department shall approve the request for proposal and the exclusive geographic service area:

6133 (i) unless the geographic service area creates an orphaned area; and

6134 (ii) in accordance with Subsections (2)(b) and (c).

6135 (b) The exclusive geographic service area may:

6136 (i) include the entire geographic service area that is within the political subdivision's
6137 boundaries;

6138 (ii) include islands within or adjacent to other peripheral areas not included in the
6139 political subdivision that governs the geographic service area; or

6140 (iii) exclude portions of the geographic service area within the political subdivision's
6141 boundaries if another political subdivision or licensed provider agrees to include the excluded
6142 area within their license.

6143 (c) The proposed geographic service area for 911 ambulance or paramedic service
6144 [~~must~~] shall demonstrate that non-911 ambulance or paramedic service will be provided in the
6145 geographic service area, either by the current provider, the applicant, or some other method
6146 acceptable to the department. The department may consider the effect of the proposed
6147 geographic service area on the costs to the non-911 provider and that provider's ability to
6148 provide only non-911 services in the proposed area.

6149 Section 156. Section **26-8a-405.3** is amended to read:

6150 **26-8a-405.3. Use of competitive sealed proposals -- Procedure -- Appeal rights.**

6151 (1) (a) Competitive sealed proposals for paramedic or 911 ambulance services under
6152 Section 26-8a-405.2, or for non-911 services under Section 26-8a-405.4, shall be solicited
6153 through a request for proposal and the provisions of this section.

6154 (b) The governing body of the political subdivision shall approve the request for
6155 proposal prior to the notice of the request for proposals under Subsection (1)(c).

6156 (c) (i) Notice of the request for proposals shall be published:

6157 (A) at least once a week for three consecutive weeks in a newspaper of general
6158 circulation published in the county; or

6159 (B) if there is no such newspaper, then notice [~~must~~] shall be posted for at least 20 days
6160 in at least five public places in the county; and

6161 (ii) in accordance with Section 45-1-101 for at least 20 days.

6162 (2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing
6163 offerors during the process of negotiations.

6164 (b) (i) Subsequent to the published notice, and prior to selecting an applicant, the
6165 political subdivision [~~must~~] shall hold a presubmission conference with interested applicants
6166 for the purpose of assuring full understanding of, and responsiveness to, solicitation
6167 requirements.

6168 (ii) A political subdivision shall allow at least 90 days from the presubmission
6169 conference for the proposers to submit proposals.

6170 (c) Subsequent to the presubmission conference, the political subdivision may issue
6171 addenda to the request for proposals. An addenda to a request for proposal [~~must~~] shall be
6172 finalized and posted by the political subdivision at least 45 days [~~prior to the date~~] before the
6173 day on which the proposal must be submitted.

6174 (d) Offerors to the request for proposals shall be accorded fair and equal treatment with
6175 respect to any opportunity for discussion and revisions of proposals, and revisions may be
6176 permitted after submission and before a contract is awarded for the purpose of obtaining best
6177 and final offers.

6178 (e) In conducting discussions, there shall be no disclosures of any information derived
6179 from proposals submitted by competing offerors.

6180 (3) (a) (i) A political subdivision may select an applicant approved by the department
6181 under Section 26-8a-404 to provide 911 ambulance or paramedic services by contract to the
6182 most responsible offeror as defined in Subsection 63G-6-103(24).

6183 (ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose
6184 proposal is determined in writing to be the most advantageous to the political subdivision,
6185 taking into consideration price and the evaluation factors set forth in the request for proposal.

6186 (b) The applicants who are approved under Section 26-8a-405 and who are selected
6187 under this section may be the political subdivision issuing the request for competitive sealed
6188 proposals, or any other public entity or entities, any private person or entity, or any
6189 combination thereof.

6190 (c) A political subdivision may reject all of the competitive proposals.
6191 (4) In seeking competitive sealed proposals and awarding contracts under this section,
6192 a political subdivision:
6193 (a) shall apply the public convenience and necessity factors listed in Subsections
6194 26-8a-408(2) through (6);
6195 (b) shall require the applicant responding to the proposal to disclose how the applicant
6196 will meet performance standards in the request for proposal;
6197 (c) may not require or restrict an applicant to a certain method of meeting the
6198 performance standards, including:
6199 (i) requiring ambulance medical personnel to also be a firefighter; or
6200 (ii) mandating that offerors use fire stations or dispatch services of the political
6201 subdivision;
6202 (d) shall require an applicant to submit the proposal:
6203 (i) based on full cost accounting in accordance with generally accepted accounting
6204 principals; and
6205 (ii) if the applicant is a governmental entity, in addition to the requirements of
6206 Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and
6207 in compliance with the State of Utah Legal Compliance Audit Guide; and
6208 (e) shall set forth in the request for proposal:
6209 (i) the method for determining full cost accounting in accordance with generally
6210 accepted accounting principles, and require an applicant to submit the proposal based on such
6211 full cost accounting principles;
6212 (ii) guidelines established to further competition and provider accountability; and
6213 (iii) a list of the factors that will be considered by the political subdivision in the award
6214 of the contract, including by percentage, the relative weight of the factors established under this
6215 Subsection (4)(e), which may include such things as:
6216 (A) response times;
6217 (B) staging locations;

6218 (C) experience;

6219 (D) quality of care; and

6220 (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).

6221 (5) (a) Notwithstanding the provisions of Subsection 63G-6-104(3), the provisions of

6222 Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies, apply to the procurement

6223 process required by this section, except as provided in Subsection (5)(c).

6224 (b) The Procurement Appeals Board created in Section 63G-6-807 shall have

6225 jurisdiction to review and determine an appeal of an offeror under this section in the same

6226 manner as provided in Section 63G-6-810.

6227 (c) (i) An offeror may appeal the solicitation or award as provided by the political

6228 subdivision's procedures. After all political subdivision appeal rights are exhausted, the offeror

6229 may appeal under the provisions of Subsections (5)(a) and (b).

6230 (ii) The factual determination required by Subsection 63G-6-813(1) shall be based on

6231 whether the solicitation or award was made in accordance with the procedures set forth in this

6232 section and Section 26-8a-405.2.

6233 (d) The determination of an issue of fact by the appeals board shall be final and

6234 conclusive unless arbitrary and capricious or clearly erroneous as provided in Section

6235 63G-6-813.

6236 Section 157. Section **26-8a-405.5** is amended to read:

6237 **26-8a-405.5. Use of competitive sealed proposals -- Procedure -- Appeal rights.**

6238 (1) (a) The department shall issue a request for proposal for non-911 services in a

6239 geographic service area if the department receives a request from a political subdivision under

6240 Subsection 26-8a-405.4(3)(a)(ii)(B) to issue a request for proposal for non-911 services.

6241 (b) Competitive sealed proposals for non-911 services under Subsection (1)(a) shall be

6242 solicited through a request for proposal and the provisions of this section.

6243 (c) (i) Notice of the request for proposals shall be published:

6244 (A) at least once a week for three consecutive weeks in a newspaper of general

6245 circulation published in the county; or

6246 (B) if there is no such newspaper, then notice [~~must~~] shall be posted for at least 20 days
6247 in at least five public places in the county; and

6248 (ii) in accordance with Section 45-1-101 for at least 20 days.

6249 (2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing
6250 offerors during the process of negotiations.

6251 (b) (i) Subsequent to the published notice, and prior to selecting an applicant, the
6252 department [~~must~~] shall hold a presubmission conference with interested applicants for the
6253 purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

6254 (ii) The department shall allow at least 90 days from the presubmission conference for
6255 the proposers to submit proposals.

6256 (c) Subsequent to the presubmission conference, the department may issue addenda to
6257 the request for proposals. An addenda to a request for proposal [~~must~~] shall be finalized and
6258 posted by the department at least 45 days [~~prior to the date~~] before the day on which the
6259 proposal must be submitted.

6260 (d) Offerors to the request for proposals shall be accorded fair and equal treatment with
6261 respect to any opportunity for discussion and revisions of proposals, and revisions may be
6262 permitted after submission and before a contract is awarded for the purpose of obtaining best
6263 and final offers.

6264 (e) In conducting discussions, there shall be no disclosures of any information derived
6265 from proposals submitted by competing offerors.

6266 (3) (a) (i) The department may select an applicant approved by the department under
6267 Section 26-8a-404 to provide non-911 services by contract to the most responsible offeror as
6268 defined in Subsection 63G-6-103(24).

6269 (ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose
6270 proposal is determined in writing to be the most advantageous to the public, taking into
6271 consideration price and the evaluation factors set forth in the request for proposal.

6272 (b) The applicants who are approved under Section 26-8a-405 and who are selected
6273 under this section may be the political subdivision responding to the request for competitive

6274 sealed proposals, or any other public entity or entities, any private person or entity, or any
6275 combination thereof.

6276 (c) The department may reject all of the competitive proposals.

6277 (4) In seeking competitive sealed proposals and awarding contracts under this section,
6278 the department:

6279 (a) shall consider the public convenience and necessity factors listed in Subsections
6280 26-8a-408(2) through (6);

6281 (b) shall require the applicant responding to the proposal to disclose how the applicant
6282 will meet performance standards in the request for proposal;

6283 (c) may not require or restrict an applicant to a certain method of meeting the
6284 performance standards, including:

6285 (i) requiring ambulance medical personnel to also be a firefighter; or

6286 (ii) mandating that offerors use fire stations or dispatch services of the political
6287 subdivision;

6288 (d) shall require an applicant to submit the proposal:

6289 (i) based on full cost accounting in accordance with generally accepted accounting
6290 principals; and

6291 (ii) if the applicant is a governmental entity, in addition to the requirements of
6292 Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and
6293 in compliance with the State of Utah Legal Compliance Audit Guide; and

6294 (e) shall set forth in the request for proposal:

6295 (i) the method for determining full cost accounting in accordance with generally
6296 accepted accounting principles, and require an applicant to submit the proposal based on such
6297 full cost accounting principles;

6298 (ii) guidelines established to further competition and provider accountability; and

6299 (iii) a list of the factors that will be considered by the department in the award of the
6300 contract, including by percentage, the relative weight of the factors established under this
6301 Subsection (4)(e), which may include such things as:

- 6302 (A) response times;
- 6303 (B) staging locations;
- 6304 (C) experience;
- 6305 (D) quality of care; and
- 6306 (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).
- 6307 (5) A license issued under this section:
- 6308 (a) is for the exclusive geographic service area approved by the department;
- 6309 (b) is valid for four years;
- 6310 (c) is not subject to a request for license from another applicant under the provisions of
- 6311 Sections 26-8a-406 through 26-8a-409 during the four-year term, unless the applicant's license
- 6312 is revoked under Section 26-8a-504;
- 6313 (d) is subject to supervision by the department under Sections 26-8a-503 and
- 6314 26-8a-504; and
- 6315 (e) except as provided in Subsection (4)(a), is not subject to the provisions of Sections
- 6316 26-8a-406 through 26-8a-409.
- 6317 Section 158. Section **26-8a-406** is amended to read:
- 6318 **26-8a-406. Ground ambulance and paramedic licenses -- Parties.**
- 6319 (1) When an applicant approved under Section 26-8a-404 seeks licensure under the
- 6320 provisions of Sections 26-8a-406 through 26-8a-409, the department shall:
- 6321 (a) issue a notice of agency action to the applicant to commence an informal
- 6322 administrative proceeding;
- 6323 (b) provide notice of the application to all interested parties; and
- 6324 (c) publish notice of the application, at the applicant's expense:
- 6325 (i) once a week for four consecutive weeks, in a newspaper of general circulation in the
- 6326 geographic service area that is the subject of the application; and
- 6327 (ii) in accordance with Section 45-1-101 for four weeks.
- 6328 (2) An interested party has 30 days to object to an application.
- 6329 (3) If an interested party objects, the presiding officer [~~must~~] shall join the interested

6330 party as an indispensable party to the proceeding.

6331 (4) The department may join the proceeding as a party to represent the public interest.

6332 (5) Others who may be affected by the grant of a license to the applicant may join the
6333 proceeding, if the presiding officer determines that they meet the requirement of legal standing.

6334 Section 159. Section **26-8a-408** is amended to read:

6335 **26-8a-408. Criteria for determining public convenience and necessity.**

6336 (1) The criteria for determining public convenience and necessity is set forth in
6337 Subsections (2) through (6).

6338 (2) Access to emergency medical services [~~must~~] shall be maintained or improved.

6339 The officer shall consider the impact on existing services, including the impact on response
6340 times, call volumes, populations and exclusive geographic service areas served, and the ability
6341 of surrounding licensed providers to service their exclusive geographic service areas. The
6342 issuance or amendment of a license may not create an orphaned area.

6343 (3) The quality of service in the area [~~must~~] shall be maintained or improved. The
6344 officer shall consider the:

6345 (a) staffing and equipment standards of the current licensed provider and the applicant;

6346 (b) training and certification levels of the current licensed provider's staff and the
6347 applicant's staff;

6348 (c) continuing medical education provided by the current licensed provider and the
6349 applicant;

6350 (d) levels of care as defined by department rule;

6351 (e) plan of medical control; and

6352 (f) the negative or beneficial impact on the regional emergency medical service system
6353 to provide service to the public.

6354 (4) The cost to the public [~~must~~] shall be justified. The officer [~~must~~] shall consider:

6355 (a) the financial solvency of the applicant;

6356 (b) the applicant's ability to provide services within the rates established under Section
6357 26-8a-403;

6358 (c) the applicant's ability to comply with cost reporting requirements;
6359 (d) the cost efficiency of the applicant; and
6360 (e) the cost effect of the application on the public, interested parties, and the emergency
6361 medical services system.

6362 (5) Local desires concerning cost, quality, and access [~~must~~] shall be considered. The
6363 officer shall assess and consider:

6364 (a) the existing provider's record of providing services and the applicant's record and
6365 ability to provide similar or improved services;

6366 (b) locally established emergency medical services goals, including those established in
6367 Subsection (7);

6368 (c) comment by local governments on the applicant's business and operations plans;

6369 (d) comment by interested parties that are providers on the impact of the application on
6370 the parties' ability to provide emergency medical services;

6371 (e) comment by interested parties that are local governments on the impact of the
6372 application on the citizens it represents; and

6373 (f) public comment on any aspect of the application or proposed license.

6374 (6) Other related criteria:

6375 (a) the officer considers necessary; or

6376 (b) established by department rule.

6377 (7) The role of local governments in the licensing of ground ambulance and paramedic
6378 providers that serve areas also served by the local governments is important. The Legislature
6379 strongly encourages local governments to establish cost, quality, and access goals for the
6380 ground ambulance and paramedic services that serve their areas.

6381 (8) In a formal adjudicative proceeding, the applicant bears the burden of establishing
6382 that public convenience and necessity require the approval of the application for all or part of
6383 the exclusive geographic service area requested.

6384 Section 160. Section **26-8a-410** is amended to read:

6385 **26-8a-410. Local approvals.**

6386 (1) Licensed ambulance providers and paramedic providers [must] shall meet all local
6387 zoning and business licensing standards generally applicable to businesses operating within the
6388 jurisdiction.

6389 (2) Publicly subsidized providers [must] shall demonstrate approval of the taxing
6390 authority that will provide the subsidy.

6391 (3) A publicly operated service [must] shall demonstrate that the governing body has
6392 approved the provision of services to the entire exclusive geographic service area that is the
6393 subject of the license, including those areas that may lie outside the territorial or jurisdictional
6394 boundaries of the governing body.

6395 Section 161. Section **26-8a-413** is amended to read:

6396 **26-8a-413. License renewals.**

6397 (1) A licensed provider desiring to renew its license [must] shall meet the renewal
6398 requirements established by department rule.

6399 (2) The department shall issue a renewal license for a ground ambulance provider or a
6400 paramedic provider upon the licensee's application for a renewal and without a public hearing
6401 if there has been:

6402 (a) no change in controlling interest in the ownership of the licensee as defined in
6403 Section 26-8a-415;

6404 (b) no serious, substantiated public complaints filed with the department against the
6405 licensee during the term of the previous license;

6406 (c) no material or substantial change in the basis upon which the license was originally
6407 granted;

6408 (d) no reasoned objection from the committee or the department; and

6409 (e) if the applicant was licensed under the provisions of Sections 26-8a-406 through
6410 26-8a-409, no conflicting license application.

6411 (3) (a) (i) The provisions of this Subsection (3) apply to a provider licensed under the
6412 provisions of Sections 26-8a-405.1 and 26-8a-405.2.

6413 (ii) A provider may renew its license if the provisions of Subsections (1), (2)(a)

6414 through (d), and this Subsection (3) are met.

6415 (b) (i) The department shall issue a renewal license to a provider upon the provider's
6416 application for renewal for one additional four-year term if the political subdivision certifies to
6417 the department that the provider has met all of the specifications of the original bid.

6418 (ii) If the political subdivision does not certify to the department that the provider has
6419 met all of the specifications of the original bid, the department may not issue a renewal license
6420 and the political subdivision [~~must~~] shall enter into a public bid process under Sections
6421 26-8a-405.1 and 26-8a-405.2.

6422 (c) (i) The department shall issue an additional renewal license to a provider who has
6423 already been issued a one-time renewal license under the provisions of Subsection (3)(b)(i) if
6424 the department and the political subdivision do not receive, prior to the expiration of the
6425 provider's license, written notice from an approved applicant informing the political
6426 subdivision of the approved applicant's desire to submit a bid for ambulance or paramedic
6427 service.

6428 (ii) If the department and the political subdivision receive the notice in accordance with
6429 Subsection (3)(c)(i), the department may not issue a renewal license and the political
6430 subdivision [~~must~~] shall enter into a public bid process under Sections 26-8a-405.1 and
6431 26-8a-405.2.

6432 (4) The department shall issue a renewal license for an air ambulance provider upon
6433 the licensee's application for renewal and completion of the renewal requirements established
6434 by department rule.

6435 Section 162. Section **26-10b-102** is amended to read:

6436 **26-10b-102. Department to award grants and contracts -- Applications.**

6437 (1) (a) Within appropriations specified by the Legislature for this purpose, the
6438 department may make grants to public and nonprofit entities for the cost of operation of
6439 providing primary health care services to medically underserved populations.

6440 (b) The department may, as funding permits, contract with community based
6441 organizations for the purpose of developing culturally and linguistically appropriate programs

6442 and services for low income and medically underserved populations through a pilot program to
6443 accomplish one or more of the following:

6444 (i) to educate individuals:

6445 (A) to use private and public health care coverage programs, products, services, and
6446 resources in a timely, effective, and responsible manner;

6447 (B) to make prudent use of private and public health care resources;

6448 (C) to pursue preventive health care, health screenings, and disease management; and

6449 (D) to locate health care programs and services;

6450 (ii) to assist individuals to develop:

6451 (A) personal health management;

6452 (B) self-sufficiency in daily care; and

6453 (C) life and disease management skills;

6454 (iii) to support translation of health materials and information;

6455 (iv) to facilitate an individual's access to primary care services and providers, including
6456 mental health services; and

6457 (v) to measure and report empirical results of the pilot project.

6458 (2) (a) Grants by the department shall be awarded based on:

6459 (i) applications submitted to the department in the manner and form prescribed by the
6460 department; and

6461 (ii) the criteria established in Section 26-10b-103.

6462 (b) The application for a grant under Subsection (2)(a) shall contain:

6463 (i) a requested award amount;

6464 (ii) a budget; and

6465 (iii) a narrative plan of the manner in which the applicant intends to provide the
6466 primary health care services described in Subsection 26-10b-101(7).

6467 (c) A contract bid for a service under Subsection (1)(b):

6468 (i) shall be awarded in accordance with Title 63G, Chapter 6, Utah Procurement Code;

6469 (ii) [~~must~~] shall include the information described in Section 26-10b-103; and

6470 (iii) is subject to Subsection (3) of this section.

6471 (3) (a) An applicant under this chapter [~~must~~] shall demonstrate to the department that
6472 the applicant will not deny services to a person because of the person's inability to pay for the
6473 services.

6474 (b) Subsection (3)(a) does not preclude an applicant from seeking payment from the
6475 person receiving services, a third party, or a government agency if:

6476 (i) the applicant is authorized to charge for the services; and

6477 (ii) the person, third party, or government agency is under legal obligation to pay the
6478 charges.

6479 (4) The department shall maximize the use of federal matching funds received for
6480 services under Subsection (1)(b) to fund additional contracts under Subsection (1)(b).

6481 Section 163. Section **26-15-8** is amended to read:

6482 **26-15-8. Periodic evaluation of local health sanitation programs -- Minimum**
6483 **statewide enforcement standards -- Technical assistance.**

6484 (1) The department shall periodically evaluate the sanitation programs of local health
6485 departments to determine the levels of sanitation being maintained throughout the state.

6486 (2) (a) The department shall ensure that each local health department's enforcement of
6487 the minimum rules of sanitation adopted under Section 26-15-2 for restaurants and other places
6488 where food or drink is handled meets or exceeds minimum statewide enforcement standards
6489 established by the department by administrative rule.

6490 (b) Administrative rules adopted under Subsection (2)(a) shall include at least:

6491 (i) the minimum number of periodic on-site inspections that [~~must~~] shall be conducted
6492 by each local health department;

6493 (ii) criteria for conducting additional inspections; and

6494 (iii) standardized methods to be used by local health departments to assess compliance
6495 with the minimum rules of sanitation adopted under Section 26-15-2.

6496 (c) The department shall help local health departments comply with the minimum
6497 statewide enforcement standards adopted under this Subsection (2) by providing technical

6498 assistance.

6499 Section 164. Section **26-18-3** is amended to read:

6500 **26-18-3. Administration of Medicaid program by department -- Reporting to the**
6501 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**
6502 **standards -- Internal audits -- Studies -- Health opportunity accounts.**

6503 (1) The department shall be the single state agency responsible for the administration
6504 of the Medicaid program in connection with the United States Department of Health and
6505 Human Services pursuant to Title XIX of the Social Security Act.

6506 (2) (a) The department shall implement the Medicaid program through administrative
6507 rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking
6508 Act, the requirements of Title XIX, and applicable federal regulations.

6509 (b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules
6510 necessary to implement the program:

6511 (i) the standards used by the department for determining eligibility for Medicaid
6512 services;

6513 (ii) the services and benefits to be covered by the Medicaid program; and

6514 (iii) reimbursement methodologies for providers under the Medicaid program.

6515 (3) (a) The department shall, in accordance with Subsection (3)(b), report to the Health
6516 and Human Services Appropriations Subcommittee when the department:

6517 (i) implements a change in the Medicaid State Plan;

6518 (ii) initiates a new Medicaid waiver;

6519 (iii) initiates an amendment to an existing Medicaid waiver;

6520 (iv) applies for an extension of an application for a waiver or an existing Medicaid
6521 waiver; or

6522 (v) initiates a rate change that requires public notice under state or federal law.

6523 (b) The report required by Subsection (3)(a) shall:

6524 (i) be submitted to the Health and Human Services Appropriations Subcommittee prior
6525 to the department implementing the proposed change; and

- 6526 (ii) include:
- 6527 (A) a description of the department's current practice or policy that the department is
6528 proposing to change;
- 6529 (B) an explanation of why the department is proposing the change;
- 6530 (C) the proposed change in services or reimbursement, including a description of the
6531 effect of the change;
- 6532 (D) the effect of an increase or decrease in services or benefits on individuals and
6533 families;
- 6534 (E) the degree to which any proposed cut may result in cost-shifting to more expensive
6535 services in health or human service programs; and
- 6536 (F) the fiscal impact of the proposed change, including:
- 6537 (I) the effect of the proposed change on current or future appropriations from the
6538 Legislature to the department;
- 6539 (II) the effect the proposed change may have on federal matching dollars received by
6540 the state Medicaid program;
- 6541 (III) any cost shifting or cost savings within the department's budget that may result
6542 from the proposed change; and
- 6543 (IV) identification of the funds that will be used for the proposed change, including any
6544 transfer of funds within the department's budget.
- 6545 (4) (a) The Department of Human Services shall report to the Legislative Health and
6546 Human Services Appropriations Subcommittee no later than December 31, 2010 in accordance
6547 with Subsection (4)(b).
- 6548 (b) The report required by Subsection (4)(a) shall include:
- 6549 (i) changes made by the division or the department beginning July 1, 2010 that effect
6550 the Medicaid program, a waiver under the Medicaid program, or an interpretation of Medicaid
6551 services or funding, that relate to care for children and youth in the custody of the Division of
6552 Child and Family Services or the Division of Juvenile Justice Services;
- 6553 (ii) the history and impact of the changes under Subsection (4)(b)(I);

6554 (iii) the Department of Human Service's plans for addressing the impact of the changes
6555 under Subsection (4)(b)(i); and

6556 (iv) ways to consolidate administrative functions within the Department of Human
6557 Services, the Department of Health, the Division of Child and Family Services, and the
6558 Division of Juvenile Justice Services to more efficiently meet the needs of children and youth
6559 with mental health and substance disorder treatment needs.

6560 (5) Any rules adopted by the department under Subsection (2) are subject to review and
6561 reauthorization by the Legislature in accordance with Section 63G-3-502.

6562 (6) The department may, in its discretion, contract with the Department of Human
6563 Services or other qualified agencies for services in connection with the administration of the
6564 Medicaid program, including:

6565 (a) the determination of the eligibility of individuals for the program;

6566 (b) recovery of overpayments; and

6567 (c) consistent with Section 26-20-13, and to the extent permitted by law and quality
6568 control services, enforcement of fraud and abuse laws.

6569 (7) The department shall provide, by rule, disciplinary measures and sanctions for
6570 Medicaid providers who fail to comply with the rules and procedures of the program, provided
6571 that sanctions imposed administratively may not extend beyond:

6572 (a) termination from the program;

6573 (b) recovery of claim reimbursements incorrectly paid; and

6574 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

6575 (8) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX
6576 of the federal Social Security Act shall be deposited in the General Fund as dedicated credits to
6577 be used by the division in accordance with the requirements of Section 1919 of Title XIX of
6578 the federal Social Security Act.

6579 (9) (a) In determining whether an applicant or recipient is eligible for a service or
6580 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department
6581 shall, if Subsection (9)(b) is satisfied, exclude from consideration one passenger vehicle

6582 designated by the applicant or recipient.

6583 (b) Before Subsection (9)(a) may be applied:

6584 (i) the federal government [~~must~~] shall:

6585 (A) determine that Subsection (9)(a) may be implemented within the state's existing
6586 public assistance-related waivers as of January 1, 1999;

6587 (B) extend a waiver to the state permitting the implementation of Subsection (9)(a); or

6588 (C) determine that the state's waivers that permit dual eligibility determinations for
6589 cash assistance and Medicaid are no longer valid; and

6590 (ii) the department [~~must~~] shall determine that Subsection (9)(a) can be implemented
6591 within existing funding.

6592 (10) (a) For purposes of this Subsection (10):

6593 (i) "aged, blind, or disabled" shall be defined by administrative rule; and

6594 (ii) "spend down" means an amount of income in excess of the allowable income
6595 standard that [~~must~~] shall be paid in cash to the department or incurred through the medical
6596 services not paid by Medicaid.

6597 (b) In determining whether an applicant or recipient who is aged, blind, or disabled is
6598 eligible for a service or benefit under this chapter, the department shall use 100% of the federal
6599 poverty level as:

6600 (i) the allowable income standard for eligibility for services or benefits; and

6601 (ii) the allowable income standard for eligibility as a result of spend down.

6602 (11) The department shall conduct internal audits of the Medicaid program, in
6603 proportion to at least the level of funding it receives from Medicaid to conduct internal audits.

6604 (12) In order to determine the feasibility of contracting for direct Medicaid providers
6605 for primary care services, the department shall:

6606 (a) issue a request for information for direct contracting for primary services that shall
6607 provide that a provider shall exclusively serve all Medicaid clients:

6608 (i) in a geographic area;

6609 (ii) for a defined range of primary care services; and

6610 (iii) for a predetermined total contracted amount; and
6611 (b) by February 1, 2011, report to the Health and Human Services Appropriations
6612 Subcommittee on the response to the request for information under Subsection (12)(a).
6613 (13) (a) By December 31, 2010, the department shall:
6614 (i) determine the feasibility of implementing a three year patient-centered medical
6615 home demonstration project in an area of the state using existing budget funds; and
6616 (ii) report the department's findings and recommendations under Subsection (13)(a)(i)
6617 to the Health and Human Services Appropriations Subcommittee.
6618 (b) If the department determines that the medical home demonstration project
6619 described in Subsection (13)(a) is feasible, and the Health and Human Services Appropriations
6620 Subcommittee recommends that the demonstration project be implemented, the department
6621 shall:
6622 (i) implement the demonstration project; and
6623 (ii) by December 1, 2012, make recommendations to the Health and Human Services
6624 Appropriations Subcommittee regarding the:
6625 (A) continuation of the demonstration project;
6626 (B) expansion of the demonstration project to other areas of the state; and
6627 (C) cost savings incurred by the implementation of the demonstration project.
6628 (14) (a) The department may apply for and, if approved, implement a demonstration
6629 program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.
6630 (b) A health opportunity account established under Subsection (14)(a) shall be an
6631 alternative to the existing benefits received by an individual eligible to receive Medicaid under
6632 this chapter.
6633 (c) Subsection (14)(a) is not intended to expand the coverage of the Medicaid program.
6634 Section 165. Section **26-18-4** is amended to read:
6635 **26-18-4. Department standards for eligibility under Medicaid -- Funds for**
6636 **abortions.**
6637 (1) The department may develop standards and administer policies relating to

6638 eligibility under the Medicaid program as long as they are consistent with Subsection
6639 26-18-3(8). An applicant receiving Medicaid assistance may be limited to particular types of
6640 care or services or to payment of part or all costs of care determined to be medically necessary.

6641 (2) The department [~~shall not~~] may not provide any funds for medical, hospital, or
6642 other medical expenditures or medical services to otherwise eligible persons where the purpose
6643 of the assistance is to perform an abortion, unless the life of the mother would be endangered if
6644 an abortion were not performed.

6645 (3) Any employee of the department who authorizes payment for an abortion contrary
6646 to the provisions of this section is guilty of a class B misdemeanor and subject to forfeiture of
6647 office.

6648 (4) Any person or organization that, under the guise of other medical treatment,
6649 provides an abortion under auspices of the Medicaid program is guilty of a third degree felony
6650 and subject to forfeiture of license to practice medicine or authority to provide medical services
6651 and treatment.

6652 Section 166. Section **26-18-5** is amended to read:

6653 **26-18-5. Contracts for provision of medical services -- Federal provisions**
6654 **modifying department rules -- Compliance with Social Security Act.**

6655 (1) The department may contract with other public or private agencies to purchase or
6656 provide medical services in connection with the programs of the division. Where these
6657 programs are used by other state agencies, contracts shall provide that other state agencies
6658 transfer the state matching funds to the department in amounts sufficient to satisfy needs of the
6659 specified program.

6660 (2) All contracts for the provision or purchase of medical services shall be established
6661 on the basis of the state's fiscal year and shall remain uniform during the fiscal year insofar as
6662 possible. Contract terms shall include provisions for maintenance, administration, and service
6663 costs.

6664 (3) If a federal legislative or executive provision requires modifications or revisions in
6665 an eligibility factor established under this chapter as a condition for participation in medical

6666 assistance, the department may modify or change its rules as necessary to qualify for
6667 participation; providing, the provisions of this section [~~shall not~~] do not apply to department
6668 rules governing abortion.

6669 (4) The department shall comply with all pertinent requirements of the Social Security
6670 Act and all orders, rules, and regulations adopted thereunder when required as a condition of
6671 participation in benefits under the Social Security Act.

6672 Section 167. Section **26-18-10** is amended to read:

6673 **26-18-10. Utah Medical Assistance Program -- Policies and standards.**

6674 (1) The division shall develop a medical assistance program, which shall be known as
6675 the Utah Medical Assistance Program, for low income persons who are not eligible under the
6676 state plan for Medicaid under Title XIX of the Social Security Act or Medicare under Title
6677 XVIII of that act.

6678 (2) Persons in the custody of prisons, jails, halfway houses, and other nonmedical
6679 government institutions are not eligible for services provided under this section.

6680 (3) The department shall develop standards and administer policies relating to
6681 eligibility requirements, consistent with Subsection 26-18-3(8), for participation in the
6682 program, and for payment of medical claims for eligible persons.

6683 (4) The program shall be a payor of last resort. Before assistance is rendered the
6684 division shall investigate the availability of the resources of the spouse, father, mother, and
6685 adult children of the person making application.

6686 (5) The department shall determine what medically necessary care or services are
6687 covered under the program, including duration of care, and method of payment, which may be
6688 partial or in full.

6689 (6) The department [~~shall not~~] may not provide public assistance for medical, hospital,
6690 or other medical expenditures or medical services to otherwise eligible persons where the
6691 purpose of the assistance is for the performance of an abortion, unless the life of the mother
6692 would be endangered if an abortion were not performed.

6693 (7) The department may establish rules to carry out the provisions of this section.

6694 Section 168. Section **26-18-11** is amended to read:

6695 **26-18-11. Rural hospitals.**

6696 (1) For purposes of this section "rural hospital" means a hospital located outside of a
6697 standard metropolitan statistical area, as designated by the United States Bureau of the Census.

6698 (2) For purposes of the Medicaid program and the Utah Medical Assistance Program,
6699 the Division of Health Care Financing [~~shall not~~] may not discriminate among rural hospitals
6700 on the basis of size.

6701 Section 169. Section **26-18-501** is amended to read:

6702 **26-18-501. Definitions.**

6703 As used in this part:

6704 (1) "Certified program" means a nursing care facility program with Medicaid
6705 certification.

6706 (2) "Director" means the director of the Division of Health Care Financing.

6707 (3) "Medicaid certification" means the right to Medicaid reimbursement as a provider
6708 of a nursing care facility program as established by division rule.

6709 (4) (a) "Nursing care facility" means the following facilities licensed by the department
6710 under Chapter 21, Health Care Facility Licensing and Inspection Act:

6711 (i) skilled nursing homes;

6712 (ii) intermediate care facilities; and

6713 (iii) intermediate care facilities for the mentally retarded.

6714 (b) "Nursing care facility" does not mean a critical access hospital that meets the
6715 criteria of 42 U.S.C. 1395i-4(c)(2) (1998).

6716 (5) "Nursing care facility program" means the personnel, licenses, services, contracts
6717 and all other requirements that [~~must~~] shall be met for a nursing care facility to be eligible for
6718 Medicaid certification under this part and division rule.

6719 (6) "Physical facility" means the buildings or other physical structures where a nursing
6720 care facility program is operated.

6721 (7) "Service area" means the boundaries of the distinct geographic area served by a

6722 certified program as determined by the division in accordance with this part and division rule.

6723 Section 170. Section **26-18-502** is amended to read:

6724 **26-18-502. Purpose -- Medicaid certification of nursing care facilities.**

6725 (1) The Legislature finds:

6726 (a) that an oversupply of nursing care facility programs in the state adversely affects the
6727 state Medicaid program and the health of the people in the state; and

6728 (b) it is in the best interest of the state to prohibit Medicaid certification of nursing care
6729 facility programs, except as authorized by this part.

6730 (2) Medicaid reimbursement of nursing care facility programs is limited to:

6731 (a) the number of nursing care facility programs with Medicaid certification as of May
6732 4, 2004; and

6733 (b) additional nursing care facility programs approved for Medicaid certification under
6734 the provisions of Subsection 26-18-503(5).

6735 (3) The division [~~shall not~~] may not:

6736 (a) except as authorized by Section 26-18-503:

6737 (i) process initial applications for Medicaid certification or execute provider
6738 agreements with nursing care facility programs; or

6739 (ii) reinstate Medicaid certification for a nursing care facility whose certification
6740 expired or was terminated by action of the federal or state government; or

6741 (b) execute a Medicaid provider agreement with a certified program that moves its
6742 nursing care facility program to a different physical facility, except as authorized by Subsection
6743 26-18-503(3).

6744 Section 171. Section **26-18-503** is amended to read:

6745 **26-18-503. Authorization to renew, transfer, or increase Medicaid certified**
6746 **programs -- Reimbursement methodology.**

6747 (1) The division may renew Medicaid certification of a certified program if the
6748 program, without lapse in service to Medicaid recipients, has its nursing care facility program
6749 certified by the division at the same physical facility as long as the licensed and certified bed

6750 capacity at the facility has not been expanded, unless the director has approved additional beds
6751 in accordance with Subsection (5).

6752 (2) (a) The division may issue a Medicaid certification for a new nursing care facility
6753 program if a current owner of the Medicaid certified program transfers its ownership of the
6754 Medicaid certification to the new nursing care facility program and the new nursing care
6755 facility program meets all of the following conditions:

6756 (i) the new nursing care facility program operates at the same physical facility as the
6757 previous Medicaid certified program;

6758 (ii) the new nursing care facility program gives a written assurance to the director in
6759 accordance with Subsection (4);

6760 (iii) the new nursing care facility program receives the Medicaid certification within
6761 one year of the date the previously certified program ceased to provide medical assistance to a
6762 Medicaid recipient; and

6763 (iv) the licensed and certified bed capacity at the facility has not been expanded, unless
6764 the director has approved additional beds in accordance with Subsection (5).

6765 (b) A nursing care facility program that receives Medicaid certification under the
6766 provisions of Subsection (2)(a) does not assume the Medicaid liabilities of the previous nursing
6767 care facility program if the new nursing care facility program:

6768 (i) is not owned in whole or in part by the previous nursing care facility program; or

6769 (ii) is not a successor in interest of the previous nursing care facility program.

6770 (3) The division may issue a Medicaid certification to a nursing care facility program
6771 that was previously a certified program but now resides in a new or renovated physical facility
6772 if the nursing care facility program meets all of the following:

6773 (a) the nursing care facility program met all applicable requirements for Medicaid
6774 certification at the time of closure;

6775 (b) the new or renovated physical facility is in the same county or within a five-mile
6776 radius of the original physical facility;

6777 (c) the time between which the certified program ceased to operate in the original

6778 facility and will begin to operate in the new physical facility is not more than three years;

6779 (d) if Subsection (3)(c) applies, the certified program notifies the department within 90
6780 days after ceasing operations in its original facility, of its intent to retain its Medicaid
6781 certification;

6782 (e) the provider gives written assurance to the director in accordance with Subsection
6783 (4) that no third party has a legitimate claim to operate a certified program at the previous
6784 physical facility; and

6785 (f) the bed capacity in the physical facility has not been expanded unless the director
6786 has approved additional beds in accordance with Subsection (5).

6787 (4) (a) The entity requesting Medicaid certification under Subsections (2) and (3)
6788 [~~must~~] shall give written assurances satisfactory to the director or [~~his~~] the director's designee
6789 that:

6790 (i) no third party has a legitimate claim to operate the certified program;

6791 (ii) the requesting entity agrees to defend and indemnify the department against any
6792 claims by a third party who may assert a right to operate the certified program; and

6793 (iii) if a third party is found, by final agency action of the department after exhaustion
6794 of all administrative and judicial appeal rights, to be entitled to operate a certified program at
6795 the physical facility the certified program shall voluntarily comply with Subsection (4)(b).

6796 (b) If a finding is made under the provisions of Subsection (4)(a)(iii):

6797 (i) the certified program shall immediately surrender its Medicaid certification and
6798 comply with division rules regarding billing for Medicaid and the provision of services to
6799 Medicaid patients; and

6800 (ii) the department shall transfer the surrendered Medicaid certification to the third
6801 party who prevailed under Subsection (4)(a)(iii).

6802 (5) (a) As provided in Subsection 26-18-502(2)(b), the director shall issue additional
6803 Medicaid certification when requested by a nursing care facility or other interested party if
6804 there is insufficient bed capacity with current certified programs in a service area. A
6805 determination of insufficient bed capacity shall be based on the nursing care facility or other

6806 interested party providing reasonable evidence of an inadequate number of beds in the county
6807 or group of counties impacted by the requested Medicaid certification based on:

6808 (i) current demographics which demonstrate nursing care facility occupancy levels of at
6809 least 90% for all existing and proposed facilities within a prospective three-year period;

6810 (ii) current nursing care facility occupancy levels of 90%; or

6811 (iii) no other nursing care facility within a 35-mile radius of the nursing care facility
6812 requesting the additional certification.

6813 (b) In addition to the requirements of Subsection (5)(a), a nursing care facility program
6814 [~~must~~] shall demonstrate by an independent analysis that the nursing care facility can
6815 financially support itself at an after tax break-even net income level based on projected
6816 occupancy levels.

6817 (c) When making a determination to certify additional beds or an additional nursing
6818 care facility program under Subsection (5)(a):

6819 (i) the director shall consider whether the nursing care facility will offer specialized or
6820 unique services that are underserved in a service area;

6821 (ii) the director shall consider whether any Medicaid certified beds are subject to a
6822 claim by a previous certified program that may reopen under the provisions of Subsections (2)
6823 and (3); and

6824 (iii) the director may consider how to add additional capacity to the long-term care
6825 delivery system to best meet the needs of Medicaid recipients.

6826 (6) The department shall adopt administrative rules in accordance with Title 63G,
6827 Chapter 3, Utah Administrative Rulemaking Act, to adjust the Medicaid nursing care facility
6828 property reimbursement methodology to:

6829 (a) beginning July 1, 2008, only pay that portion of the property component of rates,
6830 representing actual bed usage by Medicaid clients as a percentage of the greater of:

6831 (i) actual occupancy; or

6832 (ii) (A) for a nursing care facility other than a facility described in Subsection
6833 (6)(a)(ii)(B), 85% of total bed capacity; or

6834 (B) for a rural nursing care facility, 65% of total bed capacity; and
6835 (b) beginning July 1, 2008, not allow for increases in reimbursement for property
6836 values without major renovation or replacement projects as defined by the department by rule.

6837 Section 172. Section **26-18-505** is amended to read:

6838 **26-18-505. Authorization to sell or transfer licensed Medicaid beds -- Duties of**
6839 **transferor -- Duties of transferee -- Duties of division.**

6840 (1) This section provides a method to transfer the license for a Medicaid bed from one
6841 nursing care facility program to another entity that is in addition to the authorization to transfer
6842 under Section 26-18-503.

6843 (2) (a) A nursing care facility program may transfer or sell one or more of its licenses
6844 for Medicaid beds in accordance with Subsection (2)(b) if:

6845 (i) at the time of the transfer, and with respect to the license for the Medicaid bed that
6846 will be transferred, the nursing care facility program that will transfer the Medicaid license
6847 meets all applicable regulations for Medicaid certification;

6848 (ii) 30 days prior to the transfer, the nursing care facility program gives a written
6849 assurance to the director and to the transferee in accordance with Subsection 26-18-503(4); and

6850 (iii) 30 days prior to the transfer, the nursing care facility program that will transfer the
6851 license for a Medicaid bed notifies the division in writing of:

6852 (A) the number of bed licenses that will be transferred;

6853 (B) the date of the transfer; and

6854 (C) the identity and location of the entity receiving the transferred licenses.

6855 (b) A nursing care facility program may transfer or sell one or more of its licenses for
6856 Medicaid beds to:

6857 (i) a nursing care facility program that has the same owner or successor in interest of
6858 the same owner;

6859 (ii) a nursing care facility program that has a different owner; or

6860 (iii) an entity that intends to establish a nursing care facility program.

6861 (3) An entity that receives or purchases a license for a Medicaid bed:

6862 (a) may receive a license for a Medicaid bed from more than one nursing care facility
6863 program;

6864 (b) within 14 days of seeking Medicaid certification of beds in the nursing care facility
6865 program, give the division notice of the total number of licenses for Medicaid beds that the
6866 entity received and who it received the licenses from;

6867 (c) may only seek Medicaid certification for the number of licensed beds in the nursing
6868 care facility program equal to the total number of licenses for Medicaid beds received by the
6869 entity, multiplied by a conversion factor of .7, and rounded down to the lowest integer;

6870 (d) does not have to demonstrate need for the Medicaid licensed beds under Subsection
6871 26-18-503(5);

6872 (e) [~~must~~] shall meet the standards for Medicaid certification other than those in
6873 Subsection 26-18-503(5), including personnel, services, contracts, and licensing of facilities
6874 under Chapter 21, Health Care Facility Licensing and Inspection Act; and

6875 (f) [~~must~~] shall obtain Medicaid certification for the licensed Medicaid beds within
6876 three years of the date of transfer as documented under Subsection (2)(a)(iii)(B).

6877 (4) The conversion formula required by Subsection (3)(c) shall be calculated:

6878 (a) when the nursing care facility program applies to the Department for Medicaid
6879 certification of the licensed beds; and

6880 (b) based on the total number of licenses for Medicaid beds transferred to the nursing
6881 care facility at the time of the request for Medicaid certification.

6882 (5) (a) When the division receives notice of a transfer of a license for a Medicaid bed
6883 under Subsection (2)(a)(iii)(A), the division shall reduce the number of licenses for Medicaid
6884 beds at the transferring nursing care facility:

6885 (i) equal to the number of licenses transferred; and

6886 (ii) effective on the date of the transfer as reported under Subsection (2)(a)(iii)(B).

6887 (b) For purposes of Section 26-18-502, the division shall approve Medicaid
6888 certification for the receiving entity:

6889 (i) in accordance with the formula established in Subsection (3)(c); and

- 6890 (ii) if:
- 6891 (A) the nursing care facility seeks Medicaid certification for the transferred licenses
- 6892 within the time limit required by Subsection (3)(f); and
- 6893 (B) the nursing care facility program meets other requirements for Medicaid
- 6894 certification under Subsection (3)(e).
- 6895 (c) A license for a Medicaid bed may not be approved for Medicaid certification
- 6896 without meeting the requirements of Sections 26-18-502 and 26-18-503 if:
- 6897 (i) the license for a Medicaid bed is transferred under this section but the receiving
- 6898 entity does not obtain Medicaid certification for the licensed bed within the time required by
- 6899 Subsection (3)(f); or
- 6900 (ii) the license for a Medicaid bed is transferred under this section but the license is no
- 6901 longer eligible for Medicaid certification as a result of the conversion factor established in
- 6902 Subsection (3)(c).

6903 Section 173. Section **26-19-7** is amended to read:

6904 **26-19-7. Notice of claim by recipient -- Department response -- Conditions for**
6905 **proceeding -- Collection agreements -- Department's right to intervene -- Department's**
6906 **interests protected -- Remitting funds -- Disbursements -- Liability and penalty for**
6907 **noncompliance.**

- 6908 (1) (a) A recipient may not file a claim, commence an action, or settle, compromise,
- 6909 release, or waive a claim against a third party for recovery of medical costs for an injury,
- 6910 disease, or disability for which the department has provided or has become obligated to provide
- 6911 medical assistance, without the department's written consent as provided in Subsection (2)(b)
- 6912 or (4).
- 6913 (b) For purposes of Subsection (1)(a), consent may be obtained if:
- 6914 (i) a recipient who files a claim, or commences an action against a third party notifies
- 6915 the department in accordance with Subsection (1)(d) within 10 days of making [~~his~~] the claim
- 6916 or commencing an action; or
- 6917 (ii) an attorney, who has been retained by the recipient to file a claim, or commence an

6918 action against a third party, notifies the department in accordance with Subsection (1)(d) of the
6919 recipient's claim:

6920 (A) within 30 days after being retained by the recipient for that purpose; or

6921 (B) within 30 days from the date the attorney either knew or should have known that
6922 the recipient received medical assistance from the department.

6923 (c) Service of the notice of claim to the department shall be made by certified mail,
6924 personal service, or by e-mail in accordance with Rule 5 of the Utah Rules of Civil Procedure,
6925 to the director of the Office of Recovery Services.

6926 (d) The notice of claim shall include the following information:

6927 (i) the name of the recipient;

6928 (ii) the recipient's Social Security number;

6929 (iii) the recipient's date of birth;

6930 (iv) the name of the recipient's attorney if applicable;

6931 (v) the name or names of individuals or entities against whom the recipient is making
6932 the claim, if known;

6933 (vi) the name of the third party's insurance carrier, if known;

6934 (vii) the date of the incident giving rise to the claim; and

6935 (viii) a short statement identifying the nature of the recipient's claim.

6936 (2) (a) Within 30 days of receipt of the notice of the claim required in Subsection (1),
6937 the department shall acknowledge receipt of the notice of the claim to the recipient or the
6938 recipient's attorney and shall notify the recipient or the recipient's attorney in writing of the
6939 following:

6940 (i) if the department has a claim or lien pursuant to Section 26-19-5 or has become
6941 obligated to provide medical assistance; and

6942 (ii) whether the department is denying or granting written consent in accordance with
6943 Subsection (1)(a).

6944 (b) The department shall provide the recipient's attorney the opportunity to enter into a
6945 collection agreement with the department, with the recipient's consent, unless:

6946 (i) the department, prior to the receipt of the notice of the recipient's claim pursuant to
6947 Subsection (1), filed a written claim with the third party, the third party agreed to make
6948 payment to the department before the date the department received notice of the recipient's
6949 claim, and the agreement is documented in the department's record; or

6950 (ii) there has been a failure by the recipient's attorney to comply with any provision of
6951 this section by:

6952 (A) failing to comply with the notice provisions of this section;

6953 (B) failing or refusing to enter into a collection agreement;

6954 (C) failing to comply with the terms of a collection agreement with the department; or

6955 (D) failing to disburse funds owed to the state in accordance with this section.

6956 (c) (i) The collection agreement shall be:

6957 (A) consistent with this section and the attorney's obligation to represent the recipient
6958 and represent the state's claim; and

6959 (B) state the terms under which the interests of the department may be represented in
6960 an action commenced by the recipient.

6961 (ii) If the recipient's attorney enters into a written collection agreement with the
6962 department, or includes the department's claim in the recipient's claim or action pursuant to
6963 Subsection (4), the department shall pay attorney's fees at the rate of 33.3% of the department's
6964 total recovery and shall pay a proportionate share of the litigation expenses directly related to
6965 the action.

6966 (d) The department is not required to enter into a collection agreement with the
6967 recipient's attorney for collection of personal injury protection under Subsection
6968 31A-22-302(2).

6969 (3) (a) If the department receives notice pursuant to Subsection (1), and notifies the
6970 recipient and the recipient's attorney that the department will not enter into a collection
6971 agreement with the recipient's attorney, the recipient may proceed with the recipient's claim or
6972 action against the third party if the recipient excludes from the claim:

6973 (i) any medical expenses paid by the department; or

6974 (ii) any medical costs for which the department is obligated to provide medical
6975 assistance.

6976 (b) When a recipient proceeds with a claim under Subsection (3)(a), the recipient shall
6977 provide written notice to the third party of the exclusion of the department's claim for expenses
6978 under Subsection (3)(a)(i) or (ii).

6979 (4) If the department receives notice pursuant to Subsection (1), and does not respond
6980 within 30 days to the recipient or the recipient's attorney, the recipient or the recipient's
6981 attorney:

6982 (a) may proceed with the recipient's claim or action against the third party;

6983 (b) may include the state's claim in the recipient's claim or action; and

6984 (c) may not negotiate, compromise, settle, or waive the department's claim without the
6985 department's consent.

6986 (5) The department has an unconditional right to intervene in an action commenced by
6987 a recipient against a third party for the purpose of recovering medical costs for which the
6988 department has provided or has become obligated to provide medical assistance.

6989 (6) (a) If the recipient proceeds without complying with the provisions of this section,
6990 the department is not bound by any decision, judgment, agreement, settlement, or compromise
6991 rendered or made on the claim or in the action.

6992 (b) The department may recover in full from the recipient or any party to which the
6993 proceeds were made payable all medical assistance which it has provided and retains its right to
6994 commence an independent action against the third party, subject to Subsection 26-19-5(3).

6995 (7) Any amounts assigned to and recoverable by the department pursuant to Sections
6996 26-19-4.5 and 26-19-5 collected directly by the recipient shall be remitted to the Bureau of
6997 Medical Collections within the Office of Recovery Services no later than five business days
6998 after receipt.

6999 (8) (a) Any amounts assigned to and recoverable by the department pursuant to
7000 Sections 26-19-4.5 and 26-19-5 collected directly by the recipient's attorney [~~must~~] shall be
7001 remitted to the Bureau of Medical Collections within the Office of Recovery Services no later

7002 than 30 days after the funds are placed in the attorney's trust account.

7003 (b) The date by which the funds [~~must~~] shall be remitted to the department may be
7004 modified based on agreement between the department and the recipient's attorney.

7005 (c) The department's consent to another date for remittance may not be unreasonably
7006 withheld.

7007 (d) If the funds are received by the recipient's attorney, no disbursements shall be made
7008 to the recipient or the recipient's attorney until the department's claim has been paid.

7009 (9) A recipient or recipient's attorney who knowingly and intentionally fails to comply
7010 with this section is liable to the department for:

7011 (a) the amount of the department's claim or lien pursuant to Subsection (5);

7012 (b) a penalty equal to 10% of the amount of the department's claim; and

7013 (c) [~~attorney's~~] attorney fees and litigation expenses related to recovering the
7014 department's claim.

7015 Section 174. Section **26-19-8** is amended to read:

7016 **26-19-8. Statute of limitations -- Survival of right of action -- Insurance policy not**
7017 **to limit time allowed for recovery.**

7018 (1) (a) Subject to Subsection (6), action commenced by the department under this
7019 chapter against a health insurance entity [~~must~~] shall be commenced within:

7020 (i) subject to Subsection (7), six years after the day on which the department submits
7021 the claim for recovery or payment for the health care item or service upon which the action is
7022 based; or

7023 (ii) six months after the date of the last payment for medical assistance, whichever is
7024 later.

7025 (b) An action against any other third party, the recipient, or anyone to whom the
7026 proceeds are payable [~~must~~] shall be commenced within:

7027 (i) four years after the date of the injury or onset of the illness; or

7028 (ii) six months after the date of the last payment for medical assistance, whichever is
7029 later.

7030 (2) The death of the recipient does not abate any right of action established by this
7031 chapter.

7032 (3) (a) No insurance policy issued or renewed after June 1, 1981, may contain any
7033 provision that limits the time in which the department may submit its claim to recover medical
7034 assistance benefits to a period of less than 24 months from the date the provider furnishes
7035 services or goods to the recipient.

7036 (b) No insurance policy issued or renewed after April 30, 2007, may contain any
7037 provision that limits the time in which the department may submit its claim to recover medical
7038 assistance benefits to a period of less than that described in Subsection (1)(a).

7039 (4) The provisions of this section do not apply to Section 26-19-13.5.

7040 (5) The provisions of this section supercede any other sections regarding the time limit
7041 in which an action [~~must~~] shall be commenced, including Section 75-7-509.

7042 (6) (a) Subsection (1)(a) extends the statute of limitations on a cause of action
7043 described in Subsection (1)(a) that was not time-barred on or before April 30, 2007.

7044 (b) Subsection (1)(a) does not revive a cause of action that was time-barred on or
7045 before April 30, 2007.

7046 (7) An action described in Subsection (1)(a) may not be commenced if the claim for
7047 recovery or payment described in Subsection (1)(a)(i) is submitted later than three years after
7048 the day on which the health care item or service upon which the claim is based was provided.

7049 Section 175. Section **26-20-3** is amended to read:

7050 **26-20-3. False statement or representation relating to medical benefits.**

7051 (1) A person [~~shall not~~] may not make or cause to be made a false statement or false
7052 representation of a material fact in an application for medical benefits.

7053 (2) A person [~~shall not~~] may not make or cause to be made a false statement or false
7054 representation of a material fact for use in determining rights to a medical benefit.

7055 (3) A person, who having knowledge of the occurrence of an event affecting [~~his~~] the
7056 person's initial or continued right to receive a medical benefit or the initial or continued right of
7057 any other person on whose behalf [~~he~~] the person has applied for or is receiving a medical

7058 benefit, [~~shall not~~] may not conceal or fail to disclose that event with intent to obtain a medical
7059 benefit to which the person or any other person is not entitled or in an amount greater than that
7060 to which the person or any other person is entitled.

7061 Section 176. Section **26-20-6** is amended to read:

7062 **26-20-6. Conspiracy to defraud prohibited.**

7063 A person [~~shall not~~] may not enter into an agreement, combination, or conspiracy to
7064 defraud the state by obtaining or aiding another to obtain the payment or allowance of a false,
7065 fictitious, or fraudulent claim for a medical benefit.

7066 Section 177. Section **26-20-8** is amended to read:

7067 **26-20-8. Knowledge of past acts not necessary to establish fact that false**
7068 **statement or representation knowingly made.**

7069 In prosecution under this chapter, it [~~shall not be~~] is not necessary to show that the
7070 person had knowledge of similar acts having been performed in the past on the part of persons
7071 acting on his behalf nor to show that the person had actual notice that the acts by the persons
7072 acting on his behalf occurred to establish the fact that a false statement or representation was
7073 knowingly made.

7074 Section 178. Section **26-20-9.5** is amended to read:

7075 **26-20-9.5. Civil penalties.**

7076 (1) The culpable mental state required for a civil violation of this chapter is "knowing"
7077 or "knowingly" which:

7078 (a) means that person, with respect to information:

7079 (i) has actual knowledge of the information;

7080 (ii) acts in deliberate ignorance of the truth or falsity of the information; or

7081 (iii) acts in reckless disregard of the truth or falsity of the information; and

7082 (b) does not require a specific intent to defraud.

7083 (2) Any person who violates this chapter shall, in all cases, in addition to other
7084 penalties provided by law, be required to:

7085 (a) make full and complete restitution to the state of all damages that the state sustains

7086 because of the person's violation of this chapter;

7087 (b) pay to the state its costs of enforcement of this chapter in that case, including [~~but~~
7088 ~~not limited to~~] the cost of investigators, attorneys, and other public employees, as determined
7089 by the state; and

7090 (c) pay to the state a civil penalty equal to:

7091 (i) three times the amount of damages that the state sustains because of the person's
7092 violation of this chapter; and

7093 (ii) not less than \$5,000 or more than \$10,000 for each claim filed or act done in
7094 violation of this chapter.

7095 (3) Any civil penalties assessed under Subsection (2) shall be awarded by the court as
7096 part of its judgment in both criminal and civil actions.

7097 (4) A criminal action need not be brought against a person in order for that person to be
7098 civilly liable under this section.

7099 Section 179. Section **26-20-12** is amended to read:

7100 **26-20-12. Violation of other laws.**

7101 (1) The provisions of this chapter are:

7102 (a) not exclusive, and the remedies provided for in this chapter are in addition to any
7103 other remedies provided for under:

7104 (i) any other applicable law; or

7105 (ii) common law; and

7106 (b) to be liberally construed and applied to:

7107 (i) effectuate the chapter's remedial and deterrent purposes; and

7108 (ii) serve the public interest.

7109 (2) If any provision of this chapter or the application of this chapter to any person or
7110 circumstance is held unconstitutional:

7111 (a) the remaining provisions of this chapter [~~shall not be~~] are not affected; and

7112 (b) the application of this chapter to other persons or circumstances [~~shall not be~~] are
7113 not affected.

7114 Section 180. Section **26-20-14** is amended to read:

7115 **26-20-14. Investigations -- Civil investigative demands.**

7116 (1) The attorney general may take investigative action under Subsection (2) if the
7117 attorney general has reason to believe that:

7118 (a) a person has information or custody or control of documentary material relevant to
7119 the subject matter of an investigation of an alleged violation of this chapter;

7120 (b) a person is committing, has committed, or is about to commit a violation of this
7121 chapter; or

7122 (c) it is in the public interest to conduct an investigation to ascertain whether or not a
7123 person is committing, has committed, or is about to commit a violation of this chapter.

7124 (2) In taking investigative action, the attorney general may:

7125 (a) require the person to file on a prescribed form a statement in writing, under oath or
7126 affirmation describing:

7127 (i) the facts and circumstances concerning the alleged violation of this chapter; and

7128 (ii) other information considered necessary by the attorney general;

7129 (b) examine under oath a person in connection with the alleged violation of this
7130 chapter; and

7131 (c) in accordance with Subsections (7) through (18), execute in writing, and serve on
7132 the person, a civil investigative demand requiring the person to produce the documentary
7133 material and permit inspection and copying of the material.

7134 (3) The attorney general may not release or disclose information that is obtained under
7135 Subsection (2)(a) or (b), or any documentary material or other record derived from the
7136 information obtained under Subsection (2)(a) or (b), except:

7137 (a) by court order for good cause shown;

7138 (b) with the consent of the person who provided the information;

7139 (c) to an employee of the attorney general or the department;

7140 (d) to an agency of this state, the United States, or another state;

7141 (e) to a special assistant attorney general representing the state in a civil action;

7142 (f) to a political subdivision of this state; or
7143 (g) to a person authorized by the attorney general to receive the information.
7144 (4) The attorney general may use documentary material derived from information
7145 obtained under Subsection (2)(a) or (b), or copies of that material, as the attorney general
7146 determines necessary in the enforcement of this chapter, including presentation before a court.
7147 (5) (a) If a person fails to file a statement as required by Subsection (2)(a) or fails to
7148 submit to an examination as required by Subsection (2)(b), the attorney general may file in
7149 district court a complaint for an order to compel the person to within a period stated by court
7150 order:
7151 (i) file the statement required by Subsection (2)(a); or
7152 (ii) submit to the examination required by Subsection (2)(b).
7153 (b) Failure to comply with an order entered under Subsection (5)(a) is punishable as
7154 contempt.
7155 (6) A civil investigative demand [~~must~~] shall:
7156 (a) state the rule or statute under which the alleged violation of this chapter is being
7157 investigated;
7158 (b) describe the:
7159 (i) general subject matter of the investigation; and
7160 (ii) class or classes of documentary material to be produced with reasonable specificity
7161 to fairly indicate the documentary material demanded;
7162 (c) designate a date within which the documentary material is to be produced; and
7163 (d) identify an authorized employee of the attorney general to whom the documentary
7164 material is to be made available for inspection and copying.
7165 (7) A civil investigative demand may require disclosure of any documentary material
7166 that is discoverable under the Utah Rules of Civil Procedure.
7167 (8) Service of a civil investigative demand may be made by:
7168 (a) delivering an executed copy of the demand to the person to be served or to a
7169 partner, an officer, or an agent authorized by appointment or by law to receive service of

7170 process on behalf of that person;

7171 (b) delivering an executed copy of the demand to the principal place of business in this
7172 state of the person to be served; or

7173 (c) mailing by registered or certified mail an executed copy of the demand addressed to
7174 the person to be served:

7175 (i) at the person's principal place of business in this state; or

7176 (ii) if the person has no place of business in this state, to the person's principal office or
7177 place of business.

7178 (9) Documentary material demanded in a civil investigative demand shall be produced
7179 for inspection and copying during normal business hours at the office of the attorney general or
7180 as agreed by the person served and the attorney general.

7181 (10) The attorney general may not produce for inspection or copying or otherwise
7182 disclose the contents of documentary material obtained pursuant to a civil investigative demand
7183 except:

7184 (a) by court order for good cause shown;

7185 (b) with the consent of the person who produced the information;

7186 (c) to an employee of the attorney general or the department;

7187 (d) to an agency of this state, the United States, or another state;

7188 (e) to a special assistant attorney general representing the state in a civil action;

7189 (f) to a political subdivision of this state; or

7190 (g) to a person authorized by the attorney general to receive the information.

7191 (11) (a) With respect to documentary material obtained pursuant to a civil investigative
7192 demand, the attorney general shall prescribe reasonable terms and conditions allowing such
7193 documentary material to be available for inspection and copying by the person who produced
7194 the material or by an authorized representative of that person.

7195 (b) The attorney general may use such documentary material or copies of it as the
7196 attorney general determines necessary in the enforcement of this chapter, including presentation
7197 before a court.

7198 (12) A person may file a complaint, stating good cause, to extend the return date for the
7199 demand or to modify or set aside the demand. A complaint under this Subsection (12) shall be
7200 filed in district court [~~and must be filed~~] before the earlier of:

- 7201 (a) the return date specified in the demand; or
- 7202 (b) the 20th day after the date the demand is served.

7203 (13) Except as provided by court order, a person who has been served with a civil
7204 investigative demand shall comply with the terms of the demand.

7205 (14) (a) A person who has committed a violation of this chapter in relation to the
7206 Medicaid program in this state or to any other medical benefit program administered by the
7207 state has submitted to the jurisdiction of this state.

7208 (b) Personal service of a civil investigative demand under this section may be made on
7209 the person described in Subsection (14)(a) outside of this state.

7210 (15) This section does not limit the authority of the attorney general to conduct
7211 investigations or to access a person's documentary materials or other information under another
7212 state or federal law, the Utah Rules of Civil Procedure, or the Federal Rules of Civil Procedure.

7213 (16) The attorney general may file a complaint in district court for an order to enforce
7214 the civil investigative demand if:

- 7215 (a) a person fails to comply with a civil investigative demand; or
- 7216 (b) copying and reproduction of the documentary material demanded:
 - 7217 (i) cannot be satisfactorily accomplished; and
 - 7218 (ii) the person refuses to surrender the documentary material.

7219 (17) If a complaint is filed under Subsection (16), the court may determine the matter
7220 presented and may enter an order to enforce the civil investigative demand.

7221 (18) Failure to comply with a final order entered under Subsection (17) is punishable
7222 by contempt.

7223 Section 181. Section **26-21-9** is amended to read:

7224 **26-21-9. Application for license -- Information required -- Public records.**

7225 (1) An application for license shall be made to the department in a form prescribed by

7226 the department. The application and other documentation requested by the department as part
7227 of the application process shall require such information as the committee determines
7228 necessary to ensure compliance with established rules.

7229 (2) Information received by the department in reports and inspections shall be public
7230 records, except the information [~~shall not~~] may not be disclosed if it directly or indirectly
7231 identifies any individual other than the owner or operator of a health facility (unless disclosure
7232 is required by law) or if its disclosure would otherwise constitute an unwarranted invasion of
7233 personal privacy.

7234 (3) Information received by the department from a health care facility, pertaining to
7235 that facility's accreditation by a voluntary accrediting organization, shall be private data except
7236 for a summary prepared by the department related to licensure standards.

7237 Section 182. Section **26-21-9.5** is amended to read:

7238 **26-21-9.5. Criminal background check and Licensing Information System check.**

7239 (1) For purposes of this section:

7240 (a) "Covered employer" means an individual who:

7241 (i) is not a covered health care facility;

7242 (ii) is not a licensed business within the state; and

7243 (iii) is hiring an individual to provide services to an elderly or disabled person in the
7244 home of the elderly or disabled person.

7245 (b) "Covered health care facility" means:

7246 (i) home health care agencies;

7247 (ii) hospices;

7248 (iii) nursing care facilities;

7249 (iv) assisted-living facilities;

7250 (v) small health care facilities; and

7251 (vi) end stage renal disease facilities.

7252 (c) "Covered person" includes:

7253 (i) the following people who provide direct patient care:

7254 (A) employees;
7255 (B) volunteers; and
7256 (C) people under contract with the covered health care facility; and
7257 (ii) for residential settings, any individual residing in the home where the assisted
7258 living or small health care program is to be licensed who:
7259 (A) is 18 years of age or older; or
7260 (B) is a child between the age of 12 and 17 years of age; however, the identifying
7261 information required for a child between the age of 12 and 17 does not include fingerprints.
7262 (2) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a
7263 covered health care facility at the time of initial application for a license and license renewal
7264 shall:
7265 (a) submit the name and other identifying information of each covered person at the
7266 covered facility who:
7267 (i) provides direct care to a patient; and
7268 (ii) has been the subject of a criminal background check within the preceding
7269 three-year period by a public or private entity recognized by the department; and
7270 (b) submit the name and other identifying information, which may include fingerprints,
7271 of each covered person at the covered facility who has not been the subject of a criminal
7272 background check in accordance with Subsection (2)(a)(ii).
7273 (3) (a) The department shall forward the information received under Subsection (2)(b)
7274 or (6)(b) to the Criminal Investigations and Technical Services Division of the Department of
7275 Public Safety for processing to determine whether the individual has been convicted of any
7276 crime.
7277 (b) Except for individuals described in Subsection (1)(c)(ii)(B), if an individual has not
7278 had residency in Utah for the last five years, the individual shall submit fingerprints for an FBI
7279 national criminal history record check. The fingerprints shall be submitted to the FBI through
7280 the Criminal Investigations and Technical Services Division. The individual or licensee is
7281 responsible for the cost of the fingerprinting and national criminal history check.

- 7282 (4) The department may determine whether:
- 7283 (a) an individual whose name and other identifying information has been submitted
- 7284 pursuant to Subsection (2) and who provides direct care to children is listed in the Licensing
- 7285 Information System described in Section 62A-4a-1006 or has a substantiated finding by a court
- 7286 of a severe type of child abuse or neglect under Section 78A-6-323, if identification as a
- 7287 possible perpetrator of child abuse or neglect is relevant to the employment activities of that
- 7288 individual;
- 7289 (b) an individual whose name and other identifying information has been submitted
- 7290 pursuant to Subsection (2) or (6)(b) and who provides direct care to disabled or elder adults, or
- 7291 who is residing in a residential home that is a facility licensed to provide direct care to disabled
- 7292 or elder adults has a substantiated finding of abuse, neglect, or exploitation of a disabled or
- 7293 elder adult by accessing in accordance with Subsection (5) the database created in Section
- 7294 62A-3-311.1 if identification as a possible perpetrator of disabled or elder adult abuse, neglect,
- 7295 or exploitation is relevant to the employment activities or residence of that person; or
- 7296 (c) an individual whose name or other identifying information has been submitted
- 7297 pursuant to Subsection (2) or (6)(b) has been adjudicated in a juvenile court of committing an
- 7298 act which if committed by an adult would be a felony or a misdemeanor if:
- 7299 (i) the individual is under the age of 28 years; or
- 7300 (ii) the individual is over the age of 28 and has been convicted, has pleaded no contest,
- 7301 or is currently subject to a plea in abeyance or diversion agreement for any felony or
- 7302 misdemeanor.
- 7303 (5) (a) The department shall:
- 7304 (i) designate persons within the department to access:
- 7305 (A) the Licensing Information System described in Section 62A-4a-1006;
- 7306 (B) court records under Subsection 78A-6-323(6);
- 7307 (C) the database described in Subsection (4)(b); and
- 7308 (D) juvenile court records as permitted by Subsection (4)(c); and
- 7309 (ii) adopt measures to:

7310 (A) protect the security of the Licensing Information System, the court records, and the
7311 database; and

7312 (B) strictly limit access to the Licensing Information System, the court records, and the
7313 database to those designated under Subsection (5)(a)(i).

7314 (b) Those designated under Subsection (5)(a)(i) shall receive training from the
7315 Department of Human Services with respect to:

7316 (i) accessing the Licensing Information System, the court records, and the database;

7317 (ii) maintaining strict security; and

7318 (iii) the criminal provisions in Section 62A-4a-412 for the improper release of
7319 information.

7320 (c) Those designated under Subsection (5)(a)(i):

7321 (i) are the only ones in the department with the authority to access the Licensing
7322 Information System, the court records, and database; and

7323 (ii) may only access the Licensing Information System, the court records, and the
7324 database for the purpose of licensing and in accordance with the provisions of Subsection (4).

7325 (6) (a) Within 10 days of initially hiring a covered individual, a covered health care
7326 facility shall submit the covered individual's information to the department in accordance with
7327 Subsection (2).

7328 (b) (i) Prior to, or within 10 days of initially hiring an individual to provide care to an
7329 elderly adult or a disabled person in the home of the elderly adult or disabled person, a covered
7330 employer may submit the employed individual's information to the department.

7331 (ii) The department shall:

7332 (A) in accordance with Subsections (4) and (6)(c) of this section, and Subsection
7333 62A-3-311.1(4)(b), determine whether the individual has a substantiated finding of abuse,
7334 neglect, or exploitation of a minor or an elderly adult; and

7335 (B) in accordance with Subsection (9), inform the covered employer of the
7336 department's findings.

7337 (c) A covered employer:

7338 (i) [must] shall certify to the department that the covered employer intends to hire, or
7339 has hired, the individual whose information the covered employer has submitted to the
7340 department for the purpose of providing care to an elderly adult or a disabled person in the
7341 home of the elderly adult or disabled person;

7342 (ii) [must] shall pay the reasonable fees established by the department under
7343 Subsection (8); and

7344 (iii) commits an infraction if the covered employer intentionally misrepresents any fact
7345 certified under Subsection (6)(c)(i).

7346 (7) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative
7347 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
7348 who has been convicted of a criminal offense, or a person described in Subsection (4), may
7349 provide direct care to a patient in a covered health care facility, taking into account the nature
7350 of the criminal conviction or substantiated finding and its relation to patient care.

7351 (8) The department may, in accordance with Section 26-1-6, assess reasonable fees for
7352 a criminal background check processed pursuant to this section.

7353 (9) The department may inform the covered health care facility or a covered employer
7354 of information discovered under Subsection (4) with respect to a covered individual, or an
7355 individual whose name is submitted by a covered employer.

7356 (10) (a) A covered health care facility is not civilly liable for submitting information to
7357 the department as required by this section.

7358 (b) A covered employer is not civilly liable for submitting information to the
7359 department as permitted by this section if the covered employer:

7360 (i) complies with Subsection (6)(c)(i); and

7361 (ii) does not use the information obtained about an individual under this section for any
7362 purpose other than hiring decisions directly related to the care of the elderly adult or disabled
7363 person.

7364 Section 183. Section **26-23-7** is amended to read:

7365 **26-23-7. Application of enforcement procedures and penalties.**

7366 Enforcement procedures and penalties provided in this chapter [~~shall not~~] do not apply
7367 to other chapters in this title which provide for specific enforcement procedures and penalties.

7368 Section 184. Section **26-23-10** is amended to read:

7369 **26-23-10. Religious exemptions from code -- Regulation of state-licensed healing**
7370 **system practice unaffected by code.**

7371 (1) [~~Nothing~~] (a) Except as provided in Subsection (1)(b), nothing in this code shall be
7372 construed to compel any person to submit to any medical or dental examination or treatment
7373 under the authority of this code when such person, or the parent or guardian of any such person
7374 objects to such examination or treatment on religious grounds, or to permit any discrimination
7375 against such person on account of such objection[~~; provided, that~~].

7376 (b) An exemption from medical or dental examination [~~shall not~~], described in
7377 Subsection (1)(a), may not be granted if the executive director has reasonable cause to suspect
7378 a substantial menace to the health of other persons exposed to contact with the unexamined
7379 person.

7380 (2) Nothing in this code shall be construed as authorizing the supervision, regulation,
7381 or control of the remedial care or treatment of residents in any home or institution conducted
7382 for those who rely upon treatment by prayer or spiritual means in accordance with the creed or
7383 tenets of any well recognized church or religious denomination, provided the statutes and
7384 regulations on sanitation are complied with.

7385 (3) Nothing in this code shall be construed or used to amend any statute now in force
7386 pertaining to the scope of practice of any state-licensed healing system.

7387 Section 185. Section **26-23b-104** is amended to read:

7388 **26-23b-104. Authorization to report.**

7389 (1) A health care provider is authorized to report to the department any case of a
7390 reportable emergency illness or health condition in any person when:

7391 (a) the health care provider knows of a confirmed case; or

7392 (b) the health care provider believes, based on [~~his~~] the health care provider's
7393 professional judgment that a person likely harbors a reportable emergency illness or health

7394 condition.

7395 (2) A report pursuant to this section shall include, if known:

7396 (a) the name of the facility submitting the report;

7397 (b) a patient identifier that allows linkage with the patient's record for follow-up

7398 investigation if needed;

7399 (c) the date and time of visit;

7400 (d) the patient's age and sex;

7401 (e) the zip code of the patient's residence;

7402 (f) the reportable illness or condition detected or suspected;

7403 (g) diagnostic information and, if available, diagnostic codes assigned to the visit; and

7404 (h) whether the patient was admitted to the hospital.

7405 (3) (a) If the department determines that a public health emergency exists, the

7406 department may, with the concurrence of the governor and the executive director or in the

7407 absence of the executive director, [~~his~~] the executive director's designee, issue a public health

7408 emergency order and mandate reporting under this section for a limited reasonable period of

7409 time, as necessary to respond to the public health emergency.

7410 (b) The department may not mandate reporting under this subsection for more than 90

7411 days. If more than 90 days is needed to abate the public health emergency declared under

7412 Subsection (3)(a), the department [~~must~~] shall obtain the concurrence of the governor to extend

7413 the period of time beyond 90 days.

7414 (4) (a) Unless the provisions of Subsection (3) apply, a health care provider is not

7415 subject to penalties for failing to submit a report under this section.

7416 (b) If the provisions of Subsection (3) apply, a health care provider is subject to the

7417 penalties of Subsection 26-23b-103(3) for failure to make a report under this section.

7418 Section 186. Section **26-25-5** is amended to read:

7419 **26-25-5. Violation of chapter a misdemeanor -- Civil liability.**

7420 (1) Any use, release or publication, negligent or otherwise, contrary to the provisions of

7421 this chapter [~~shall be~~] is a class B misdemeanor.

7422 (2) Subsection (1) [~~shall not~~] does not relieve the person or organization responsible
7423 for such use, release, or publication from civil liability.

7424 Section 187. Section **26-28-105** is amended to read:

7425 **26-28-105. Manner of making anatomical gift before donor's death.**

7426 (1) A donor may make an anatomical gift:

7427 (a) by authorizing a statement or symbol indicating that the donor has made an
7428 anatomical gift to be imprinted on the donor's driver license or identification card;

7429 (b) in a will;

7430 (c) during a terminal illness or injury of the donor, by any form of communication
7431 addressed to at least two adults, at least one of whom is a disinterested witness; or

7432 (d) as provided in Subsection (2).

7433 (2) A donor or other person authorized to make an anatomical gift under Section

7434 26-28-104 may make a gift by a donor card or other record signed by the donor or other person

7435 making the gift or by authorizing that a statement or symbol indicating that the donor has made

7436 an anatomical gift be included on a donor registry. If the donor or other person is physically

7437 unable to sign a record, the record may be signed by another individual at the direction of the

7438 donor or other person and [~~must~~] shall:

7439 (a) be witnessed by at least two adults, at least one of whom is a disinterested witness,
7440 who have signed at the request of the donor or the other person; and

7441 (b) state that it has been signed and witnessed as provided in Subsection (2)(a).

7442 (3) Revocation, suspension, expiration, or cancellation of a driver license or
7443 identification card upon which an anatomical gift is indicated does not invalidate the gift.

7444 (4) An anatomical gift made by will takes effect upon the donor's death whether or not
7445 the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

7446 Section 188. Section **26-28-106** is amended to read:

7447 **26-28-106. Amending or revoking anatomical gift before donor's death.**

7448 (1) Subject to Section 26-28-108, a donor or other person authorized to make an
7449 anatomical gift under Section 26-28-104 may amend or revoke an anatomical gift by:

7450 (a) a record signed by:
7451 (i) the donor;
7452 (ii) the other person; or
7453 (iii) subject to Subsection (2), another individual acting at the direction of the donor or
7454 the other person if the donor or other person is physically unable to sign; or

7455 (b) a later-executed document of gift that amends or revokes a previous anatomical gift
7456 or portion of an anatomical gift, either expressly or by inconsistency.

7457 (2) A record signed pursuant to Subsection (1)(a)(iii) [~~must~~] shall:

7458 (a) be witnessed by at least two adults, at least one of whom is a disinterested witness,
7459 who have signed at the request of the donor or the other person; and

7460 (b) state that it has been signed and witnessed as provided in Subsection (1)(a).

7461 (3) Subject to Section 26-28-108, a donor or other person authorized to make an
7462 anatomical gift under Section 26-28-104 may revoke an anatomical gift by the destruction or
7463 cancellation of the document of gift, or the portion of the document of gift used to make the
7464 gift, with the intent to revoke the gift.

7465 (4) A donor may amend or revoke an anatomical gift that was not made in a will by any
7466 form of communication during a terminal illness or injury addressed to at least two adults, at
7467 least one of whom is a disinterested witness.

7468 (5) A donor who makes an anatomical gift in a will may amend or revoke the gift in the
7469 manner provided for amendment or revocation of wills or as provided in Subsection (1).

7470 Section 189. Section **26-28-107** is amended to read:

7471 **26-28-107. Refusal to make anatomical gift -- Effect of refusal.**

7472 (1) An individual may refuse to make an anatomical gift of the individual's body or part
7473 by:

7474 (a) a record signed by:

7475 (i) the individual; or

7476 (ii) subject to Subsection (2), another individual acting at the direction of the individual
7477 if the individual is physically unable to sign;

7478 (b) the individual's will, whether or not the will is admitted to probate or invalidated
7479 after the individual's death; or

7480 (c) any form of communication made by the individual during the individual's terminal
7481 illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

7482 (2) A record signed pursuant to Subsection (1)(a)(ii) [~~must~~] shall:

7483 (a) be witnessed by at least two adults, at least one of whom is a disinterested witness,
7484 who have signed at the request of the individual; and

7485 (b) state that it has been signed and witnessed as provided in Subsection (1)(a).

7486 (3) An individual who has made a refusal may amend or revoke the refusal:

7487 (a) in the manner provided in Subsection (1) for making a refusal;

7488 (b) by subsequently making an anatomical gift pursuant to Section 26-28-105 that is
7489 inconsistent with the refusal; or

7490 (c) by destroying or canceling the record evidencing the refusal, or the portion of the
7491 record used to make the refusal, with the intent to revoke the refusal.

7492 (4) Except as otherwise provided in Subsection 26-28-108(8), in the absence of an
7493 express, contrary indication by the individual set forth in the refusal, an individual's unrevoked
7494 refusal to make an anatomical gift of the individual's body or part bars all other persons from
7495 making an anatomical gift of the individual's body or part.

7496 Section 190. Section **26-28-111** is amended to read:

7497 **26-28-111. Persons that may receive anatomical gift -- Purpose of anatomical gift.**

7498 (1) An anatomical gift may be made to the following persons named in the document
7499 of gift:

7500 (a) a hospital, accredited medical school, dental school, college, university, organ
7501 procurement organization, or other appropriate person, for research or education;

7502 (b) subject to Subsection (2), an individual designated by the person making the
7503 anatomical gift if the individual is the recipient of the part; or

7504 (c) an eye bank or tissue bank.

7505 (2) If an anatomical gift to an individual under Subsection (1)(b) cannot be

7506 transplanted into the individual, the part passes in accordance with Subsection (7) in the
7507 absence of an express, contrary indication by the person making the anatomical gift.

7508 (3) If an anatomical gift of one or more specific parts or of all parts is made in a
7509 document of gift that does not name a person described in Subsection (1) but identifies the
7510 purpose for which an anatomical gift may be used, the following rules apply:

7511 (a) If the part is an eye and the gift is for the purpose of transplantation or therapy, the
7512 gift passes to the appropriate eye bank.

7513 (b) If the part is tissue and the gift is for the purpose of transplantation or therapy, the
7514 gift passes to the appropriate tissue bank.

7515 (c) If the part is an organ and the gift is for the purpose of transplantation or therapy,
7516 the gift passes to the appropriate organ procurement organization as custodian of the organ.

7517 (d) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or
7518 education, the gift passes to the appropriate procurement organization.

7519 (4) For the purpose of Subsection (3), if there is more than one purpose of an
7520 anatomical gift set forth in the document of gift but the purposes are not set forth in any
7521 priority, the gift [~~must~~] shall be used for transplantation or therapy, if suitable. If the gift
7522 cannot be used for transplantation or therapy, the gift may be used for research or education.

7523 (5) If an anatomical gift of one or more specific parts is made in a document of gift that
7524 does not name a person described in Subsection (1) and does not identify the purpose of the
7525 gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance
7526 with Subsection (7).

7527 (6) If a document of gift specifies only a general intent to make an anatomical gift by
7528 words such as "donor," "organ donor," or "body donor," or by a symbol or statement of similar
7529 import, the gift may be used only for transplantation or therapy, and the gift passes in
7530 accordance with Subsection (7).

7531 (7) For purposes of Subsections (2), (5), and (7) the following rules apply:

7532 (a) If the part is an eye, the gift passes to the appropriate eye bank.

7533 (b) If the part is tissue, the gift passes to the appropriate tissue bank.

7534 (c) If the part is an organ, the gift passes to the appropriate organ procurement
7535 organization as custodian of the organ.

7536 (8) An anatomical gift of an organ for transplantation or therapy, other than an
7537 anatomical gift under Subsection (1)(b), passes to the organ procurement organization as
7538 custodian of the organ.

7539 (9) If an anatomical gift does not pass pursuant to Subsections (2) through (8) or the
7540 decedent's body or part is not used for transplantation, therapy, research, or education, custody
7541 of the body or part passes to the person under obligation to dispose of the body or part.

7542 (10) A person may not accept an anatomical gift if the person knows that the gift was
7543 not effectively made under Section 26-28-105 or 26-28-110 or if the person knows that the
7544 decedent made a refusal under Section 26-28-107 that was not revoked. For purposes of this
7545 Subsection (10), if a person knows that an anatomical gift was made on a document of gift, the
7546 person is considered to know of any amendment or revocation of the gift or any refusal to make
7547 an anatomical gift on the same document of gift.

7548 (11) Except as otherwise provided in Subsection (1)(b), nothing in this chapter affects
7549 the allocation of organs for transplantation or therapy.

7550 Section 191. Section **26-28-114** is amended to read:

7551 **26-28-114. Rights and duties of procurement organization and others.**

7552 (1) When a hospital refers an individual at or near death to a procurement organization,
7553 the organization shall make a reasonable search of the records of the Department of Public
7554 Safety and any donor registry that it knows exists for the geographical area in which the
7555 individual resides to ascertain whether the individual has made an anatomical gift.

7556 (2) A procurement organization [~~must~~] shall be allowed reasonable access to
7557 information in the records of the Department of Public Safety to ascertain whether an
7558 individual at or near death is a donor.

7559 (3) When a hospital refers an individual at or near death to a procurement organization,
7560 the organization may conduct any reasonable examination necessary to ensure the medical
7561 suitability of a part that is or could be the subject of an anatomical gift for transplantation,

7562 therapy, research, or education from a donor or a prospective donor. During the examination
7563 period, measures necessary to ensure the medical suitability of the part may not be withdrawn
7564 unless the hospital or procurement organization knows that the individual expressed a contrary
7565 intent.

7566 (4) Unless prohibited by law other than this chapter, at any time after a donor's death,
7567 the person to which a part passes under Section 26-28-111 may conduct any reasonable
7568 examination necessary to ensure the medical suitability of the body or part for its intended
7569 purpose.

7570 (5) Unless prohibited by law other than this chapter, an examination under Subsection
7571 (3) or (4) may include an examination of all medical and dental records of the donor or
7572 prospective donor.

7573 (6) Upon the death of a minor who was a donor or had signed a refusal, unless a
7574 procurement organization knows the minor is emancipated, the procurement organization shall
7575 conduct a reasonable search for the parents of the minor and provide the parents with an
7576 opportunity to revoke or amend the anatomical gift or revoke the refusal.

7577 (7) Upon referral by a hospital under Subsection (1), a procurement organization shall
7578 make a reasonable search for any person listed in Section 26-28-109 having priority to make an
7579 anatomical gift on behalf of a prospective donor. If a procurement organization receives
7580 information that an anatomical gift to any other person was made, amended, or revoked, it shall
7581 promptly advise the other person of all relevant information.

7582 (8) Subject to Subsection 26-28-111(9) and Section 26-28-123, the rights of the person
7583 to which a part passes under Section 26-28-111 are superior to the rights of all others with
7584 respect to the part. The person may accept or reject an anatomical gift in whole or in part.
7585 Subject to the terms of the document of gift and this chapter, a person that accepts an
7586 anatomical gift of an entire body may allow embalming, burial or cremation, and use of
7587 remains in a funeral service. If the gift is of a part, the person to which the part passes under
7588 Section 26-28-111, upon the death of the donor and before embalming, burial, or cremation,
7589 shall cause the part to be removed without unnecessary mutilation.

7590 (9) Neither the physician who attends the decedent at death nor the physician who
7591 determines the time of the decedent's death may participate in the procedures for removing or
7592 transplanting a part from the decedent.

7593 (10) A physician or technician may remove a donated part from the body of a donor
7594 that the physician or technician is qualified to remove.

7595 Section 192. Section **26-28-120** is amended to read:

7596 **26-28-120. Donor registry.**

7597 (1) The Department of Public Safety may establish or contract for the establishment of
7598 a donor registry.

7599 (2) The Driver License Division of the Department of Public Safety shall cooperate
7600 with a person that administers any donor registry that this state establishes, contracts for, or
7601 recognizes for the purpose of transferring to the donor registry all relevant information
7602 regarding a donor's making, amendment to, or revocation of an anatomical gift.

7603 (3) A donor registry [~~must~~] shall:

7604 (a) allow a donor or other person authorized under Section 26-28-104 to include on the
7605 donor registry a statement or symbol that the donor has made, amended, or revoked an
7606 anatomical gift;

7607 (b) be accessible to a procurement organization to allow it to obtain relevant
7608 information on the donor registry to determine, at or near death of the donor or a prospective
7609 donor, whether the donor or prospective donor has made, amended, or revoked an anatomical
7610 gift; and

7611 (c) be accessible for purposes of Subsections (3)(a) and (b) seven days a week on a
7612 24-hour basis.

7613 (4) Personally identifiable information on a donor registry about a donor or prospective
7614 donor may not be used or disclosed without the express consent of the donor, prospective
7615 donor, or person that made the anatomical gift for any purpose other than to determine, at or
7616 near death of the donor or prospective donor, whether the donor or prospective donor has
7617 made, amended, or revoked an anatomical gift.

7618 (5) This section does not prohibit any person from creating or maintaining a donor
7619 registry that is not established by or under contract with the state. Any such registry [~~must~~]
7620 shall comply with Subsections (3) and (4).

7621 Section 193. Section **26-28-121** is amended to read:

7622 **26-28-121. Effect of anatomical gift on advance health care directive.**

7623 (1) As used in this section:

7624 (a) "Advance health care directive" means a power of attorney for health care or a
7625 record signed or authorized by a prospective donor containing the prospective donor's direction
7626 concerning a health care decision for the prospective donor.

7627 (b) "Declaration" means a record signed by a prospective donor specifying the
7628 circumstances under which a life support system may be withheld or withdrawn from the
7629 prospective donor.

7630 (c) "Health care decision" means any decision regarding the health care of the
7631 prospective donor.

7632 (2) If a prospective donor has a declaration or advance health care directive and the
7633 terms of the declaration or directive and the express or implied terms of a potential anatomical
7634 gift are in conflict with regard to the administration of measures necessary to ensure the
7635 medical suitability of a part for transplantation or therapy, the prospective donor's attending
7636 physician and prospective donor shall confer to resolve the conflict. If the prospective donor is
7637 incapable of resolving the conflict, an agent acting under the prospective donor's declaration or
7638 directive, or if no declaration or directive exists or the agent is not reasonably available,
7639 another person authorized by a law other than this chapter to make a health care decision on
7640 behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict
7641 [~~must~~] shall be resolved as expeditiously as possible. Information relevant to the resolution of
7642 the conflict may be obtained from the appropriate procurement organization and any other
7643 person authorized to make an anatomical gift for the prospective donor under Section
7644 26-28-109. Before resolution of the conflict, measures necessary to ensure the medical
7645 suitability of the part may not be withheld or withdrawn from the prospective donor if

7646 withholding or withdrawing the measures is not contraindicated by appropriate end of life care.

7647 Section 194. Section **26-28-124** is amended to read:

7648 **26-28-124. Uniformity of application and construction.**

7649 In applying and construing this uniform act, consideration [~~must~~] shall be given to the
7650 need to promote uniformity of the law with respect to its subject matter among states that enact
7651 it.

7652 Section 195. Section **26-31-1** is amended to read:

7653 **26-31-1. Procurement and use of blood, plasma, products, and derivatives a**
7654 **service and not a sale.**

7655 The procurement, processing, distribution, or use of whole human blood, plasma, blood
7656 products, and blood derivatives for the purpose of injecting or transfusing them into the human
7657 body together with the process of injecting or transfusing the same shall be construed to be the
7658 rendition of a service by every person participating therein and [~~shall not~~] may not be construed
7659 to be a sale.

7660 Section 196. Section **26-33a-104** is amended to read:

7661 **26-33a-104. Purpose, powers, and duties of the committee.**

7662 (1) The purpose of the committee is to direct a statewide effort to collect, analyze, and
7663 distribute health care data to facilitate the promotion and accessibility of quality and
7664 cost-effective health care and also to facilitate interaction among those with concern for health
7665 care issues.

7666 (2) The committee shall:

7667 (a) develop and adopt by rule, following public hearing and comment, a health data
7668 plan that shall among its elements:

7669 (i) identify the key health care issues, questions, and problems amenable to resolution
7670 or improvement through better data, more extensive or careful analysis, or improved
7671 dissemination of health data;

7672 (ii) document existing health data activities in the state to collect, organize, or make
7673 available types of data pertinent to the needs identified in Subsection (2)(a)(I);

7674 (iii) describe and prioritize the actions suitable for the committee to take in response to
7675 the needs identified in Subsection (2)(a)(i) in order to obtain or to facilitate the obtaining of
7676 needed data, and to encourage improvements in existing data collection, interpretation, and
7677 reporting activities, and indicate how those actions relate to the activities identified under
7678 Subsection (2)(a)(ii);

7679 (iv) detail the types of data needed for the committee's work, the intended data
7680 suppliers, and the form in which such data are to be supplied, noting the consideration given to
7681 the potential alternative sources and forms of such data and to the estimated cost to the
7682 individual suppliers as well as to the department of acquiring these data in the proposed
7683 manner; the plan shall reasonably demonstrate that the committee has attempted to maximize
7684 cost-effectiveness in the data acquisition approaches selected;

7685 (v) describe the types and methods of validation to be performed to assure data validity
7686 and reliability;

7687 (vi) explain the intended uses of and expected benefits to be derived from the data
7688 specified in Subsection (2)(a)(iv), including the contemplated tabulation formats and analysis
7689 methods; the benefits described [~~must~~] shall demonstrably relate to one or more of the
7690 following:

7691 (A) promoting quality health care[;];

7692 (B) managing health care costs[;]; or

7693 (C) improving access to health care services;

7694 (vii) describe the expected processes for interpretation and analysis of the data flowing
7695 to the committee; noting specifically the types of expertise and participation to be sought in
7696 those processes; and

7697 (viii) describe the types of reports to be made available by the committee and the
7698 intended audiences and uses;

7699 (b) have the authority to collect, validate, analyze, and present health data in
7700 accordance with the plan while protecting individual privacy through the use of a control
7701 number as the health data identifier;

7702 (c) evaluate existing identification coding methods and, if necessary, require by rule
7703 that health data suppliers use a uniform system for identification of patients, health care
7704 facilities, and health care providers on health data they submit under this chapter;

7705 (d) report biennially to the governor and the Legislature on how the committee is
7706 meeting its responsibilities under this chapter; and

7707 (e) advise, consult, contract, and cooperate with any corporation, association, or other
7708 entity for the collection, analysis, processing, or reporting of health data identified by control
7709 number only in accordance with the plan.

7710 (3) The committee may adopt rules to carry out the provisions of this chapter in
7711 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

7712 (4) Except for data collection, analysis, and validation functions described in this
7713 section, nothing in this chapter shall be construed to authorize or permit the committee to
7714 perform regulatory functions which are delegated by law to other agencies of the state or
7715 federal governments or to perform quality assurance or medical record audit functions that
7716 health care facilities, health care providers, or third party payors are required to conduct to
7717 comply with federal or state law. The committee ~~shall not~~ may not recommend or determine
7718 whether a health care provider, health care facility, third party payor, or self-funded employer is
7719 in compliance with federal or state laws including ~~but not limited to~~ federal or state licensure,
7720 insurance, reimbursement, tax, malpractice, or quality assurance statutes or common law.

7721 (5) Nothing in this chapter shall be construed to require a data supplier to supply health
7722 data identifying a patient by name or describing detail on a patient beyond that needed to
7723 achieve the approved purposes included in the plan.

7724 (6) No request for health data shall be made of health care providers and other data
7725 suppliers until a plan for the use of such health data has been adopted.

7726 (7) If a proposed request for health data imposes unreasonable costs on a data supplier,
7727 due consideration shall be given by the committee to altering the request. If the request is not
7728 altered, the committee shall pay the costs incurred by the data supplier associated with
7729 satisfying the request that are demonstrated by the data supplier to be unreasonable.

7730 (8) After a plan is adopted as provided in Section 26-33a-106.1, the committee may
7731 require any data supplier to submit fee schedules, maximum allowable costs, area prevailing
7732 costs, terms of contracts, discounts, fixed reimbursement arrangements, capitations, or other
7733 specific arrangements for reimbursement to a health care provider.

7734 (9) The committee [~~shall not~~] may not publish any health data collected under
7735 Subsection (8) [~~which~~] that would disclose specific terms of contracts, discounts, or fixed
7736 reimbursement arrangements, or other specific reimbursement arrangements between an
7737 individual provider and a specific payer.

7738 (10) Nothing in Subsection (8) shall prevent the committee from requiring the
7739 submission of health data on the reimbursements actually made to health care providers from
7740 any source of payment, including consumers.

7741 Section 197. Section **26-33a-106.5** is amended to read:

7742 **26-33a-106.5. Comparative analyses.**

7743 (1) The committee may publish compilations or reports that compare and identify
7744 health care providers or data suppliers from the data it collects under this chapter or from any
7745 other source.

7746 (2) (a) The committee shall publish compilations or reports from the data it collects
7747 under this chapter or from any other source which:

7748 (i) contain the information described in Subsection (2)(b); and

7749 (ii) compare and identify by name at least a majority of the health care facilities and
7750 institutions in the state.

7751 (b) The report required by this Subsection (2) shall:

7752 (i) be published at least annually; and

7753 (ii) contain comparisons based on at least the following factors:

7754 (A) nationally recognized quality standards;

7755 (B) charges; and

7756 (C) nationally recognized patient safety standards.

7757 (3) The committee may contract with a private, independent analyst to evaluate the

7758 standard comparative reports of the committee that identify, compare, or rank the performance
7759 of data suppliers by name. The evaluation shall include a validation of statistical
7760 methodologies, limitations, appropriateness of use, and comparisons using standard health
7761 services research practice. The analyst ~~[must]~~ shall be experienced in analyzing large
7762 databases from multiple data suppliers and in evaluating health care issues of cost, quality, and
7763 access. The results of the analyst's evaluation ~~[must]~~ shall be released to the public before the
7764 standard comparative analysis upon which it is based may be published by the committee.

7765 (4) The committee shall adopt by rule a timetable for the collection and analysis of data
7766 from multiple types of data suppliers.

7767 (5) The comparative analysis required under Subsection (2) shall be available free of
7768 charge and easily accessible to the public.

7769 Section 198. Section **26-33a-111** is amended to read:

7770 **26-33a-111. Health data not subject to subpoena or compulsory process --**

7771 **Exception.**

7772 Identifiable health data obtained in the course of activities undertaken or supported
7773 under this chapter ~~[shall not be]~~ are not subject to subpoena or similar compulsory process in
7774 any civil or criminal, judicial, administrative, or legislative proceeding, nor shall any individual
7775 or organization with lawful access to identifiable health data under the provisions of this
7776 chapter be compelled to testify with regard to such health data, except that data pertaining to a
7777 party in litigation may be subject to subpoena or similar compulsory process in an action
7778 brought by or on behalf of such individual to enforce any liability arising under this chapter.

7779 Section 199. Section **26-34-2** is amended to read:

7780 **26-34-2. Definition of death -- Determination of death.**

7781 (1) An individual is dead if the individual has sustained either:

7782 (a) irreversible cessation of circulatory and respiratory functions; or

7783 (b) irreversible cessation of all functions of the entire brain, including the brain stem.

7784 (2) A determination of death ~~[must]~~ shall be made in accordance with accepted medical
7785 standards.

7786 Section 200. Section **26-35a-107** is amended to read:

7787 **26-35a-107. Adjustment to nursing care facility Medicaid reimbursement rates.**

7788 If federal law or regulation prohibits the money in the Nursing Care Facilities Account
7789 from being used in the manner set forth in Subsection 26-35a-106(1)(b), the rates paid to
7790 nursing care facilities for providing services pursuant to the Medicaid program [~~must~~] shall be
7791 changed as follows:

7792 (1) except as otherwise provided in Subsection (2), to the rates paid to nursing care
7793 facilities on June 30, 2004; or

7794 (2) if the Legislature or the department has on or after July 1, 2004, changed the rates
7795 paid to facilities through a manner other than the use of expenditures from the Nursing Care
7796 Facilities Account, to the rates provided for by the Legislature or the department.

7797 Section 201. Section **26-36a-102** is amended to read:

7798 **26-36a-102. Legislative findings.**

7799 (1) The Legislature finds that there is an important state purpose to improve the access
7800 of Medicaid patients to quality care in Utah hospitals because of continuous decreases in state
7801 revenues and increases in enrollment under the Utah Medicaid program.

7802 (2) The Legislature finds that in order to improve this access to those persons described
7803 in Subsection (1):

7804 (a) the rates paid to Utah hospitals [~~must~~] shall be adequate to encourage and support
7805 improved access; and

7806 (b) adequate funding [~~must~~] shall be provided to increase the rates paid to Utah
7807 hospitals providing services pursuant to the Utah Medicaid program.

7808 Section 202. Section **26-36a-203** is amended to read:

7809 **26-36a-203. Calculation of assessment.**

7810 (1) The division shall calculate the inpatient upper payment limit gap for hospitals for
7811 each state fiscal year.

7812 (2) (a) An annual assessment is payable on a quarterly basis for each hospital in an
7813 amount calculated at a uniform assessment rate for each hospital discharge, in accordance with

7814 this section.

7815 (b) The uniform assessment rate shall be determined using the total number of hospital
7816 discharges for assessed hospitals divided into the total non-federal portion of the upper
7817 payment limit gap.

7818 (c) Any quarterly changes to the uniform assessment rate [~~must~~] shall be applied
7819 uniformly to all assessed hospitals.

7820 (d) (i) Except as provided in Subsection (2)(d)(ii), the annual uniform assessment rate
7821 may not generate more than the non-federal share of the annual upper payment limit gap for the
7822 fiscal year.

7823 (ii) (A) For fiscal year 2010 the assessment may not generate more than the non-federal
7824 share of the annual upper payment limit gap for the fiscal year.

7825 (B) For fiscal year 2010-11 the department may generate an additional amount from
7826 the assessment imposed under Subsection (2)(d)(i) in the amount of \$2,000,000 which shall be
7827 used by the department and the division as follows:

7828 (I) \$1,000,000 to offset Medicaid mandatory expenditures; and

7829 (II) \$1,000,000 to offset the reduction in hospital outpatient fees in the state program.

7830 (C) For fiscal years 2011-12 and 2012-13 the department may generate an additional
7831 amount from the assessment imposed under Subsection (2)(d)(i) in the amount of \$1,000,000
7832 to offset Medicaid mandatory expenditures.

7833 (3) (a) For state fiscal years 2010 and 2011, discharges shall be determined using the
7834 data from each hospital's Medicare Cost Report contained in the Centers for Medicare and
7835 Medicaid Services' Healthcare Cost Report Information System file as of April 1, 2009 for
7836 hospital fiscal years ending between October 1, 2007, and September 30, 2008.

7837 (b) If a hospital's fiscal year Medicare Cost Report is not contained in the Centers for
7838 Medicare and Medicaid Services' Healthcare Cost Report Information System file dated March
7839 31, 2009:

7840 (i) the hospital shall submit to the division a copy of the hospital's Medicare Cost
7841 Report with a fiscal year end between October 1, 2007, and September 30, 2008; and

7842 (ii) the division shall determine the hospital's discharges from the information
7843 submitted under Subsection (3)(b)(i).

7844 (c) If a hospital started operations after the due date for a 2007 Medicare Cost Report:
7845 (i) the hospital shall submit to the division a copy of the hospital's most recent
7846 complete year Medicare Cost Report; and

7847 (ii) the division shall determine the hospital's discharges from the information
7848 submitted under Subsection (3)(c)(i).

7849 (d) If a hospital is not certified by the Medicare program and is not required to file a
7850 Medicare Cost Report:
7851 (i) the hospital shall submit to the division its applicable fiscal year discharges with
7852 supporting documentation;

7853 (ii) the division shall determine the hospital's discharges from the information
7854 submitted under Subsection (3)(d)(i); and

7855 (iii) the failure to submit discharge information under Subsections (3)(d)(i) and (ii)
7856 shall result in an audit of the hospital's records by the department and the imposition of a
7857 penalty equal to 5% of the calculated assessment.

7858 (4) (a) For state fiscal year 2012 and 2013, discharges shall be determined using the
7859 data from each hospital's Medicare Cost Report contained in the Centers for Medicare and
7860 Medicaid Services' Healthcare Cost Report Information System file as of:
7861 (i) for state fiscal year 2012, September 30, 2010, for hospital fiscal years ending
7862 between October 1, 2008, and September 30, 2009; and

7863 (ii) for state fiscal year 2013, September 30, 2011, for hospital fiscal years ending
7864 between October 1, 2009, and September 30, 2010.

7865 (b) If a hospital's fiscal year Medicare Cost Report is not contained in the Centers for
7866 Medicare and Medicaid Services' Healthcare Cost Report Information System file:
7867 (i) the hospital shall submit to the division a copy of the hospital's Medicare Cost
7868 Report applicable to the assessment year; and

7869 (ii) the division shall determine the hospital's discharges.

7870 (c) If a hospital is not certified by the Medicare program and is not required to file a
7871 Medicare Cost Report:

7872 (i) the hospital shall submit to the division its applicable fiscal year discharges with
7873 supporting documentation;

7874 (ii) the division shall determine the hospital's discharges from the information
7875 submitted under Subsection (4)(c)(i); and

7876 (iii) the failure to submit discharge information shall result in an audit of the hospital's
7877 records and a penalty equal to 5% of the calculated assessment.

7878 (5) Except as provided in Subsection (6), if a hospital is owned by an organization that
7879 owns more than one hospital in the state:

7880 (a) the assessment for each hospital shall be separately calculated by the department;
7881 and

7882 (b) each separate hospital shall pay the assessment imposed by this chapter.

7883 (6) Notwithstanding the requirement of Subsection (5), if multiple hospitals use the
7884 same Medicaid provider number:

7885 (a) the department shall calculate the assessment in the aggregate for the hospitals
7886 using the same Medicaid provider number; and

7887 (b) the hospitals may pay the assessment in the aggregate.

7888 (7) (a) The assessment formula imposed by this section, and the inpatient access
7889 payments under Section 26-36a-205, shall be adjusted in accordance with Subsection (7)(b) if a
7890 hospital, for any reason, does not meet the definition of a hospital subject to the assessment
7891 under Section 26-36a-103 for the entire fiscal year.

7892 (b) The department shall adjust the assessment payable to the department under this
7893 chapter for a hospital that is not subject to the assessment for an entire fiscal year by
7894 multiplying the annual assessment calculated under Subsection (3) or (4) by a fraction, the
7895 numerator of which is the number of days during the year that the hospital operated, and the
7896 denominator of which is 365.

7897 (c) A hospital described in Subsection (7)(a):

7898 (i) that is ceasing to operate in the state, shall pay any assessment owed to the
7899 department immediately upon ceasing to operate in the state; and

7900 (ii) shall receive Medicaid inpatient hospital access payments under Section
7901 26-36a-205 for the state fiscal year, adjusted using the same formula described in Subsection
7902 (7)(b).

7903 (8) A hospital that is subject to payment of the assessment at the beginning of a state
7904 fiscal year, but during the state fiscal year experiences a change in status so that it no longer
7905 falls under the definition of a hospital subject to the assessment in Section 26-36a-204, shall:

7906 (a) not be required to pay the hospital assessment beginning on the date established by
7907 the department by administrative rule; and

7908 (b) not be entitled to Medicaid inpatient hospital access payments under Section
7909 26-36a-205 on the date established by the department by administrative rule.

7910 Section 203. Section **26-40-110** is amended to read:

7911 **26-40-110. Managed care -- Contracting for services.**

7912 (1) Program benefits provided to enrollees under the program, as described in Section
7913 26-40-106, shall be delivered in a managed care system if the department determines that
7914 adequate services are available where the enrollee lives or resides.

7915 (2) (a) The department shall use the following criteria to evaluate bids from health
7916 plans:

7917 (i) ability to manage medical expenses, including mental health costs;

7918 (ii) proven ability to handle accident and health insurance;

7919 (iii) efficiency of claim paying procedures;

7920 (iv) proven ability for managed care and quality assurance;

7921 (v) provider contracting and discounts;

7922 (vi) pharmacy benefit management;

7923 (vii) an estimate of total charges for administering the pool;

7924 (viii) ability to administer the pool in a cost-efficient manner;

7925 (ix) the ability to provide adequate providers and services in the state; and

7926 (x) other criteria established by the department.

7927 (b) The dental benefits required by Section 26-40-106 may be bid out separately from
7928 other program benefits.

7929 (c) Except for dental benefits, the department shall request bids for the program's
7930 benefits in 2008. The department shall request bids for the program's dental benefits in 2009.
7931 The department shall request bids for the program's benefits at least once every five years
7932 thereafter.

7933 (d) The department's contract with health plans for the program's benefits shall include
7934 risk sharing provisions in which the health plan [~~must~~] shall accept at least 75% of the risk for
7935 any difference between the department's premium payments per client and actual medical
7936 expenditures.

7937 (3) The executive director shall report to and seek recommendations from the Health
7938 Advisory Council created in Section 26-1-7.5:

7939 (a) if the division receives less than two bids or proposals under this section that are
7940 acceptable to the division or responsive to the bid; and

7941 (b) before awarding a contract to a managed care system.

7942 (4) (a) The department shall award contracts to responsive bidders if the department
7943 determines that a bid is acceptable and meets the criteria of Subsections (2)(a) and (d).

7944 (b) The department may contract with the Group Insurance Division within the Utah
7945 State Retirement Office to provide services under Subsection (1) if:

7946 (i) the executive director seeks the recommendation of the Health Advisory Council
7947 under Subsection (3); and

7948 (ii) the executive director determines that the bids were not acceptable to the
7949 department.

7950 (c) In accordance with Section 49-20-201, a contract awarded under Subsection (4)(b)
7951 is not subject to the risk sharing required by Subsection (2)(d).

7952 (5) Title 63G, Chapter 6, Utah Procurement Code, shall apply to this section.

7953 Section 204. Section **26-41-104** is amended to read:

7954 **26-41-104. Training in use of epinephrine auto-injector.**

7955 (1) (a) Each primary and secondary school in the state, both public and private, shall
7956 make initial and annual refresher training, regarding the storage and emergency use of an
7957 epinephrine auto-injector, available to any teacher or other school employee who volunteers to
7958 become a qualified adult.

7959 (b) The training described in Subsection (1)(a) may be provided by the school nurse, or
7960 other person qualified to provide such training, designated by the school district physician, the
7961 medical director of the local health department, or the local emergency medical services
7962 director.

7963 (2) A person who provides training under Subsection (1) or (6) shall include in the
7964 training:

7965 (a) techniques for recognizing symptoms of anaphylaxis;

7966 (b) standards and procedures for the storage and emergency use of epinephrine
7967 auto-injectors;

7968 (c) emergency follow-up procedures, including calling the emergency 911 number and
7969 contacting, if possible, the student's parent and physician; and

7970 (d) written materials covering the information required under this Subsection (2).

7971 (3) A qualified adult shall retain for reference the written materials prepared in
7972 accordance with Subsection (2)(d).

7973 (4) A public school shall permit a student to possess an epinephrine auto-injector or
7974 possess and self-administer an epinephrine auto-injector if:

7975 (a) the student's parent or guardian signs a statement:

7976 (i) authorizing the student to possess or possess and self-administer an epinephrine
7977 auto-injector; and

7978 (ii) acknowledging that the student is responsible for, and capable of, possessing or
7979 possessing and self-administering an epinephrine auto-injector; and

7980 (b) the student's health care provider provides a written statement that states that:

7981 (i) it is medically appropriate for the student to possess or possess and self-administer

7982 an epinephrine auto-injector; and

7983 (ii) the student should be in possession of the epinephrine auto-injector at all times.

7984 (5) The Utah Department of Health, in cooperation with the state superintendent of
7985 public instruction, shall design forms to be used by public schools for the parental and health
7986 care providers statements described in Subsection (6).

7987 (6) (a) The department:

7988 (i) shall approve educational programs conducted by other persons, to train people
7989 under Subsection (6)(b) of this section, regarding the use and storage of emergency epinephrine
7990 auto-injectors; and

7991 (ii) may, as funding is available, conduct educational programs to train people
7992 regarding the use of and storage of emergency epinephrine auto-injectors.

7993 (b) A person who volunteers to receive training to administer an epinephrine
7994 auto-injector under the provisions of this Subsection (6) [~~must~~] shall demonstrate a need for the
7995 training to the department, which may be based upon occupational, volunteer, or family
7996 circumstances, and shall include:

7997 (i) camp counselors;

7998 (ii) scout leaders;

7999 (iii) forest rangers;

8000 (iv) tour guides; and

8001 (v) other persons who have or reasonably expect to have responsibility for at least one
8002 other person as a result of the person's occupational or volunteer status.

8003 (7) The department shall adopt rules in accordance with Title 63G, Chapter 3, Utah
8004 Administrative Rulemaking Act, to:

8005 (a) establish and approve training programs in accordance with this section; and

8006 (b) establish a procedure for determining the need for training under Subsection
8007 (6)(b)(v).

8008 Section 205. Section **26-47-103** is amended to read:

8009 **26-47-103. Department to award grants for assistance to persons with bleeding**

8010 **disorders.**

8011 (1) For purposes of this section:

8012 (a) "Hemophilia services" means a program for medical care, including the costs of
8013 blood transfusions, and the use of blood derivatives and blood clotting factors.

8014 (b) "Person with a bleeding disorder" means a person:

8015 (i) who is medically diagnosed with hemophilia or a bleeding disorder;

8016 (ii) who is not eligible for Medicaid or the Children's Health Insurance Program; and

8017 (iii) who has either:

8018 (A) insurance coverage that excludes coverage for hemophilia services;

8019 (B) exceeded the person's insurance plan's annual maximum benefits;

8020 (C) exceeded the person's annual or lifetime maximum benefits payable under Title
8021 31A, Chapter 29, Comprehensive Health Insurance Pool Act; or

8022 (D) insurance coverage available under either private health insurance, Title 31A,
8023 Chapter 29, Comprehensive Health Insurance Pool Act, Utah mini COBRA coverage under
8024 Section 31A-22-722, or federal COBRA coverage, but the premiums for that coverage are
8025 greater than a percentage of the person's annual adjusted gross income as established by the
8026 department by administrative rule.

8027 (2) (a) Within appropriations specified by the Legislature for this purpose, the
8028 department shall make grants to public and nonprofit entities who assist persons with bleeding
8029 disorders with the cost of obtaining hemophilia services or the cost of insurance premiums for
8030 coverage of hemophilia services.

8031 (b) Applicants for grants under this section:

8032 (i) [~~must~~] shall be submitted to the department in writing; and

8033 (ii) [~~must~~] shall comply with Subsection (3).

8034 (3) Applications for grants under this section shall include:

8035 (a) a statement of specific, measurable objectives, and the methods to be used to assess
8036 the achievement of those objectives;

8037 (b) a description of the personnel responsible for carrying out the activities of the grant

8038 along with a statement justifying the use of any grant funds for the personnel;

8039 (c) letters and other forms of evidence showing that efforts have been made to secure
8040 financial and professional assistance and support for the services to be provided under the
8041 grant;

8042 (d) a list of services to be provided by the applicant;

8043 (e) the schedule of fees to be charged by the applicant; and

8044 (f) other provisions as determined by the department.

8045 (4) The department may accept grants, gifts, and donations of money or property for
8046 use by the grant program.

8047 (5) (a) The department shall establish rules in accordance with Title 63G, Chapter 3,
8048 Utah Administrative Rulemaking Act, governing the application form, process, and criteria it
8049 will use in awarding grants under this section.

8050 (b) The department shall submit an annual report on the implementation of the grant
8051 program:

8052 (i) by no later than November 1; and

8053 (ii) to the Health and Human Services Interim Committee and the Health and Human
8054 Services Appropriations Subcommittee.

8055 Section 206. Section **26-49-202** is amended to read:

8056 **26-49-202. Volunteer health practitioner registration systems.**

8057 (1) To qualify as a volunteer health practitioner registration system, the registration
8058 system ~~must~~ shall:

8059 (a) accept applications for the registration of volunteer health practitioners before or
8060 during an emergency;

8061 (b) include information about the licensure and good standing of health practitioners
8062 that is accessible by authorized persons;

8063 (c) be capable of confirming the accuracy of information concerning whether a health
8064 practitioner is licensed and in good standing before health services or veterinary services are
8065 provided under this chapter; and

8066 (d) meet one of the following conditions:

8067 (i) be an emergency system for advance registration of volunteer health practitioners
8068 established by a state and funded through the United States Department of Health and Human
8069 Services under Section 319I of the Public Health Services Act, 42 U.S.C. Sec. 247d-7b, as
8070 amended;

8071 (ii) be a local unit consisting of trained and equipped emergency response, public
8072 health, and medical personnel formed under Section 2801 of the Public Health Services Act, 42
8073 U.S.C. Sec. 300hh as amended;

8074 (iii) be operated by a:

8075 (A) disaster relief organization;

8076 (B) licensing board;

8077 (C) national or regional association of licensing boards or health practitioners;

8078 (D) health facility that provides comprehensive inpatient and outpatient healthcare
8079 services, including tertiary care; or

8080 (E) governmental entity; or

8081 (iv) be designated by the Department of Health as a registration system for purposes of
8082 this chapter.

8083 (2) (a) Subject to Subsection (2)(b), while an emergency declaration is in effect, the
8084 Department of Health, a person authorized to act on behalf of the Department of Health, or a
8085 host entity shall confirm whether a volunteer health practitioner in Utah is registered with a
8086 registration system that complies with Subsection (1).

8087 (b) The confirmation authorized under this Subsection (2) is limited to obtaining the
8088 identity of the practitioner from the system and determining whether the system indicates that
8089 the practitioner is licensed and in good standing.

8090 (3) Upon request of a person authorized under Subsection (2), or a similarly authorized
8091 person in another state, a registration system located in Utah shall notify the person of the
8092 identity of a volunteer health practitioner and whether or not the volunteer health practitioner is
8093 licensed and in good standing.

8094 (4) A host entity is not required to use the services of a volunteer health practitioner
8095 even if the volunteer health practitioner is registered with a registration system that indicates
8096 that the practitioner is licensed and in good standing.

8097 Section 207. Section **26-49-701** is amended to read:

8098 **26-49-701. Uniformity of application and construction.**

8099 In applying and construing this chapter, consideration [~~must~~] shall be given to the need
8100 to promote uniformity of the law with respect to its subject matter among states that enact it.

8101 Section 208. Section **26A-1-112** is amended to read:

8102 **26A-1-112. Appointment of personnel.**

8103 (1) All local health department personnel shall be hired by the local health officer or
8104 [~~his~~] the local health officer's designee in accordance with the merit system, personnel policies,
8105 and compensation plans approved by the board and ratified pursuant to Subsection (2). The
8106 personnel shall have qualifications for their positions equivalent to those approved for
8107 comparable positions in the Departments of Health and Environmental Quality.

8108 (2) The merit system, personnel policies, and compensation plans approved under
8109 Subsection (1) [~~must~~] shall be ratified by all the counties participating in the local health
8110 department.

8111 (3) Subject to the local merit system, employees of the local health department may be
8112 removed by the local health officer for cause. A hearing shall be granted if requested by the
8113 employee.

8114 Section 209. Section **26A-1-126** is amended to read:

8115 **26A-1-126. Medical reserve corps.**

8116 (1) In addition to the duties listed in Section 26A-1-114, a local health department may
8117 establish a medical reserve corps in accordance with this section.

8118 (2) The purpose of a medical reserve corps is to enable a local health authority to
8119 respond with appropriate health care professionals to a national, state, or local emergency, a
8120 public health emergency as defined in Section 26-23b-102, or a declaration by the president of
8121 the United States or other federal official requesting public health related activities.

8122 (3) When an emergency has been declared in accordance with Subsection (2), a local
8123 health department may activate a medical reserve corps for the duration of the emergency.

8124 (4) For purposes of this section, a medical reserve corps may include persons who:

8125 (a) are licensed under Title 58, Occupations and Professions, and who are operating
8126 within the scope of their practice;

8127 (b) are exempt from licensure, or operating under modified scope of practice
8128 provisions in accordance with Subsections 58-1-307(4) and (5); and

8129 (c) within the 10 years preceding the declared emergency, held a valid license, in good
8130 standing in Utah, for one of the occupations described in Subsection 58-13-2(1), but the license
8131 is not currently active.

8132 (5) (a) Notwithstanding the provisions of Subsections 58-1-307(4)(a) and (5)(b) the
8133 local health department may authorize a person described in Subsection (4) to operate in a
8134 modified scope of practice as necessary to respond to the declared emergency.

8135 (b) A person operating as a member of an activated medical reserve corps under this
8136 section:

8137 (i) ~~must~~ shall be volunteering for and supervised by the local health department;

8138 (ii) ~~must~~ shall comply with the provisions of this section;

8139 (iii) is exempt from the licensing laws of Title 58, Occupations and Professions; and

8140 (iv) ~~must~~ shall carry a certificate issued by the local health department which
8141 designates the individual as a member of the medical reserve corps during the duration of the
8142 emergency.

8143 (6) The local department of health may access the Division of Occupational and
8144 Professional Licensing database for the purpose of determining if a person's current or expired
8145 license to practice in the state was in good standing.

8146 (7) The local department of health shall maintain a registry of persons who are
8147 members of a medical reserve corps. The registry of the medical reserve corps shall be made
8148 available to the public and to the Division of Occupational and Professional Licensing.

8149 Section 210. Section **29-1-2** is amended to read:

8150 **29-1-2. Property worth more than \$250 -- Limitation of liability -- Special**
8151 **arrangements -- Theft by, or negligence of, innkeeper or servant.**

8152 An innkeeper, hotel keeper, boarding house or lodging house keeper [~~shall not be~~
8153 ~~obliged~~] is not required to receive from a guest for deposit in such safe or vault, property
8154 described in the next preceding section exceeding a total value of \$250, and [~~shall not be~~] is
8155 not liable for such property exceeding such value whether received or not. Such innkeeper,
8156 hotel keeper, boarding house or lodging house keeper, by special arrangement with a guest,
8157 may receive for deposit in such safe or vault property upon such written terms as may be
8158 agreed upon. [~~An~~] A person who is an innkeeper, hotel keeper, boarding house or lodging
8159 house keeper shall be liable for a loss of any of such property of a guest in [~~his~~] the person's inn
8160 caused by the theft or negligence of the innkeeper or [~~his~~] the innkeeper's servant.

8161 Section 211. Section **29-1-3** is amended to read:

8162 **29-1-3. Other personal property -- Limitation of liability.**

8163 (1) The liability of a person who is an innkeeper, hotel keeper, boarding or lodging
8164 house keeper, for loss of or injury to personal property placed in [~~his care by his~~] the person's
8165 care by the person's guests other than that described in Section 29-1-1, shall be that of a
8166 depositary for hire. [~~Such liability shall not~~]

8167 (2) The liability described in Subsection (1) may not exceed \$150 for each trunk and its
8168 contents, \$50 for each valise, suitcase or other piece of hand luggage and its contents, and \$10
8169 for each box, bundle or package, and its contents, so placed in [~~his~~] the person's care, unless
8170 [~~he~~] the person has consented in writing with [~~such~~] the guest to assume a greater liability.

8171 Section 212. Section **30-1-4.5** is amended to read:

8172 **30-1-4.5. Validity of marriage not solemnized.**

8173 (1) A marriage which is not solemnized according to this chapter shall be legal and
8174 valid if a court or administrative order establishes that it arises out of a contract between a man
8175 and a woman who:

8176 (a) are of legal age and capable of giving consent;

8177 (b) are legally capable of entering a solemnized marriage under the provisions of this

8178 chapter;

8179 (c) have cohabited;

8180 (d) mutually assume marital rights, duties, and obligations; and

8181 (e) who hold themselves out as and have acquired a uniform and general reputation as
8182 husband and wife.

8183 (2) The determination or establishment of a marriage under this section [~~must~~] shall
8184 occur during the relationship described in Subsection (1), or within one year following the
8185 termination of that relationship. Evidence of a marriage recognizable under this section may be
8186 manifested in any form, and may be proved under the same general rules of evidence as facts in
8187 other cases.

8188 Section 213. Section **30-1-5** is amended to read:

8189 **30-1-5. Marriage solemnization -- Before unauthorized person -- Validity.**

8190 (1) A marriage solemnized before a person professing to have authority to perform
8191 marriages [~~shall not~~] may not be invalidated for lack of authority, if consummated in the belief
8192 of the parties or either of them that [~~he~~] the person had authority and that they have been
8193 lawfully married.

8194 (2) This section may not be construed to validate a marriage that is prohibited or void
8195 under Section 30-1-2.

8196 Section 214. Section **30-1-10** is amended to read:

8197 **30-1-10. Application by persons unknown to clerk -- Affidavit -- Penalty.**

8198 (1) When the parties are personally unknown to the clerk a license [~~shall not issue~~]
8199 may not be issued until an affidavit is made before [~~him~~] the clerk, which shall be filed and
8200 preserved by [~~him~~] the clerk, by a party applying for [~~such~~] the license, showing that there is no
8201 lawful reason in the way of [~~such~~] the marriage. [~~The party making such affidavit or any~~
8202 ~~subscribing witness, if he falsely swears therein, is guilty of perjury.~~]

8203 (2) A party who makes an affidavit described in Subsection (1) or a subscribing
8204 witness to the affidavit who falsely swears in the affidavit is guilty of perjury.

8205 Section 215. Section **30-1-32** is amended to read:

8206 **30-1-32. Master plan for counseling.**

8207 (1) It shall be the function and duty of the premarital counseling board, after holding
8208 public hearings, to make, adopt, and certify to the county legislative body a master plan for
8209 premarital counseling of marriage license applicants within the purposes and objectives of this
8210 act.

8211 (2) The master plan [~~shall include, but not be limited to,~~] described in Subsection (1)
8212 shall include:

8213 (a) counseling procedures [~~which~~] that:

8214 (i) will make applicants aware of problem areas in their proposed marriage [~~and~~];

8215 (ii) suggest ways of meeting problems [~~and which~~]; and

8216 (iii) will induce reconsideration or postponement [~~where~~] when:

8217 (A) the applicants are not sufficiently matured or are not financially capable of meeting
8218 the responsibilities of marriage; or

8219 (B) are marrying for reasons not conducive to a sound lasting marriage[~~The plan shall~~
8220 ~~include~~]; and

8221 (b) standards for evaluating premarital counseling received by the applicants, prior to
8222 their application for a marriage license, which would justify issuance of certificate without
8223 further counseling being given or required.

8224 (3) The board may, from time to time, amend or extend the plan described in
8225 Subsection (1).

8226 (4) The premarital counseling board may, subject to Subsection (5):

8227 (a) appoint a staff and employees as may be necessary for its work; and [~~may~~]

8228 (b) contract with social service agencies or other consultants within the county or
8229 counties for services it requires[~~, providing, its expenditures shall not~~].

8230 (5) Expenditures for the appointments and contracts described in Subsection (4) may
8231 not exceed the sums appropriated by the county legislative body plus sums placed at its
8232 disposal through gift or otherwise.

8233 Section 216. Section **30-1-33** is amended to read:

8234 **30-1-33. Conformity to master plan for counseling as prerequisite to marriage**
8235 **license -- Exceptions.**

8236 Whenever the board of commissioners of a county has adopted a master plan for
8237 premarital counseling no resident of the county may obtain a marriage license without
8238 conforming to the plan, except that:

8239 (1) Any person who applies for a marriage license shall have the right to secure the
8240 license and to marry notwithstanding their failure to conform to the required premarital
8241 counseling or their failure to obtain a certificate of authorization from the premarital counseling
8242 board if they wait six months from the date of application for issuance of the license.

8243 (2) This [~~act shall not~~] chapter does not apply to any application for a marriage license
8244 where both parties are at least 19 years of age and neither has been previously divorced.

8245 (3) This [~~act shall not~~] chapter does not apply to any application for a marriage license
8246 unless both applicants have physically resided in [~~the state of~~] Utah for 60 days immediately
8247 preceding their application.

8248 (4) Premarital counseling required by this act shall be [~~deemed~~] considered fulfilled if
8249 the applicants present a certificate verified by a clergyman that the applicants have completed a
8250 course of premarital counseling approved by [~~his~~] a church and given by or under the
8251 supervision of the clergyman.

8252 Section 217. Section **30-1-35** is amended to read:

8253 **30-1-35. Persons performing counseling services designated by board --**
8254 **Exemption from license requirements.**

8255 For the purposes of this [~~act~~] chapter the premarital counseling board of each county or
8256 combination of counties may determine those persons who are to perform any services under
8257 this [~~act~~] chapter and any person so acting [~~shall not be~~] is not subject to prosecution or other
8258 sanctions for [~~his~~] the person's failure to hold any license for these services as may be required
8259 by the laws of the state [~~of Utah~~].

8260 Section 218. Section **30-1-37** is amended to read:

8261 **30-1-37. Confidentiality of information obtained under counseling provisions.**

8262 Except for the information required or to be required on the marriage license
8263 application form, any information given by a marriage license applicant in compliance with this
8264 [act] chapter shall be confidential information and [~~shall not~~] may not be released by any
8265 person, board, commission, or other entity. However, the premarital counseling board or board
8266 of commissioners may use the information, without identification of individuals, to compile
8267 and release statistical data.

8268 Section 219. Section **30-2-7** is amended to read:

8269 **30-2-7. Husband's liability for wife's torts.**

8270 For civil injuries committed by a married woman damages may be recovered from her
8271 alone, and her husband [~~shall not~~] may not be held liable [~~therefor~~] for those civil injuries,
8272 except in cases where he would be jointly liable with her if the marriage did not exist.

8273 Section 220. Section **30-3-16.7** is amended to read:

8274 **30-3-16.7. Effect of petition -- Pendency of action.**

8275 (1) The filing of a petition for conciliation under this act shall, for a period of 60 days
8276 thereafter, act as a bar to the filing by either spouse of an action for divorce, annulment of
8277 marriage or separate maintenance unless the court otherwise orders.

8278 (2) The pendency of an action for divorce, annulment of marriage or separate
8279 maintenance [~~shall not~~] does not prevent either party to the action from filing a petition for
8280 conciliation under this act, either on [~~his~~] the party's own or at the request and direction of the
8281 court as authorized by Section 30-3-17[~~; and the~~].

8282 (3) The filing of a petition for conciliation shall stay for a period of 60 days, unless the
8283 court otherwise orders, any trial or default hearing upon the complaint. [~~However,~~]

8284 (4) Notwithstanding any other provision of this section, when the judge of the family
8285 court division is advised in writing by a marriage counselor to whom a petition for conciliation
8286 has been referred that a reconciliation of the parties cannot be effected, the bar to filing an
8287 action or the stay of trial or default hearing shall be removed.

8288 Section 221. Section **30-3-17** is amended to read:

8289 **30-3-17. Power and jurisdiction of judge.**

8290 (1) The judge of a district court may:

8291 (a) counsel either spouse or both [~~and may in his~~];

8292 (b) in the judge's discretion require one or both [~~of them~~] spouses to appear before

8293 [~~him and,~~] the judge;

8294 (c) in those counties where a domestic relations counselor has been appointed pursuant

8295 to this [~~act~~] chapter, require [~~them~~] the spouses to file a petition for conciliation and to appear

8296 before [~~such~~] the counselor[~~;~~]; or [~~may~~]

8297 (d) recommend the aid of:

8298 (i) a physician, psychiatrist, psychologist, social service worker, or other specialists or

8299 scientific expert[~~;~~]; or

8300 (ii) the pastor, bishop, or presiding officer of any religious denomination to which the

8301 parties may belong.

8302 (2) The power and jurisdiction granted by this [~~act shall be~~] chapter is in addition to,

8303 and not in limitation of, that presently exercised by the district courts [~~and shall not be in~~

8304 limitation thereof].

8305 Section 222. Section **30-3-17.1** is amended to read:

8306 **30-3-17.1. Proceedings considered confidential -- Written evaluation by**

8307 **counselor.**

8308 (1) The petition for conciliation and all communications, verbal or written, from the

8309 parties to the domestic relations counselors or other personnel of the conciliation department in

8310 counseling or conciliation proceedings shall be [~~deemed~~] considered to be made in official

8311 confidence within the meaning of Section 78B-1-137 and [~~shall not be~~] is not admissible or

8312 usable for any purpose in any divorce hearing or other proceeding. [~~However,~~]

8313 (2) Notwithstanding Subsection (1), the marriage counselor may submit to the

8314 appropriate court a written evaluation of the prospects or prognosis of a particular marriage

8315 without divulging facts or revealing confidential disclosures.

8316 Section 223. Section **30-3-18** is amended to read:

8317 **30-3-18. Waiting period for hearing after filing for divorce -- Exemption -- Use of**

8318 **counseling and education services not to be construed as condonation or promotion.**

8319 (1) Unless the court, for good cause shown and set forth in the findings, otherwise
8320 orders, no hearing for decree of divorce shall be held by the court until 90 days shall have
8321 elapsed from the filing of the complaint, [~~provided~~] but the court may make [~~such~~] interim
8322 orders as may be just and equitable.

8323 (2) The 90-day period as provided in Subsection (1) [~~shall not~~] does not apply in any
8324 case where both parties have completed the mandatory educational course for divorcing parents
8325 as provided in Section 30-3-11.3.

8326 (3) The use of counseling, mediation, and education services provided under this
8327 chapter may not be construed as condoning the acts that may constitute grounds for divorce on
8328 the part of either spouse nor of promoting divorce.

8329 Section 224. Section **30-3-33** is amended to read:

8330 **30-3-33. Advisory guidelines.**

8331 In addition to the parent-time schedules provided in Sections 30-3-35 and 30-3-35.5,
8332 the following advisory guidelines are suggested to govern all parent-time arrangements
8333 between parents.

8334 (1) Parent-time schedules mutually agreed upon by both parents are preferable to a
8335 court-imposed solution.

8336 (2) The parent-time schedule shall be utilized to maximize the continuity and stability
8337 of the child's life.

8338 (3) Special consideration shall be given by each parent to make the child available to
8339 attend family functions including funerals, weddings, family reunions, religious holidays,
8340 important ceremonies, and other significant events in the life of the child or in the life of either
8341 parent which may inadvertently conflict with the parent-time schedule.

8342 (4) The responsibility for the pick up, delivery, and return of the child shall be
8343 determined by the court when the parent-time order is entered, and may be changed at any time
8344 a subsequent modification is made to the parent-time order.

8345 (5) If the noncustodial parent will be providing transportation, the custodial parent

8346 shall have the child ready for parent-time at the time the child is to be picked up and shall be
8347 present at the custodial home or shall make reasonable alternate arrangements to receive the
8348 child at the time the child is returned.

8349 (6) If the custodial parent will be transporting the child, the noncustodial parent shall
8350 be at the appointed place at the time the noncustodial parent is to receive the child, and have
8351 the child ready to be picked up at the appointed time and place, or have made reasonable
8352 alternate arrangements for the custodial parent to pick up the child.

8353 (7) Regular school hours may not be interrupted for a school-age child for the exercise
8354 of parent-time by either parent.

8355 (8) The court may make alterations in the parent-time schedule to reasonably
8356 accommodate the work schedule of both parents and may increase the parent-time allowed to
8357 the noncustodial parent but ~~shall not~~ may not diminish the standardized parent-time provided
8358 in Sections 30-3-35 and 30-3-35.5.

8359 (9) The court may make alterations in the parent-time schedule to reasonably
8360 accommodate the distance between the parties and the expense of exercising parent-time.

8361 (10) Neither parent-time nor child support is to be withheld due to either parent's
8362 failure to comply with a court-ordered parent-time schedule.

8363 (11) The custodial parent shall notify the noncustodial parent within 24 hours of
8364 receiving notice of all significant school, social, sports, and community functions in which the
8365 child is participating or being honored, and the noncustodial parent shall be entitled to attend
8366 and participate fully.

8367 (12) The noncustodial parent shall have access directly to all school reports including
8368 preschool and daycare reports and medical records and shall be notified immediately by the
8369 custodial parent in the event of a medical emergency.

8370 (13) Each parent shall provide the other with ~~his~~ the parent's current address and
8371 telephone number, email address, and other virtual parent-time access information within 24
8372 hours of any change.

8373 (14) Each parent shall permit and encourage, during reasonable hours, reasonable and

8374 uncensored communications with the child, in the form of mail privileges and virtual
8375 parent-time if the equipment is reasonably available, provided that if the parties cannot agree
8376 on whether the equipment is reasonably available, the court shall decide whether the equipment
8377 for virtual parent-time is reasonably available, taking into consideration:

- 8378 (a) the best interests of the child;
- 8379 (b) each parent's ability to handle any additional expenses for virtual parent-time; and
- 8380 (c) any other factors the court considers material.

8381 (15) Parental care shall be presumed to be better care for the child than surrogate care
8382 and the court shall encourage the parties to cooperate in allowing the noncustodial parent, if
8383 willing and able to transport the children, to provide the child care. Child care arrangements
8384 existing during the marriage are preferred as are child care arrangements with nominal or no
8385 charge.

8386 (16) Each parent shall provide all surrogate care providers with the name, current
8387 address, and telephone number of the other parent and shall provide the noncustodial parent
8388 with the name, current address, and telephone number of all surrogate care providers unless the
8389 court for good cause orders otherwise.

8390 (17) Each parent shall be entitled to an equal division of major religious holidays
8391 celebrated by the parents, and the parent who celebrates a religious holiday that the other parent
8392 does not celebrate shall have the right to be together with the child on the religious holiday.

8393 (18) If the child is on a different parent-time schedule than a sibling, based on Sections
8394 30-3-35 and 30-3-35.5, the parents should consider if an upward deviation for parent-time with
8395 all the minor children so that parent-time is uniform between school aged and nonschool aged
8396 children, is appropriate.

8397 Section 225. Section **30-8-3** is amended to read:

8398 **30-8-3. Writing -- Signature required.**

8399 A premarital agreement [~~must~~] shall be in writing and signed by both parties. It is
8400 enforceable without consideration.

8401 Section 226. Section **31A-2-301** is amended to read:

8402 **31A-2-301. Special hearing officers -- Witness and mileage fees.**

8403 (1) If the commissioner considers it necessary because of the technicality or complexity
8404 of the subject, [~~he~~] the commissioner may appoint a special hearing officer from outside the
8405 department staff and may contract for a reasonable professional fee for the services.

8406 (2) (a) In hearings before the commissioner, witness fees and reimbursement for
8407 mileage traveled, if claimed, shall be allowed at the same rate as in district courts.

8408 (b) Witness fees and reimbursement for mileage, together with the actual expense
8409 necessarily incurred in securing attendance of witnesses and their testimony, and the hearing
8410 officer's fee and reasonable actual expenses, shall be paid by the Insurance Department.

8411 (c) The commissioner shall be reimbursed for these costs as provided in Section
8412 31A-2-205 if:

8413 (i) the hearing is incident to an examination for which costs are payable under Section
8414 31A-2-205; or

8415 (ii) the commissioner orders the persons involved in the hearing to reimburse the
8416 department for hearing costs, which the commissioner may do if [~~he~~] the commissioner had
8417 reasonable cause to believe that the order which issued or might have issued was necessary.

8418 (3) Whenever the commissioner is reimbursed for costs under this section, the
8419 expenditures [~~shall not~~] may not be charged against the department budget.

8420 Section 227. Section **31A-2-302** is amended to read:

8421 **31A-2-302. Commissioner's disapproval.**

8422 (1) When the law requires the commissioner's approval for a certain action without a
8423 deemer clause, that approval [~~must~~] shall be express. The commissioner's disapproval of an
8424 action is assumed if the commissioner does not act within 60 days after receiving the
8425 application for approval or give notice of the commissioner's reasonable extension of that time
8426 period with the commissioner's reasons for the extension. Assumed disapproval under this
8427 subsection entitles the aggrieved person to request agency action under Section 63G-4-201.

8428 (2) When the law provides that a certain action is not effective if disapproved by the
8429 commissioner within a certain period, the affirmative approval by the commissioner may make

8430 the action effective at a designated earlier date, but not earlier than the date of the
8431 commissioner's affirmative approval.

8432 (3) Subsections (1) and (2) do not apply to the extent that the law specifically provides
8433 otherwise.

8434 Section 228. Section **31A-5-208** is amended to read:

8435 **31A-5-208. Deposit of proceeds of subscriptions.**

8436 (1) All funds, and the securities and documents representing interests in property,
8437 received by a stock corporation for stock subscriptions or by a mutual for applications for
8438 insurance policies or for mutual bond or contribution note subscriptions, shall be deposited in
8439 the name of the corporation with a custodian financial institution qualified under Subsection
8440 31A-2-206(1). This deposit is subject to an escrow agreement approved by the commissioner
8441 under which withdrawals may be made only in accordance with conditions specified in the
8442 agreement, and with the commissioner's approval. Securities may be held as authorized in
8443 Subsection 31A-2-206(2) and ~~[must]~~ are required to be approved by the commissioner.

8444 (2) This section does not apply to stock or mutual insurance corporations already in
8445 existence on July 1, 1986.

8446 Section 229. Section **31A-5-305** is amended to read:

8447 **31A-5-305. Authorized securities.**

8448 (1) (a) The articles of incorporation of a stock corporation may authorize the kind of
8449 shares permitted by Sections 16-10a-601 and 16-10a-602, and stock rights and options, except
8450 that:

8451 (i) nonvoting common stock may not be issued;

8452 (ii) all classes of common stock ~~[must]~~ shall have equal voting rights;

8453 (iii) all common stock ~~[must]~~ shall have a stated par value; and

8454 (iv) except with the commissioner's approval, for two years after the initial issuance of
8455 a certificate of authority, the corporation may issue no shares and no other securities
8456 convertible into shares except a single class of common stock.

8457 (b) Section 16-10a-604 applies to the issuance of certificates for fractional shares or

8458 scrip.

8459 (c) The consideration and payment for shares and certificates representing shares is
8460 governed by Subsection 31A-5-207(1)(a).

8461 (d) The liability of subscribers and shareholders for unpaid subscriptions and the status
8462 of stock is governed by Section 16-10a-622.

8463 (e) A shareholder's preemptive rights is governed by Section 16-10a-630.

8464 (f) Stock corporations may issue bonds and contribution notes on the same basis as
8465 mutuals under Subsections (2)(a) and (b).

8466 (2) (a) The articles of incorporation of a nonassessable mutual may authorize bonds of
8467 one or more classes. The articles of incorporation shall specify the amount of each class of
8468 bonds the corporation is authorized to issue, their designations, preferences, limitations, rates
8469 of interest, relative rights, and other terms, subject to all of the following provisions:

8470 (i) During the first year after the initial issuance of a certificate of authority, the
8471 corporation may issue only a single class of bonds with identical rights.

8472 (ii) After the first year, but within five years after the initial issuance of a certificate of
8473 authority, additional classes of bonds may be authorized after receiving the approval of the
8474 commissioner. The commissioner shall approve the issuance if the commissioner finds that
8475 policyholders and prior bondholders will not be prejudiced.

8476 (iii) The rate of interest shall be fair.

8477 (iv) The bonds shall bear a maturity date not later than 10 years from the date of
8478 issuance, when principal and accrued interest shall be due and payable, subject to Subsection
8479 (2)(d).

8480 (b) A mutual may issue contribution notes with the commissioner's approval. The
8481 contribution notes may be denominated by any name that is not misleading. The contribution
8482 notes are subject to this subsection. The commissioner may approve the issuance only if the
8483 commissioner finds that:

8484 (i) the notes will not be issued in denominations of less than \$2,500, and no single
8485 issue will be sold to more than 15 persons;

- 8486 (ii) no discount, commission, or other fee will be paid or allowed;
- 8487 (iii) the notes will not be the subject of a public offering;
- 8488 (iv) the terms of the notes are not prejudicial to policyholders, holders of mutual bonds,
8489 or prior contribution notes; and
- 8490 (v) the mutual's articles or bylaws do not forbid their issuance.
- 8491 (c) A mutual may not:
- 8492 (i) if it has any outstanding obligations on bonds or contribution notes, borrow on
8493 contribution notes from, or sell bonds to, any other insurer without the approval of the
8494 commissioner; or
- 8495 (ii) make a loan to another insurer except a fully secured loan at usual market rates of
8496 interest.
- 8497 (d) Payment of the principal or interest on bonds or contribution notes may be made in
8498 whole or in part only after approval by the commissioner. The commissioner's approval shall
8499 be given if all the financial requirements of the issuer to do the insurance business it is then
8500 doing will continue to be satisfied after that payment, and if the interests of its insureds and the
8501 public are not endangered by the payment. In the event of liquidation under Chapter 27a,
8502 Insurer Receivership Act, unpaid amounts of principal and interest on contribution notes are
8503 subordinate to the payment of principal and interest on any bonds issued by the corporation.
- 8504 (e) This section does not prevent a mutual from borrowing money on notes which are
8505 its general obligations, nor from pledging any part of its disposable assets.
- 8506 (3) This section does not apply to securities issued prior to July 1, 1986.
- 8507 Section 230. Section **31A-6a-104** is amended to read:
- 8508 **31A-6a-104. Required disclosures.**
- 8509 (1) A service contract reimbursement insurance policy insuring a service contract that
8510 is issued, sold, or offered for sale in this state [~~must~~] shall conspicuously state that, upon failure
8511 of the service contract provider to perform under the contract, the issuer of the policy shall:
- 8512 (a) pay on behalf of the service contract provider any sums the service contract
8513 provider is legally obligated to pay according to the service contract provider's contractual

8514 obligations under the service contract issued or sold by the service contract provider; or

8515 (b) provide the service which the service contract provider is legally obligated to
8516 perform, according to the service contract provider's contractual obligations under the service
8517 contract issued or sold by the service contract provider.

8518 (2) (a) A service contract may not be issued, sold, or offered for sale in this state unless
8519 the service contract contains the following statements in substantially the following form:

8520 (i) "Obligations of the provider under this service contract are guaranteed under a
8521 service contract reimbursement insurance policy. Should the provider fail to pay or provide
8522 service on any claim within 60 days after proof of loss has been filed, the contract holder is
8523 entitled to make a claim directly against the Insurance Company."; and

8524 (ii) "This service contract or warranty is subject to limited regulation by the Utah
8525 Insurance Department. To file a complaint, contact the Utah Insurance Department."

8526 (b) A service contract or reimbursement insurance policy may not be issued, sold, or
8527 offered for sale in this state unless the contract contains a statement in substantially the
8528 following form, "Coverage afforded under this contract is not guaranteed by the Property and
8529 Casualty Guaranty Association."

8530 (3) A service contract shall:

8531 (a) conspicuously state the name, address, and a toll free claims service telephone
8532 number of the reimbursement insurer;

8533 (b) identify the service contract provider, the seller, and the service contract holder;

8534 (c) conspicuously state the total purchase price and the terms under which the service
8535 contract is to be paid;

8536 (d) conspicuously state the existence of any deductible amount;

8537 (e) specify the merchandise, service to be provided, and any limitation, exception, or
8538 exclusion;

8539 (f) state a term, restriction, or condition governing the transferability of the service
8540 contract; and

8541 (g) state a term, restriction, or condition that governs cancellation of the service

8542 contract as provided in Sections 31A-21-303 through 31A-21-305 by either the contract holder
8543 or service contract provider.

8544 (4) If prior approval of repair work is required, a service contract [must] shall
8545 conspicuously state the procedure for obtaining prior approval and for making a claim,
8546 including:

8547 (a) a toll free telephone number for claim service; and

8548 (b) a procedure for obtaining reimbursement for emergency repairs performed outside
8549 of normal business hours.

8550 (5) A preexisting condition clause in a service contract [must] shall specifically state
8551 which preexisting condition is excluded from coverage.

8552 (6) (a) Except as provided in Subsection (6)(c), a service contract [must] shall state the
8553 conditions upon which the use of a nonmanufacturers' part is allowed.

8554 (b) A condition described in Subsection (6)(a) [must] shall comply with applicable
8555 state and federal laws.

8556 (c) This Subsection (6) does not apply to a home warranty contract.

8557 Section 231. Section **31A-8a-201** is amended to read:

8558 **31A-8a-201. License required.**

8559 (1) Except as provided in Subsection 31A-8a-103(3), prior to operating a health
8560 discount program, a person [must] shall:

8561 (a) be authorized to transact business in this state; and

8562 (b) be licensed by the commissioner.

8563 (2) (a) An application for licensure under this chapter [must] shall be filed with the
8564 commissioner on a form prescribed by the commissioner.

8565 (b) The application shall be sworn to by an officer or authorized representative of the
8566 health discount program and shall include:

8567 (i) articles of incorporation with bylaws or other enabling documents that establish the
8568 organizational structure;

8569 (ii) information required by the commissioner by administrative rule which the

8570 commissioner determines is necessary to:

8571 (A) identify and locate principals, operators, and marketers involved with the health
8572 discount program; and

8573 (B) protect the interests of enrollees of health discount programs, health care providers,
8574 and consumers;

8575 (iii) biographical information, and when requested by the commissioner, a criminal
8576 background check, under the provisions of Subsection 31A-23a-105(3);

8577 (iv) the disclosures required in Section 31A-8a-203; and

8578 (v) the fee established in accordance with Section 31A-3-103.

8579 Section 232. Section **31A-8a-203** is amended to read:

8580 **31A-8a-203. Information filed with the department.**

8581 (1) Prior to operating a health discount program, a person [~~must~~] shall submit the
8582 following to the commissioner:

8583 (a) a copy of contract forms used by the health discount program for:

8584 (i) health care providers or health care provider networks participating in the health
8585 discount program, including the discounts for medical services provided to enrollees;

8586 (ii) marketing;

8587 (iii) administration of the health discount program;

8588 (iv) enrollment;

8589 (v) investment management for the health discount programs; and

8590 (vi) subcontracts for any services;

8591 (b) the program's proposed marketing plan; and

8592 (c) dispute resolution procedures for program holders.

8593 (2) The company [~~must~~] shall file prior to use:

8594 (a) the form of contracts used by the health discount program operator;

8595 (b) the marketing plan; and

8596 (c) dispute resolution procedures.

8597 (3) The commissioner may adopt rules in accordance with Title 63G, Chapter 3, Utah

8598 Administrative Rulemaking Act, to implement this section.

8599 Section 233. Section **31A-8a-204** is amended to read:

8600 **31A-8a-204. Advertising restrictions and requirements.**

8601 (1) An operator of a health discount program may not:

8602 (a) use any form of words or terms that may confuse health discount programs with
8603 other types of health insurance in advertising or marketing such as "health plan," "health
8604 benefit plan," "coverage," "copay," "copayments," "preexisting conditions," "guaranteed issue,"
8605 "premium," and "preferred provider";

8606 (b) use other terms as designated by the commissioner by administrative rule in
8607 advertisement or marketing that could reasonably mislead a consumer to believe that a discount
8608 health program is any other form of health insurance; or

8609 (c) refer to sales representatives as "agents," "producers," or "consultants."

8610 (2) A health discount program operator:

8611 (a) ~~[must]~~ shall have a written agreement with any marketer of the health discount
8612 program prior to marketing, selling, promoting, or distributing the health discount programs;

8613 (b) ~~[must]~~ shall file with the commissioner all advertisement, marketing materials,
8614 brochures, and discount programs prior to their use or distribution; and

8615 (c) ~~[must]~~ shall make the following disclosures:

8616 (i) in writing in at least 10-point type and bolded; and

8617 (ii) with any marketing or advertising to the public and with any enrollment forms
8618 given to an enrollee:

8619 (A) the program is not a health insurance policy;

8620 (B) the program provides discounts only at certain health care providers for health care
8621 services;

8622 (C) the program holder is obligated to pay for all health care services but will receive a
8623 discount from those health care providers who have contracted with the health discount
8624 program; and

8625 (D) the corporate name and the location of the health discount program operator.

8626 (3) A health discount program operator or marketer who sells the health discount
8627 program with another product [must] shall provide the consumer a written itemization of the
8628 fees of the health discount program separate from any fees or charges for the other product,
8629 which can be purchased separately.

8630 Section 234. Section **31A-8a-205** is amended to read:

8631 **31A-8a-205. Disclosure of health discount program terms.**

8632 (1) (a) Health discount program operators [must] shall provide to each purchaser or
8633 potential purchaser a copy of the terms of the discount program at the time of purchase.

8634 (b) For purposes of this section "purchaser" means the employer in an employer
8635 sponsored plan, or an individual purchasing outside of an employer relationship.

8636 (2) The disclosure required by Subsection (1) should be clear and thorough and should
8637 include any administrative or monthly fees, trial periods, procedures for securing discounts,
8638 cancellation procedures and corresponding refund requests, and procedures for filing disputes.

8639 (3) (a) A contract [must] shall be signed by the purchaser acknowledging the terms
8640 before any fees are collected and [must] shall include notice of the purchaser's 10-day rescission
8641 rights.

8642 (b) For purposes of this Subsection (3) and Section 46-4-201, when a contract is
8643 entered into via telephone, facsimile transmission or the Internet, the following is considered a
8644 signing of the contract:

8645 (i) if via the Internet, the online application form is completed and sent by the
8646 purchaser to the health discount program operator;

8647 (ii) if via facsimile transmission, the application is completed, signed and faxed to the
8648 health discount program operator; or

8649 (iii) if via telephone, the script used by the health discount program operator to solicit
8650 the purchaser [must] shall include any limitations or exclusions to the program, and the
8651 contract [must] shall be provided to the purchaser via facsimile, mail, or email within 10
8652 working days of the purchaser consenting to enrolling over the telephone.

8653 Section 235. Section **31A-8a-206** is amended to read:

8654 **31A-8a-206. Provider agreements -- Record keeping.**

8655 (1) A health discount program operator may not place any restrictions on an enrollee's
8656 access to health care providers such as waiting periods or notification periods.

8657 (2) A health discount program operator may not reimburse health care providers for
8658 services rendered to an enrollee, unless the health discount program operator is a licensed third
8659 party administrator.

8660 (3) (a) A health discount program operator [~~must~~] shall have a written agreement with
8661 a health care provider who agrees to provide discounts to health discount program enrollees.

8662 (b) If the written agreement is with a provider network, the health discount plan [~~must~~]
8663 shall require the provider network to have written agreements with each of its health care
8664 providers.

8665 (4) The health discount program operator shall maintain a copy of each active health
8666 care provider agreement.

8667 Section 236. Section **31A-8a-207** is amended to read:

8668 **31A-8a-207. Notice of change.**

8669 (1) A health discount program operator [~~must~~] shall provide the commissioner notice
8670 of:

8671 (a) any change in the health discount program's organizational name, change of
8672 business or mailing address, or change in ownership or principals; and

8673 (b) any change in the information submitted in accordance with Section 31A-8a-203.

8674 (2) (a) The notice required by Subsection (1) [~~should~~] shall be submitted 30 days prior
8675 to any change.

8676 (b) [~~The~~] Approval by the commissioner [~~must approve~~] is required for any changes in
8677 forms that required approval under Section 31A-8a-203.

8678 (3) A health insurer or health maintenance organization licensed under this title shall
8679 annually file with the Accident and Health Data Survey, a list of all value-added benefits
8680 offered at no cost to its enrollees.

8681 Section 237. Section **31A-9-503** is amended to read:

8682 **31A-9-503. Conversion of a fraternal to a mutual.**

8683 A domestic fraternal may be converted into a mutual, as follows:

8684 (1) In addition to complying with the requirements of Chapter 16, Insurance Holding
8685 Companies, the board or the supreme governing body shall adopt a plan of conversion stating:

8686 (a) the reasons for and purposes of the proposed action;

8687 (b) the proposed terms, conditions, and procedures and the estimated expenses of
8688 implementing the conversion;

8689 (c) the proposed name of the corporation; and

8690 (d) the proposed articles and bylaws.

8691 (2) If the board and the supreme governing body disagree on the conversion plan, the
8692 decision of the supreme governing body prevails.8693 (3) The plan shall be filed with the commissioner for approval, together with any
8694 information under Subsection 31A-5-204(2) the commissioner reasonably requires. The
8695 commissioner shall approve the plan unless ~~he~~ the commissioner finds, after a hearing, that it
8696 would be contrary to the law, that the new mutual would not satisfy the requirements for a
8697 certificate of authority under Section 31A-5-212, that the plan would be contrary to the
8698 interests of members or the public, or that the applicable requirements of Chapter 16, Insurance
8699 Holding Companies, have not been satisfied.8700 (4) After being approved by the commissioner, the plan shall be submitted for approval
8701 to the persons who were voting members on the date of the commissioner's approval under
8702 Subsection (3). For approval of the plan, at least a majority of the votes cast ~~must~~ shall be in
8703 favor of the plan, or a larger number if required by the laws of the fraternal.8704 (5) The officers and directors of the fraternal shall be the initial officers and directors
8705 of the mutual.8706 (6) A copy of the resolution adopted under Subsection (4) shall be filed with the
8707 commissioner, stating the number of members entitled to vote, the number voting, the method
8708 of voting, and the number of votes cast in favor of the plan, stating separately the votes cast by
8709 mail and the votes cast in person.

8710 (7) If the requirements of the law are met, the commissioner shall issue a certificate of
8711 authority to the new mutual. The fraternal then ceases its legal existence and the corporate
8712 existence of the new mutual begins. However, the new mutual is considered to have been
8713 incorporated as of the date the converted fraternal was incorporated. The new mutual has all
8714 the assets and is liable for all of the obligations of the converted fraternal. The commissioner
8715 may grant a period not exceeding one year for adjustment to the requirements of Chapter 5,
8716 Domestic Stock and Mutual Insurance Corporations, specifying the extent to which particular
8717 provisions of Chapter 5 do not apply.

8718 (8) The corporation may not pay compensation other than regular salaries to existing
8719 personnel in connection with the proposed conversion. With the commissioner's approval,
8720 payment may be made at reasonable rates for printing costs and for legal and other professional
8721 fees for services actually rendered in connection with the conversion. All expenses of the
8722 conversion, including the expenses incurred by the commissioner and the prorated salaries of
8723 any insurance office staff members involved, shall be paid by the corporation being converted.

8724 Section 238. Section **31A-11-107** is amended to read:

8725 **31A-11-107. Issuance of certificate of authority -- Reinsurance of excess services.**

8726 (1) The commissioner shall issue a certificate applied for under Section 31A-11-106 if
8727 ~~he~~ the commissioner finds that:

8728 (a) the corporation is able to negotiate, execute, and carry out the motor club business
8729 in a sound, reliable, and ongoing manner;

8730 (b) the reinsurance requirements of Subsection (2) are satisfied; and

8731 (c) all other applicable requirements of law are satisfied.

8732 (2) If a motor club provides legal expense service other than that authorized in
8733 Subsection 31A-11-102(1)(b), or other trip reimbursement service than that authorized in
8734 Subsection 31A-11-102(1)(d), or bail service other than that authorized under Section
8735 31A-11-112, it ~~must~~ shall fully reinsure the excess service with an insurer authorized under
8736 Chapter 5, Domestic Stock and Mutual Insurance Corporations, or 14, Foreign Insurers. That
8737 insurer ~~must~~ shall assume direct liability to the insured, and ~~must~~ shall fully comply with

8738 Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance
8739 Intermediaries.

8740 Section 239. Section **31A-15-203** is amended to read:

8741 **31A-15-203. Risk retention groups chartered in this state.**

8742 (1) (a) A risk retention group under this part shall be chartered and licensed to write
8743 only liability insurance pursuant to this part and, except as provided elsewhere in this part,
8744 [~~must~~] shall comply with all of the laws, rules, and requirements that apply to liability insurers
8745 chartered and licensed in this state, and with Section 31A-15-204 to the extent the requirements
8746 are not a limitation on other laws, rules, or requirements of this state.

8747 (b) Notwithstanding any other provision to the contrary, all risk retention groups
8748 chartered in this state shall file an annual statement with the department and the NAIC in a
8749 form prescribed by the commissioner, and completed in diskette form if required by the
8750 commissioner, completed in accordance with the statement instructions and the NAIC
8751 Accounting Practices and Procedures Manual.

8752 (2) Before it may offer insurance in any state, each risk retention group shall also
8753 submit for approval to the commissioner a plan of operation or feasibility study. The risk
8754 retention group shall submit an appropriate revision of the plan or study in the event of any
8755 subsequent material change in any item of the plan or study within 10 days of any such change.
8756 The group may not offer any additional kinds of liability insurance, in this state or in any other
8757 state, until any revision of the plan or study is approved by the commissioner.

8758 (3) (a) At the time of filing its application for charter, the risk retention group shall
8759 provide to the commissioner in summary form the following information:

8760 (i) the identity of the initial members of the group;

8761 (ii) the identity of those individuals who organized the group or who will provide
8762 administrative services or otherwise influence or control the activities of the group;

8763 (iii) the amount and nature of initial capitalization;

8764 (iv) the coverages to be afforded; and

8765 (v) the states in which the group intends to operate.

8766 (b) Upon receipt of this information the commissioner shall forward the information to
8767 the NAIC. Providing notification to the NAIC is in addition to, and may not be sufficient to
8768 satisfy, the requirements of Section 31A-15-204 or any other sections of this part.

8769 Section 240. Section **31A-15-207** is amended to read:

8770 **31A-15-207. Purchasing groups -- Exemption from certain laws.**

8771 A purchasing group and its insurers are subject to all applicable laws of this state,
8772 except that a purchasing group and its insurers are exempt, in regard to liability insurance for
8773 the purchasing group, from any law that would:

8774 (1) prohibit the establishment of a purchasing group;

8775 (2) make it unlawful for an insurer to provide, or offer to provide, to a purchasing
8776 group or its members insurance on a basis providing advantages based on their loss and
8777 expense experience not afforded to other persons with respect to rates, policy forms, coverages,
8778 or other matters;

8779 (3) prohibit a purchasing group or its members from purchasing insurance on a group
8780 basis described in Subsection (2);

8781 (4) prohibit a purchasing group from obtaining insurance on a group basis because the
8782 group has not been in existence for a minimum period of time or because any member has not
8783 belonged to the group for a minimum period of time;

8784 (5) require that a purchasing group [~~must~~] have a minimum number of members,
8785 common ownership or affiliation, or certain legal form;

8786 (6) require that a certain percentage of a purchasing group [~~must~~] obtain insurance on a
8787 group basis;

8788 (7) otherwise discriminate against a purchasing group or any of its members; or

8789 (8) require that any insurance policy issued to a purchasing group or any of its
8790 members be countersigned by an insurance producer residing in this state.

8791 Section 241. Section **31A-15-210** is amended to read:

8792 **31A-15-210. Purchasing group taxation.**

8793 Premium taxes and taxes on premiums paid for coverage of risks resident or located in

8794 this state by a purchasing group or any members of the purchasing groups are imposed and
8795 [~~must~~] shall be paid as follows:

8796 (1) If the insurer is an admitted insurer, taxes are imposed on the insurer at the same
8797 rate and in the same manner and subject to the same procedures, interest, and penalties that
8798 apply to premium taxes and other taxes imposed on other admitted liability insurers relative to
8799 coverage of risks resident or located in this state.

8800 (2) If the insurer is an approved, nonadmitted surplus lines insurer, taxes are imposed
8801 on the licensed producer who effected coverage on risks resident or located in this state at the
8802 same rate and in the same manner and subject to the same procedures, interest, and penalties
8803 that apply to taxes imposed on other licensed producers effecting coverage with approved,
8804 nonadmitted surplus lines insurers on risks resident or located in this state.

8805 Section 242. Section **31A-17-503** is amended to read:

8806 **31A-17-503. Actuarial opinion of reserves.**

8807 (1) This section becomes operative on December 31, 1993.

8808 (2) General: Every life insurance company doing business in this state shall annually
8809 submit the opinion of a qualified actuary as to whether the reserves and related actuarial items
8810 held in support of the policies and contracts specified by the commissioner by rule are
8811 computed appropriately, are based on assumptions which satisfy contractual provisions, are
8812 consistent with prior reported amounts, and comply with applicable laws of this state. The
8813 commissioner by rule shall define the specifics of this opinion and add any other items
8814 considered to be necessary to its scope.

8815 (3) Actuarial analysis of reserves and assets supporting reserves:

8816 (a) Every life insurance company, except as exempted by or pursuant to rule, shall also
8817 annually include in the opinion required by Subsection (2), an opinion of the same qualified
8818 actuary as to whether the reserves and related actuarial items held in support of the policies and
8819 contracts specified by the commissioner by rule, when considered in light of the assets held by
8820 the company with respect to the reserves and related actuarial items, including [~~but not limited~~
8821 ~~to~~] the investment earnings on the assets and the considerations anticipated to be received and

8822 retained under the policies and contracts, make adequate provision for the company's
8823 obligations under the policies and contracts, including [~~but not limited to~~] the benefits under
8824 the expenses associated with the policies and contracts.

8825 (b) The commissioner may provide by rule for a transition period for establishing any
8826 higher reserves which the qualified actuary may consider necessary in order to render the
8827 opinion required by this section.

8828 (4) Requirement for opinion under Subsection (3): Each opinion required by
8829 Subsection (3) shall be governed by the following provisions:

8830 (a) A memorandum, in form and substance acceptable to the commissioner as specified
8831 by rule, shall be prepared to support each actuarial opinion.

8832 (b) If the insurance company fails to provide a supporting memorandum at the request
8833 of the commissioner within a period specified by rule or the commissioner determines that the
8834 supporting memorandum provided by the insurance company fails to meet the standards
8835 prescribed by the rule or is otherwise unacceptable to the commissioner, the commissioner may
8836 engage a qualified actuary at the expense of the company to review the opinion and the basis
8837 for the opinion and prepare such supporting memorandum as is required by the commissioner.

8838 (5) Requirement for all opinions: Every opinion shall be governed by the following
8839 provisions:

8840 (a) The opinion shall be submitted with the annual statement reflecting the valuation of
8841 the reserve liabilities for each year ending on or after December 31, 1993.

8842 (b) The opinion shall apply to all business in force including individual and group
8843 health insurance plans, in form and substance acceptable to the commissioner as specified by
8844 rule.

8845 (c) The opinion shall be based on standards adopted from time to time by the Actuarial
8846 Standards Board and on such additional standards as the commissioner may by rule prescribe.

8847 (d) In the case of an opinion required to be submitted by a foreign or alien company,
8848 the commissioner may accept the opinion filed by that company with the insurance supervisory
8849 official of another state if the commissioner determines that the opinion reasonably meets the

8850 requirements applicable to a company domiciled in this state.

8851 (e) For the purposes of this section, "qualified actuary" means a member in good
8852 standing of the American Academy of Actuaries who meets the requirements set forth by
8853 department rule.

8854 (f) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for
8855 damages to any person, other than the insurance company and the commissioner, for any act,
8856 error, omission, decision, or conduct with respect to the actuary's opinion.

8857 (g) Disciplinary action by the commissioner against the company or the qualified
8858 actuary shall be defined in rules by the commissioner.

8859 (h) Any memorandum in support of the opinion, and any other material provided by the
8860 company to the commissioner in connection therewith, are considered protected records under
8861 Section 63G-2-305 and may not be made public and are not subject to subpoena under
8862 Subsection 63G-2-202(7), other than for the purpose of defending an action seeking damages
8863 from any person by reason of any action required by this section or rules promulgated under
8864 this section. However, the memorandum or other material may otherwise be released by the
8865 commissioner (i) with the written consent of the company or (ii) to the American Academy of
8866 Actuaries upon request stating that the memorandum or other material is required for the
8867 purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the
8868 commissioner for preserving the confidentiality of the memorandum or other material. Once
8869 any portion of the confidential memorandum is cited in its marketing or is cited before any
8870 governmental agency other than the department or is released to the news media, all portions of
8871 the memorandum are no longer confidential.

8872 Section 243. Section **31A-17-506** is amended to read:

8873 **31A-17-506. Computation of minimum standard by calendar year of issue.**

8874 (1) Applicability of Section 31A-17-506: The interest rates used in determining the
8875 minimum standard for the valuation shall be the calendar year statutory valuation interest rates
8876 as defined in this section for:

8877 (a) all life insurance policies issued in a particular calendar year, on or after the

8878 operative date of Subsection 31A-22-408(6)(d);

8879 (b) all individual annuity and pure endowment contracts issued in a particular calendar
8880 year on or after January 1, 1982;

8881 (c) all annuities and pure endowments purchased in a particular calendar year on or
8882 after January 1, 1982, under group annuity and pure endowment contracts; and

8883 (d) the net increase, if any, in a particular calendar year after January 1, 1982, in
8884 amounts held under guaranteed interest contracts.

8885 (2) Calendar year statutory valuation interest rates:

8886 (a) The calendar year statutory valuation interest rates, "I," shall be determined as
8887 follows and the results rounded to the nearer 1/4 of 1%:

8888 (i) for life insurance:

8889 $I = .03 + W(R1 - .03) + (W/2)(R2 - .09)$;

8890 (ii) for single premium immediate annuities and for annuity benefits involving life
8891 contingencies arising from other annuities with cash settlement options and from guaranteed
8892 interest contracts with cash settlement options:

8893 $I = .03 + W(R - .03)$,

8894 where R1 is the lesser of R and .09,

8895 R2 is the greater of R and .09,

8896 R is the reference interest rate defined in Subsection (4), and

8897 W is the weighting factor defined in this section;

8898 (iii) for other annuities with cash settlement options and guaranteed interest contracts
8899 with cash settlement options, valued on an issue year basis, except as stated in Subsection
8900 (2)(a)(ii), the formula for life insurance stated in Subsection (2)(a)(i) shall apply to annuities
8901 and guaranteed interest contracts with guarantee durations in excess of 10 years, and the
8902 formula for single premium immediate annuities stated in Subsection (2)(a)(ii) shall apply to
8903 annuities and guaranteed interest contracts with guarantee duration of 10 years or less;

8904 (iv) for other annuities with no cash settlement options and for guaranteed interest
8905 contracts with no cash settlement options, the formula for single premium immediate annuities

8906 stated in Subsection (2)(a)(ii) shall apply; and

8907 (v) for other annuities with cash settlement options and guaranteed interest contracts
8908 with cash settlement options, valued on a change in fund basis, the formula for single premium
8909 immediate annuities stated in Subsection (2)(a)(ii) shall apply.

8910 (b) However, if the calendar year statutory valuation interest rate for any life insurance
8911 policies issued in any calendar year determined without reference to this sentence differs from
8912 the corresponding actual rate for similar policies issued in the immediately preceding calendar
8913 year by less than [~~1/2~~] one-half of 1% the calendar year statutory valuation interest rate for such
8914 life insurance policies shall be equal to the corresponding actual rate for the immediately
8915 preceding calendar year. For purposes of applying the immediately preceding sentence, the
8916 calendar year statutory valuation interest rate for life insurance policies issued in a calendar
8917 year shall be determined for 1980, using the reference interest rate defined in 1979, and shall be
8918 determined for each subsequent calendar year regardless of when Subsection 31A-22-408(6)(d)
8919 becomes operative.

8920 (3) Weighting factors:

8921 (a) The weighting factors referred to in the formulas stated in Subsection (2) are given
8922 in the following tables:

8923 (i) (A) Weighting factors for life insurance:

8924

8925	Guarantee Duration (Years)	Weighting Factors
8926	10 or less:	.50
8927	More than 10, but less than 20:	.45
8928	More than 20:	.35

8929 (B) For life insurance, the guarantee duration is the maximum number of years the life
8930 insurance can remain in force on a basis guaranteed in the policy or under options to convert to
8931 plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed
8932 in the original policy;

8933 (ii) Weighting factor for single premium immediate annuities and for annuity benefits
 8934 involving life contingencies arising from other annuities with cash settlement options and
 8935 guaranteed interest contracts with cash settlement options: .80

8936 (iii) Weighting factors for other annuities and for guaranteed interest contracts, except
 8937 as stated in Subsection (3)(a)(ii), shall be as specified in the tables in Subsections (3)(a)(iii)(A),
 8938 (B), and (C), according to the rules and definitions in Subsection (3)(b):

8939 (A) For annuities and guaranteed interest contracts valued on an issue year basis:

8940	Guarantee Duration (Years)	Weighting Factors for Plan Type		
8941		A	B	C
8942	5 or less:	.80	.60	.50
8943	More than 5, but not more than 10:	.75	.60	.50
8944	More than 10, but not more than 20:	.65	.50	.45
8945	More than 20:	.45	.35	.35
8946	Plan Type			
8947		A	B	C

8948 (B) For annuities and guaranteed interest
 8949 contracts valued on a change in fund basis, the
 8950 factors shown in Subsection (3)(a)(iii)(A)
 8951 increased by:

8952	.15	.25	.05
8953	Plan Type		
8954	A	B	C

8955 (C) For annuities and guaranteed interest
 8956 contracts valued on an issue year basis, other than
 8957 those with no cash settlement options, which do
 8958 not guarantee interest on considerations received

8959 more than one year after issue or purchase and for
8960 annuities and guaranteed interest contracts valued
8961 on a change in fund basis which do not guarantee
8962 interest rates on considerations received more
8963 than 12 months beyond the valuation date, the
8964 factors shown in Subsection (3)(a)(iii)(A) or
8965 derived in Subsection (3)(a)(iii)(B) increased by: .05 .05 .05.

8966 (b) (i) For other annuities with cash settlement options and guaranteed interest
8967 contracts with cash settlement options, the guarantee duration is the number of years for which
8968 the contract guarantees interest rates in excess of the calendar year statutory valuation interest
8969 rate for life insurance policies with guarantee duration in excess of 20 years. For other annuities
8970 with no cash settlement options and for guaranteed interest contracts with no cash settlement
8971 options, the guaranteed duration is the number of years from the date of issue or date of
8972 purchase to the date annuity benefits are scheduled to commence.

8973 (ii) Plan type as used in the above tables is defined as follows:

8974 (A) Plan Type A: At any time policyholder may withdraw funds only:

8975 (I) with an adjustment to reflect changes in interest rates or asset values since receipt of
8976 the funds by the insurance company;

8977 (II) without such adjustment but installments over five years or more;

8978 (III) as an immediate life annuity; or

8979 (IV) no withdrawal permitted.

8980 (B) (I) Plan Type B: Before expiration of the interest rate guarantee, policyholder
8981 withdraw funds only:

8982 (Aa) with an adjustment to reflect changes in interest rates or asset values since receipt
8983 of the funds by the insurance company;

8984 (Bb) without such adjustment but in installments over five years or more; or

8985 (Cc) no withdrawal permitted.

8986 (II) At the end of interest rate guarantee, funds may be withdrawn without such

8987 adjustment in a single sum or installments over less than five years.

8988 (C) Plan Type C: Policyholder may withdraw funds before expiration of interest rate
8989 guarantee in a single sum or installments over less than five years either:

8990 (I) without adjustment to reflect changes in interest rates or asset values since receipt of
8991 the funds by the insurance company; or

8992 (II) subject only to a fixed surrender charge stipulated in the contract as a percentage of
8993 the fund.

8994 (iii) A company may elect to value guaranteed interest contracts with cash settlement
8995 options and annuities with cash settlement options on either an issue year basis or on a change
8996 in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities
8997 with no cash settlement options [~~must~~] shall be valued on an issue year basis. As used in this
8998 section, an issue year basis of valuation refers to a valuation basis under which the interest rate
8999 used to determine the minimum valuation standard for the entire duration of the annuity or
9000 guaranteed interest contract is the calendar year valuation interest rate for the year of issue or
9001 year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of
9002 valuation refers to a valuation basis under which the interest rate used to determine the
9003 minimum valuation standard applicable to each change in the fund held under the annuity or
9004 guaranteed interest contract is the calendar year valuation interest rate for the year of the
9005 change in the fund.

9006 (4) Reference interest rate: "Reference interest rate" referred to in Subsection (2)(a) is
9007 defined as follows:

9008 (a) For all life insurance, the lesser of the average over a period of 36 months and the
9009 average over a period of 12 months, ending on June 30 of the calendar year next preceding the
9010 year of issue, of the Monthly Average of the composite Yield on Seasoned Corporate Bonds, as
9011 published by Moody's Investors Service, Inc.

9012 (b) For single premium immediate annuities and for annuity benefits involving life
9013 contingencies arising from other annuities with cash settlement options and guaranteed interest
9014 contracts with cash settlement options, the average over a period of 12 months, ending on June

9015 30 of the calendar year of issue or year of purchase, of the Monthly Average of the Composite
9016 Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

9017 (c) For other annuities with cash settlement options and guaranteed interest contracts
9018 with cash settlement options, valued on a year of issue basis, except as stated in Subsection
9019 (4)(b), with guarantee duration in excess of 10 years, the lesser of the average over a period of
9020 36 months and the average over a period of 12 months, ending on June 30 of the calendar year
9021 of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate
9022 Bonds, as published by Moody's Investors Service, Inc.

9023 (d) For other annuities with cash settlement options and guaranteed interest contracts
9024 with cash settlement options, valued on a year of issue basis, except as stated in Subsection
9025 (4)(b), with guarantee duration of 10 years or less, the average over a period of 12 months,
9026 ending on June 30 of the calendar year of issue or purchase, of the Monthly Average of the
9027 Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service,
9028 Inc.

9029 (e) For other annuities with no cash settlement options and for guaranteed interest
9030 contracts with no cash settlement options, the average over a period of 12 months, ending on
9031 June 30 of the calendar year of issue or purchase, of the Monthly Average of the Composite
9032 Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

9033 (f) For other annuities with cash settlement options and guaranteed interest contracts
9034 with cash settlement options, valued on a change in fund basis, except as stated in Subsection
9035 (4)(b), the average over a period of 12 months, ending on June 30 of the calendar year of the
9036 change in the fund, of the Monthly Average of the Composite Yield on Seasoned Corporate
9037 Bonds, as published by Moody's Investors Service, Inc.

9038 (5) Alternative method for determining reference interest rates: In the event that the
9039 Monthly Average of the Composite Yield on Seasoned Corporate Bonds is no longer published
9040 by Moody's Investors Service, Inc. or in the event that the National Association of Insurance
9041 Commissioners determines that the Monthly Average of the Composite Yield on Seasoned
9042 Corporate Bonds as published by Moody's Investors Service, Inc. is no longer appropriate for

9043 the determination of the reference interest rate, then an alternative method for determination of
9044 the reference interest rate, which is adopted by the National Association of Insurance
9045 Commissioners and approved by rule promulgated by the commissioner, may be substituted.

9046 Section 244. Section **31A-17-507** is amended to read:

9047 **31A-17-507. Reserve valuation method -- Life insurance and endowment benefits.**

9048 (1) Except as otherwise provided in Sections 31A-17-508, 31A-17-511, and
9049 31A-17-513, reserves according to the commissioner's reserve valuation method, for the life
9050 insurance and endowment benefits of policies providing for a uniform amount of insurance and
9051 requiring the payment of uniform premiums shall be the excess, if any, of the present value, at
9052 the date of valuation, of such future guaranteed benefits provided for by such policies, over the
9053 then present value of any future modified net premiums therefor. The modified net premiums
9054 for any such policy shall be such uniform percentage of the respective contract premiums for
9055 such benefits that the present value, at the date of issue of the policy, of all such modified net
9056 premiums shall be equal to the sum of the then present value of such benefits provided for by
9057 the policy and the excess of Subsection (1)(a) over Subsection (1)(b), as follows:

9058 (a) A net level annual premium equal to the present value, at the date of issue, of such
9059 benefits provided for after the first policy year, divided by the present value, at the date of
9060 issue, of an annuity of one per annum payable on the first and each subsequent anniversary of
9061 such policy on which a premium falls due; provided, however, that such net level annual
9062 premium [~~shall not~~] may not exceed the net level annual premium on the 19 year premium
9063 whole life plan for insurance of the same amount at an age one year higher than the age at issue
9064 of such policy.

9065 (b) A net one year term premium for such benefits provided for in the first policy year.

9066 (2) Provided that for any life insurance policy issued on or after January 1, 1997, for
9067 which the contract premium in the first policy year exceeds that of the second year and for
9068 which no comparable additional benefit is provided in the first year for such excess and which
9069 provides an endowment benefit or a cash surrender value or a combination thereof in an
9070 amount greater than such excess premium, the reserve according to the commissioner's reserve

9071 valuation method as of any policy anniversary occurring on or before the assumed ending date
9072 defined herein as the first policy anniversary on which the sum of any endowment benefit and
9073 any cash surrender value then available is greater than such excess premium shall, except as
9074 otherwise provided in Section 31A-17-511, be the greater of the reserve as of such policy
9075 anniversary calculated as described in Subsection (1) and the reserve as of such policy
9076 anniversary calculated as described in that subsection, but with:

9077 (a) the value defined in Subsection (1)(a) being reduced by 15% of the amount of such
9078 excess first year premium;

9079 (b) all present values of benefits and premiums being determined without reference to
9080 premiums or benefits provided for by the policy after the assumed ending date;

9081 (c) the policy being assumed to mature on such date as an endowment; and

9082 (d) the cash surrender value provided on such date being considered as an endowment
9083 benefit. In making the above comparison the mortality and interest bases stated in Sections
9084 31A-17-504 and 31A-17-506 shall be used.

9085 (3) Reserves according to the commissioner's reserve valuation method for:

9086 (a) life insurance policies providing for a varying amount of insurance or requiring the
9087 payment of varying premiums;

9088 (b) group annuity and pure endowment contracts purchased under a retirement plan or
9089 plan of deferred compensation, established or maintained by an employer, including a
9090 partnership or sole proprietorship, or by an employee organization, or by both, other than a plan
9091 providing individual retirement accounts or individual retirement annuities under Section 408,
9092 Internal Revenue Code;

9093 (c) accident and health and accidental death benefits in all policies and contracts; and

9094 (d) all other benefits, except life insurance and endowment benefits in life insurance
9095 policies and benefits provided by all other annuity and pure endowment contracts, shall be
9096 calculated by a method consistent with the principles of Subsections (1) and (2).

9097 Section 245. Section **31A-17-510** is amended to read:

9098 **31A-17-510. Optional reserve calculation.**

9099 (1) Reserves for all policies and contracts issued prior to January 1, 1994, may be
9100 calculated, at the option of the company, according to any standards which produce greater
9101 aggregate reserves for all such policies and contracts than the minimum reserves required by
9102 the laws in effect immediately prior to that date. Reserves for any category of policies,
9103 contracts, or benefits as established by the commissioner, issued on or after January 1, 1994,
9104 may be calculated, at the option of the company, according to any standards which produce
9105 greater aggregate reserves for such category than those calculated according to the minimum
9106 standard herein provided, but the rate or rates of interest used for policies and contracts, other
9107 than annuity and pure endowment contracts, [~~shall not~~] may not be higher than the
9108 corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided
9109 therein.

9110 (2) Any such company which at any time shall have adopted any standard of valuation
9111 producing greater aggregate reserves than those calculated according to the minimum standard
9112 herein provided may, with the approval of the commissioner, adopt any lower standard of
9113 valuation, but not lower than the minimum herein provided; provided, however, that, for the
9114 purposes of this section, the holding of additional reserves previously determined by a qualified
9115 actuary to be necessary to render the opinion required by Section 31A-17-502 [~~shall not~~] may
9116 not be considered to be the adoption of a higher standard of valuation.

9117 Section 246. Section **31A-17-512** is amended to read:

9118 **31A-17-512. Reserve calculation -- Indeterminate premium plans.**

9119 (1) In the case of any plan of life insurance which provides for future premium
9120 determination, the amounts of which are to be determined by the insurance company based on
9121 then estimates of future experience, or in the case of any plan of life insurance or annuity which
9122 is of such a nature that the minimum reserves cannot be determined by the methods described
9123 in Sections 31A-17-507, 31A-17-508, and 31A-17-511, the reserves which are held under any
9124 such plan [~~must~~] shall:

9125 (a) be appropriate in relation to the benefits and the pattern of premiums for that plan;
9126 and

9127 (b) be computed by a method which is consistent with the principles of this part, as
9128 determined by rules promulgated by the commissioner.

9129 Section 247. Section **31A-18-106** is amended to read:

9130 **31A-18-106. Investment limitations generally applicable.**

9131 (1) The investment limitations listed in Subsections (1)(a) through (m) apply to an
9132 insurer.

9133 (a) For an investment authorized under Subsection 31A-18-105(1) that is not
9134 amortizable under applicable valuation rules, the limitation is 5% of assets.

9135 (b) For an investment authorized under Subsection 31A-18-105(2), the limitation is
9136 10% of assets.

9137 (c) For an investment authorized under Subsection 31A-18-105(3), the limitation is
9138 50% of assets.

9139 (d) For an investment authorized under Subsection 31A-18-105(4) that is considered to
9140 be an investment in a kind of security or evidence of debt pledged, the investment is subject to
9141 the class limitations applicable to the pledged security or evidence of debt.

9142 (e) For an investment authorized under Subsection 31A-18-105(5), the limitation is
9143 35% of assets.

9144 (f) For an investment authorized under Subsection 31A-18-105(6), the limitation is:

9145 (i) 20% of assets for a life insurer; and

9146 (ii) 50% of assets for a nonlife insurer.

9147 (g) For an investment authorized under Subsection 31A-18-105(7), the limitation is:

9148 (i) 5% of assets; or

9149 (ii) for an insurer organized and operating under Chapter 7, Nonprofit Health Service
9150 Insurance Corporations, 25% of assets.

9151 (h) For an investment authorized under Subsection 31A-18-105(8), the limitation is:

9152 (i) 20% of assets, inclusive of home office and branch office properties; or

9153 (ii) for an insurer organized and operating under Chapter 7, Nonprofit Health Service
9154 Insurance Corporations, 35% of assets, inclusive of home office and branch office properties.

9155 (i) For an investment authorized under Subsection 31A-18-105(10), the limitation is
9156 1% of assets.

9157 (j) For an investment authorized under Subsection 31A-18-105(11), the limitation is
9158 the greater of that permitted or required for compliance with Section 31A-18-103.

9159 (k) Except as provided in Subsection (1)(l), an insurer's investments in subsidiaries is
9160 limited to 50% of the insurer's total adjusted capital. An investment by an insurer in a
9161 subsidiary includes:

9162 (i) a loan, advance, or contribution to a subsidiary by an insurer; and

9163 (ii) an insurer holding a bond, note, or stock of a subsidiary.

9164 (l) Under a plan of merger approved by the commissioner, the commissioner may
9165 allow an insurer any portion of its assets invested in an insurance subsidiary. The approved
9166 plan of merger shall require the acquiring insurer to conform its accounting for investments in
9167 subsidiaries to Subsection (1)(k) within a specified period that may not exceed five years.

9168 (m) For an investment authorized under Subsections 31A-18-105(13) and (14), the
9169 aggregate limitation is 10% of assets.

9170 (2) The limits on investments listed in Subsections (2)(a) through (e) apply to each
9171 insurer.

9172 (a) (i) For all investments in a single entity, its affiliates, and subsidiaries, the
9173 limitation is 10% of assets, except that the limit imposed by this Subsection (2)(a) does not
9174 apply to:

9175 (A) an investment in the government of the United States or its agencies;

9176 (B) an investment guaranteed by the government of the United States;

9177 (C) an investment in the insurer's insurance subsidiaries; or

9178 (D) a cash deposit that:

9179 (I) is cash;

9180 (II) is held by a depository institution, as defined in Section 7-1-103, that:

9181 (Aa) is solvent;

9182 (Bb) is federally insured; and

9183 (Cc) subject to Subsection (2)(a)(ii), has a Tier 1 leverage ratio of at least 5%, if the
9184 depository institution is a bank as defined in Section 7-1-103, or a ratio of Tier 1 capital to total
9185 assets of at least 5%, if the depository institution is not a bank; and

9186 (III) does not exceed the greater of:

9187 (Aa) .4 times the Tier 1 capital of the depository institution; or

9188 (Bb) the amount insured by a federal deposit insurance agency.

9189 (ii) The commissioner by rule made in accordance with Title 63G, Chapter 3, Utah
9190 Administrative Rulemaking Act, shall:

9191 (A) define "Tier 1 leverage ratio";

9192 (B) define "Tier 1 capital"; and

9193 (C) proscribe the method to calculate Tier 1 capital.

9194 (b) An investment authorized by Subsection 31A-18-105(3) shall comply with the
9195 requirements listed in this Subsection (2)(b).

9196 (i) (A) Except as provided in this Subsection (2)(b)(i), the amount of a loan secured by
9197 a mortgage or deed of trust may not exceed 80% of the value of the real estate interest
9198 mortgaged, unless the excess over 80%:

9199 (I) is insured or guaranteed by:

9200 (Aa) the United States;

9201 (Bb) a state of the United States;

9202 (Cc) an instrumentality, agency, or political subdivision of the United States or a state;

9203 or

9204 (Dd) a combination of entities described in this Subsection (2)(b)(i)(A)(I); or

9205 (II) is insured by an insurer approved by the commissioner and qualified to insure that
9206 type of risk in this state.

9207 (B) A mortgage loan representing a purchase money mortgage acquired from the sale
9208 of real estate is not subject to the limitation of Subsection (2)(b)(i)(A).

9209 (ii) Subject to Subsection (2)(b)(v), a loan or evidence of debt secured by real estate
9210 may only be secured by:

- 9211 (A) unencumbered real property that is located in the United States; or
- 9212 (B) an unencumbered interest in real property that is located in the United States.
- 9213 (iii) Evidence of debt secured by a first mortgage or deed of trust upon a leasehold
- 9214 estate shall require that:
- 9215 (A) the leasehold estate exceed the maturity of the loan by not less than 10% of the
- 9216 lease term;
- 9217 (B) the real estate not be otherwise encumbered; and
- 9218 (C) the mortgagee is entitled to be subrogated to all rights under the leasehold.
- 9219 (iv) Subject to Subsection (2)(b)(v):
- 9220 (A) participation in a mortgage loan [~~must~~] shall:
- 9221 (I) be senior to other participants; and
- 9222 (II) give the holder substantially the rights of a first mortgagee; or
- 9223 (B) the interest of the insurer in the evidence of indebtedness [~~must~~] shall be of equal
- 9224 priority, to the extent of the interest, with other interests in the real property.
- 9225 (v) A fee simple or leasehold real estate or an interest in a fee simple or leasehold is
- 9226 not considered to be encumbered within the meaning of this chapter by reason of a prior
- 9227 mortgage or trust deed held or assumed by the insurer as a lien on the property, if:
- 9228 (A) the total of the mortgages or trust deeds held does not exceed 70% of the value of
- 9229 the property; and
- 9230 (B) the security created by the prior mortgage or trust deed is a first lien.
- 9231 (c) A loan permitted under Subsection 31A-18-105(4) may not exceed 75% of the
- 9232 market value of the collateral pledged, except that a loan upon the pledge of a United States
- 9233 government bond may be equal to the market value of the pledge.
- 9234 (d) For an equity interest in a single real estate property authorized under Subsection
- 9235 31A-18-105(8), the limitation is 5% of assets.
- 9236 (e) An investment authorized under Subsection 31A-18-105(10) shall be in connection
- 9237 with a potential change in the value of specifically identified:
- 9238 (i) asset that the insurer owns; or

- 9239 (ii) liability that the insurer has incurred.
- 9240 (3) The restrictions on investments listed in Subsections (3)(a) and (b) apply to each
9241 insurer.
- 9242 (a) Except for a financial futures contract and real property acquired and occupied by
9243 the insurer for home and branch office purposes, a security or other investment is not eligible
9244 for purchase or acquisition under this chapter unless it is:
- 9245 (i) interest bearing or income paying; and
9246 (ii) not then in default.
- 9247 (b) A security is not eligible for purchase at a price above its market value.
- 9248 (4) Computation of percentage limitations under this section:
- 9249 (a) is based only upon the insurer's total qualified invested assets described in Section
9250 31A-18-105 and this section, as these assets are valued under Section 31A-17-401; and
9251 (b) excludes investments permitted under Section 31A-18-108 and Subsections
9252 31A-17-203(2) and (3).
- 9253 (5) An insurer may not make an investment that, because the investment does not
9254 conform to Section 31A-18-105 and this section, has the result of rendering the insurer, under
9255 Chapter 17, Part 6, Risk-Based Capital, subject to proceedings under Chapter 27a, Insurer
9256 Receivership Act.
- 9257 (6) A pattern of persistent deviation from the investment diversification standards set
9258 forth in Section 31A-18-105 and this section may be grounds for a finding that the one or more
9259 persons with authority to make the insurer's investment decisions are "incompetent" as used in
9260 Subsection 31A-5-410(3).
- 9261 (7) Section 77r-1 of the Secondary Mortgage Market Enhancement Act of 1984 does
9262 not apply to the purchase, holding, investment, or valuation limitations of assets of insurance
9263 companies subject to this chapter.
- 9264 Section 248. Section **31A-19a-206** is amended to read:
- 9265 **31A-19a-206. Disapproval of rates.**
- 9266 (1) (a) Except for a conflict with the requirements of Section 31A-19a-201 or

9267 31A-19a-202, the commissioner may disapprove a rate at any time that the rate directly
9268 conflicts with:

9269 (i) this title; or
9270 (ii) any rule made under this title.

9271 (b) The disapproval under Subsection (1)(a) shall:

9272 (i) be in writing;
9273 (ii) specify the statute or rule with which the filing conflicts; and
9274 (iii) state when the rule is no longer effective.

9275 (c) (i) If an insurer's or rate service organization's rate filing is disapproved under
9276 Subsection (1)(a), the insurer or rate service organization may request a hearing on the
9277 disapproval within 30 calendar days of the date on which the order described in Subsection
9278 (1)(a) is issued.

9279 (ii) If a hearing is requested under Subsection (1)(c)(i), the commissioner shall
9280 schedule the hearing within 30 calendar days of the date on which the commissioner receives
9281 the request for a hearing.

9282 (iii) After the hearing, the commissioner shall issue an order:

9283 (A) approving the rate filing; or
9284 (B) disapproving the rate filing.

9285 (2) (a) If within 90 calendar days of the date on which a rate filing is filed the
9286 commissioner finds that the rate filing does not meet the requirements of Section 31A-19a-201
9287 or 31A-19a-202, the commissioner shall send a written order disapproving the rate filing to the
9288 insurer or rate organization that made the filing.

9289 (b) The order described in Subsection (2)(a) shall specify how the rate filing fails to
9290 meet the requirements of Section 31A-19a-201 or 31A-19a-202.

9291 (c) (i) If an insurer's or rate service organization's rate filing is disapproved under
9292 Subsection (2)(a), the insurer or rate service organization may request a hearing on the
9293 disapproval within 30 calendar days of the date on which the order described in Subsection
9294 (2)(a) is issued.

9295 (ii) If a hearing is requested under Subsection (2)(c)(i), the commissioner shall
9296 schedule the hearing within 30 calendar days of the date on which the commissioner receives
9297 the request for a hearing.

9298 (iii) After the hearing, the commissioner shall issue an order:

9299 (A) approving the rate filing; or

9300 (B) (I) disapproving the rate filing; and

9301 (II) stating when, within a reasonable time from the date on which the order is issued,
9302 the rate is no longer effective.

9303 (d) In a hearing held under this Subsection (2), the insurer or rate service organization
9304 bears the burden of proving compliance with the requirements of Section 31A-19a-201 or
9305 31A-19a-202.

9306 (3) (a) If the order described in Subsection (2)(a) is issued after the implementation of
9307 the rate filing, the commissioner may order that use of the rate filing be discontinued for any
9308 policy issued or renewed on or after a date not less than 30 calendar days from the date the
9309 order was issued.

9310 (b) If an insurer or rate service organization requests a hearing under Subsection (2),
9311 the order to discontinue use of the rate filing is stayed:

9312 (i) beginning on the date the insurer or rate service organization requests a hearing; and

9313 (ii) ending on the date the commissioner issues an order after the hearing that addresses
9314 the stay.

9315 (4) If the order described in Subsection (2)(a) is issued before the implementation of
9316 the rate filing:

9317 (a) an insurer or rate service organization may not implement the rate filing; and

9318 (b) the rates of the insurer or rate service organization at the time of disapproval
9319 continue to be in effect.

9320 (5) (a) If after a hearing the commissioner finds that a rate that has been previously
9321 filed and has been in effect for more than 90 calendar days no longer meets the requirements of
9322 Section 31A-19a-201 or 31A-19a-202, the commissioner may order that use of the rate by any

9323 insurer or rate service organization be discontinued.

9324 (b) The commissioner shall give any insurer that will be affected by an order that may
9325 be issued under Subsection (5)(a) notice of the hearing at least 10 business days prior to the
9326 hearing.

9327 (c) The order issued under Subsection (5)(a) shall:

9328 (i) be in writing;

9329 (ii) state the grounds for the order; and

9330 (iii) state when, within a reasonable time from the date on which the order is issued,
9331 the rate is no longer effective.

9332 (d) The order issued under Subsection (5)(a) [~~shall not~~] may not affect any contract or
9333 policy made or issued prior to the expiration of the period set forth in the order.

9334 (e) The order issued under Subsection (5)(a) may include a provision for a premium
9335 adjustment for contracts or policies made or issued after the effective date of the order.

9336 (6) (a) When an insurer has no legally effective rates as a result of the commissioner's
9337 disapproval of rates or other act, the commissioner shall, on the insurer's request, specify
9338 interim rates for the insurer.

9339 (b) An interim rate described in Subsection (6)(a):

9340 (i) shall be high enough to protect the interests of all parties; and

9341 (ii) may, when necessary to protect the policyholders, order that a specified portion of
9342 the premiums be placed in an escrow account approved by the commissioner.

9343 (c) When the new rates become effective, the commissioner shall order the escrowed
9344 funds or any overcharge in the interim rates to be distributed appropriately, except that minimal
9345 refunds to policyholders need not be distributed.

9346 Section 249. Section **31A-19a-208** is amended to read:

9347 **31A-19a-208. Special restrictions on individual insurers.**

9348 (1) The commissioner may require by order that a particular insurer file any or all of its
9349 rates and supplementary rate information 30 calendar days prior to their effective date, if the
9350 commissioner finds, after a hearing, that to protect the interests of the insurer's insureds and the

9351 public in Utah, the commissioner [~~must~~] shall exercise closer supervision of the insurer's rates,
9352 because of the insurer's financial condition or rating practices.

9353 (2) The commissioner may extend the waiting period described in Subsection (1) for
9354 any filing for not to exceed 30 additional calendar days, by written notice to the insurer before
9355 the first 30-day period expires.

9356 (3) A filing that has not been disapproved before the expiration of the waiting period is
9357 considered to meet the requirements of this chapter, subject to the possibility of subsequent
9358 disapproval under Section 31A-19a-206.

9359 Section 250. Section **31A-19a-309** is amended to read:

9360 **31A-19a-309. Recording and reporting of experience.**

9361 (1) (a) The commissioner may adopt rules for the development of statistical plans, for
9362 use by all insurers in recording and reporting their loss and expense experience, in order that
9363 the experience of those insurers may be made available to the commissioner.

9364 (b) The rules provided for in Subsection (1) may include:

9365 (i) the data that [~~must~~] shall be reported by an insurer;

9366 (ii) definitions of data elements;

9367 (iii) the timing and frequency of data reporting by an insurer;

9368 (iv) data quality standards;

9369 (v) data edit and audit requirements;

9370 (vi) data retention requirements;

9371 (vii) reports to be generated; and

9372 (viii) the timing of reports to be generated.

9373 (c) Except for workers' compensation insurance under Section 31A-19a-404, an insurer
9374 may not be required to record or report its experience on a classification basis that is
9375 inconsistent with its own rating system.

9376 (2) (a) The commissioner may designate one or more rate service organizations to
9377 assist the commissioner in gathering that experience and making compilations of the
9378 experience.

9379 (b) The compilations developed under Subsection (2)(a) shall be made available to the
9380 public.

9381 (3) The commissioner may make rules and plans for the interchange of data necessary
9382 for the application of rating plans.

9383 (4) To further uniform administration of rate regulatory laws, the commissioner and
9384 every insurer and rate service organization may:

9385 (a) exchange information and experience data with insurance supervisory officials,
9386 insurers, and rate service organizations in other states; and

9387 (b) consult with the persons described in Subsection (4)(a) with respect to the
9388 application of rating systems and the reporting of statistical data.

9389 Section 251. Section **31A-21-101** is amended to read:

9390 **31A-21-101. Scope of Chapters 21 and 22.**

9391 (1) Except as provided in Subsections (2) through (6), this chapter and Chapter 22,
9392 Contracts in Specific Lines, apply to all insurance policies, applications, and certificates:

9393 (a) delivered or issued for delivery in this state;

9394 (b) on property ordinarily located in this state;

9395 (c) on persons residing in this state when the policy is issued; or

9396 (d) on business operations in this state.

9397 (2) This chapter and Chapter 22 do not apply to:

9398 (a) an exemption provided in Section 31A-1-103;

9399 (b) an insurance policy procured under Sections 31A-15-103 and 31A-15-104;

9400 (c) an insurance policy on business operations in this state:

9401 (i) if:

9402 (A) the contract is negotiated primarily outside this state; and

9403 (B) the operations in this state are incidental or subordinate to operations outside this
9404 state; and

9405 (ii) except that insurance required by a Utah statute [~~must~~] shall conform to the
9406 statutory requirements; or

- 9407 (d) other exemptions provided in this title.
- 9408 (3) (a) Sections 31A-21-102, 31A-21-103, 31A-21-104, Subsections 31A-21-107(1)
9409 and (3), and Sections 31A-21-306, 31A-21-308, 31A-21-312, and 31A-21-314 apply to ocean
9410 marine and inland marine insurance.
- 9411 (b) Section 31A-21-201 applies to inland marine insurance that is written according to
9412 manual rules or rating plans.
- 9413 (4) A group or blanket policy is subject to this chapter and Chapter 22, except:
- 9414 (a) a group or blanket policy outside the scope of this title under Subsection
9415 31A-1-103(3)(h); and
- 9416 (b) other exemptions provided under Subsection (5).
- 9417 (5) The commissioner may by rule exempt any class of insurance contract or class of
9418 insurer from any or all of the provisions of this chapter and Chapter 22 if the interests of the
9419 Utah insureds, creditors, or the public would not be harmed by the exemption.
- 9420 (6) Workers' compensation insurance, including that written by the Workers'
9421 Compensation Fund created under Chapter 33, Workers' Compensation Fund, is subject to this
9422 chapter and Chapter 22.
- 9423 (7) Unless clearly inapplicable, any provision of this chapter or Chapter 22 applicable
9424 to either a policy or a contract is applicable to both.
- 9425 Section 252. Section **31A-21-312** is amended to read:
- 9426 **31A-21-312. Notice and proof of loss.**
- 9427 (1) Every insurance policy shall provide that:
- 9428 (a) when notice of loss is required separately from proof of loss, notice given by or on
9429 behalf of the insured to any authorized agent of the insurer within this state, with particulars
9430 sufficient to identify the policy, is notice to the insurer; and
- 9431 (b) failure to give any notice or file any proof of loss required by the policy within the
9432 time specified in the policy does not invalidate a claim made by the insured, if the insured
9433 shows that it was not reasonably possible to give the notice or file the proof of loss within the
9434 prescribed time and that notice was given or proof of loss filed as soon as reasonably possible.

9435 (2) Failure to give notice or file proof of loss as required by Subsection (1)(b) does not
9436 bar recovery under the policy if the insurer fails to show it was prejudiced by the failure. This
9437 subsection may not be construed to extend the statute of limitations applicable under Section
9438 31A-21-313.

9439 (3) The insurer shall, on request, promptly furnish an insured any forms or instructions
9440 needed to make a proof of loss.

9441 (4) As an alternative to giving notice directly under Subsection (1)(a), it is a sufficient
9442 service of notice or of proof of loss if a first class postage prepaid envelope addressed to the
9443 insurer and containing the proper notice or proof of loss is deposited in any United States post
9444 office within the time prescribed.

9445 (5) The commissioner shall adopt rules dealing with notice of loss and proof of loss
9446 time limitations under insurance policies. Under Section 31A-21-202, the commissioner's
9447 express approval [~~must~~] shall be received before any contract clause requiring notice of loss or
9448 proof of loss in a manner inconsistent with the rule may be used in an insurance contract.

9449 (6) The acknowledgment by the insurer of the receipt of notice, the furnishing of forms
9450 for filing proofs of loss, the acceptance of those proofs, or the investigation of any claim are
9451 not alone sufficient to waive any of the rights of the insurer in defense of any claim arising
9452 under the insurance policy.

9453 Section 253. Section **31A-21-313** is amended to read:

9454 **31A-21-313. Limitation of actions.**

9455 (1) An action on a written policy or contract of first party insurance [~~must~~] shall be
9456 commenced within three years after the inception of the loss.

9457 (2) Except as provided in Subsection (1) or elsewhere in this title, the law applicable to
9458 limitation of actions in Title 78B, Chapter 2, Statutes of Limitations, applies to actions on
9459 insurance policies.

9460 (3) An insurance policy may not:

9461 (a) limit the time for beginning an action on the policy to a time less than that
9462 authorized by statute;

9463 (b) prescribe in what court an action may be brought on the policy; or
9464 (c) provide that no action may be brought, subject to permissible arbitration provisions
9465 in contracts.

9466 (4) Unless by verified complaint it is alleged that prejudice to the complainant will
9467 arise from a delay in bringing suit against an insurer, which prejudice is other than the delay
9468 itself, no action may be brought against an insurer on an insurance policy to compel payment
9469 under the policy until the earlier of:

- 9470 (a) 60 days after proof of loss has been furnished as required under the policy;
- 9471 (b) waiver by the insurer of proof of loss; or
- 9472 (c) the insurer's denial of full payment.

9473 (5) The period of limitation is tolled during the period in which the parties conduct an
9474 appraisal or arbitration procedure prescribed by the insurance policy, by law, or as agreed to by
9475 the parties.

9476 Section 254. Section **31A-21-403** is amended to read:

9477 **31A-21-403. Orders terminating effectiveness of policies.**

9478 Upon the commissioner's order, no mass marketed life or accident and health insurance
9479 issued by an insurer may continue to be effected on persons in this state. The commissioner
9480 may issue an order under this section only if [~~he~~] the commissioner finds, after a hearing, that
9481 the total charges for the insurance to the persons insured are unreasonable in relation to the
9482 benefits provided. The commissioner's findings under this section [~~must~~] shall be in writing.
9483 Orders under this section may direct the insurer to cease effecting the insurance until the total
9484 charges for the insurance are found by the commissioner to be reasonable in relation to the
9485 benefits provided.

9486 Section 255. Section **31A-22-305** is amended to read:

9487 **31A-22-305. Uninsured motorist coverage.**

9488 (1) As used in this section, "covered persons" includes:

- 9489 (a) the named insured;
- 9490 (b) persons related to the named insured by blood, marriage, adoption, or guardianship,

9491 who are residents of the named insured's household, including those who usually make their
9492 home in the same household but temporarily live elsewhere;

9493 (c) any person occupying or using a motor vehicle:

9494 (i) referred to in the policy; or

9495 (ii) owned by a self-insured; and

9496 (d) any person who is entitled to recover damages against the owner or operator of the
9497 uninsured or underinsured motor vehicle because of bodily injury to or death of persons under
9498 Subsection (1)(a), (b), or (c).

9499 (2) As used in this section, "uninsured motor vehicle" includes:

9500 (a) (i) a motor vehicle, the operation, maintenance, or use of which is not covered
9501 under a liability policy at the time of an injury-causing occurrence; or

9502 (ii) (A) a motor vehicle covered with lower liability limits than required by Section
9503 31A-22-304; and

9504 (B) the motor vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of
9505 the deficiency;

9506 (b) an unidentified motor vehicle that left the scene of an accident proximately caused
9507 by the motor vehicle operator;

9508 (c) a motor vehicle covered by a liability policy, but coverage for an accident is
9509 disputed by the liability insurer for more than 60 days or continues to be disputed for more than
9510 60 days; or

9511 (d) (i) an insured motor vehicle if, before or after the accident, the liability insurer of
9512 the motor vehicle is declared insolvent by a court of competent jurisdiction; and

9513 (ii) the motor vehicle described in Subsection (2)(d)(i) is uninsured only to the extent
9514 that the claim against the insolvent insurer is not paid by a guaranty association or fund.

9515 (3) (a) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides
9516 coverage for covered persons who are legally entitled to recover damages from owners or
9517 operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death.

9518 (b) For new policies written on or after January 1, 2001, the limits of uninsured

9519 motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle
9520 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
9521 under the insured's motor vehicle policy, unless the insured purchases coverage in a lesser
9522 amount by signing an acknowledgment form that:

- 9523 (i) is filed with the department;
- 9524 (ii) is provided by the insurer;
- 9525 (iii) waives the higher coverage;
- 9526 (iv) reasonably explains the purpose of uninsured motorist coverage; and
- 9527 (v) discloses the additional premiums required to purchase uninsured motorist
9528 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability
9529 coverage or the maximum uninsured motorist coverage limits available by the insurer under the
9530 insured's motor vehicle policy.

9531 (c) A self-insured, including a governmental entity, may elect to provide uninsured
9532 motorist coverage in an amount that is less than its maximum self-insured retention under
9533 Subsections (3)(b) and (4)(a) by issuing a declaratory memorandum or policy statement from
9534 the chief financial officer or chief risk officer that declares the:

- 9535 (i) self-insured entity's coverage level; and
- 9536 (ii) process for filing an uninsured motorist claim.
- 9537 (d) Uninsured motorist coverage may not be sold with limits that are less than the
9538 minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304.

9539 (e) The acknowledgment under Subsection (3)(b) continues for that issuer of the
9540 uninsured motorist coverage until the insured, in writing, requests different uninsured motorist
9541 coverage from the insurer.

9542 (f) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for
9543 policies existing on that date, the insurer shall disclose in the same medium as the premium
9544 renewal notice, an explanation of:

- 9545 (A) the purpose of uninsured motorist coverage; and
- 9546 (B) the costs associated with increasing the coverage in amounts up to and including

9547 the maximum amount available by the insurer under the insured's motor vehicle policy.

9548 (ii) The disclosure required under this Subsection (3)(f) shall be sent to all insureds that
9549 carry uninsured motorist coverage limits in an amount less than the insured's motor vehicle
9550 liability policy limits or the maximum uninsured motorist coverage limits available by the
9551 insurer under the insured's motor vehicle policy.

9552 (4) (a) (i) Except as provided in Subsection (4)(b), the named insured may reject
9553 uninsured motorist coverage by an express writing to the insurer that provides liability
9554 coverage under Subsection 31A-22-302(1)(a).

9555 (ii) This rejection shall be on a form provided by the insurer that includes a reasonable
9556 explanation of the purpose of uninsured motorist coverage.

9557 (iii) This rejection continues for that issuer of the liability coverage until the insured in
9558 writing requests uninsured motorist coverage from that liability insurer.

9559 (b) (i) All persons, including governmental entities, that are engaged in the business of,
9560 or that accept payment for, transporting natural persons by motor vehicle, and all school
9561 districts that provide transportation services for their students, shall provide coverage for all
9562 motor vehicles used for that purpose, by purchase of a policy of insurance or by self-insurance,
9563 uninsured motorist coverage of at least \$25,000 per person and \$500,000 per accident.

9564 (ii) This coverage is secondary to any other insurance covering an injured covered
9565 person.

9566 (c) Uninsured motorist coverage:

9567 (i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers'
9568 Compensation Act;

9569 (ii) may not be subrogated by the workers' compensation insurance carrier;

9570 (iii) may not be reduced by any benefits provided by workers' compensation insurance;

9571 (iv) may be reduced by health insurance subrogation only after the covered person has
9572 been made whole;

9573 (v) may not be collected for bodily injury or death sustained by a person:

9574 (A) while committing a violation of Section 41-1a-1314;

9575 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated
9576 in violation of Section 41-1a-1314; or

9577 (C) while committing a felony; and

9578 (vi) notwithstanding Subsection (4)(c)(v), may be recovered:

9579 (A) for a person under 18 years of age who is injured within the scope of Subsection
9580 (4)(c)(v) but limited to medical and funeral expenses; or

9581 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured
9582 within the course and scope of the law enforcement officer's duties.

9583 (d) As used in this Subsection (4), "motor vehicle" has the same meaning as under
9584 Section 41-1a-102.

9585 (5) When a covered person alleges that an uninsured motor vehicle under Subsection
9586 (2)(b) proximately caused an accident without touching the covered person or the motor
9587 vehicle occupied by the covered person, the covered person [~~must~~] shall show the existence of
9588 the uninsured motor vehicle by clear and convincing evidence consisting of more than the
9589 covered person's testimony.

9590 (6) (a) The limit of liability for uninsured motorist coverage for two or more motor
9591 vehicles may not be added together, combined, or stacked to determine the limit of insurance
9592 coverage available to an injured person for any one accident.

9593 (b) (i) Subsection (6)(a) applies to all persons except a covered person as defined under
9594 Subsection (7)(b)(ii).

9595 (ii) A covered person as defined under Subsection (7)(b)(ii) is entitled to the highest
9596 limits of uninsured motorist coverage afforded for any one motor vehicle that the covered
9597 person is the named insured or an insured family member.

9598 (iii) This coverage shall be in addition to the coverage on the motor vehicle the covered
9599 person is occupying.

9600 (iv) Neither the primary nor the secondary coverage may be set off against the other.

9601 (c) Coverage on a motor vehicle occupied at the time of an accident shall be primary
9602 coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall

9603 be secondary coverage.

9604 (7) (a) Uninsured motorist coverage under this section applies to bodily injury,
9605 sickness, disease, or death of covered persons while occupying or using a motor vehicle only if
9606 the motor vehicle is described in the policy under which a claim is made, or if the motor
9607 vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy.
9608 Except as provided in Subsection (6) or this Subsection (7), a covered person injured in a
9609 motor vehicle described in a policy that includes uninsured motorist benefits may not elect to
9610 collect uninsured motorist coverage benefits from any other motor vehicle insurance policy
9611 under which the person is a covered person.

9612 (b) Each of the following persons may also recover uninsured motorist benefits under
9613 any one other policy in which they are described as a "covered person" as defined in Subsection
9614 (1):

9615 (i) a covered person injured as a pedestrian by an uninsured motor vehicle; and

9616 (ii) except as provided in Subsection (7)(c), a covered person injured while occupying
9617 or using a motor vehicle that is not owned, leased, or furnished:

9618 (A) to the covered person;

9619 (B) to the covered person's spouse; or

9620 (C) to the covered person's resident parent or resident sibling.

9621 (c) (i) A covered person may recover benefits from no more than two additional
9622 policies, one additional policy from each parent's household if the covered person is:

9623 (A) a dependent minor of parents who reside in separate households; and

9624 (B) injured while occupying or using a motor vehicle that is not owned, leased, or
9625 furnished:

9626 (I) to the covered person;

9627 (II) to the covered person's resident parent; or

9628 (III) to the covered person's resident sibling.

9629 (ii) Each parent's policy under this Subsection (7)(c) is liable only for the percentage of
9630 the damages that the limit of liability of each parent's policy of uninsured motorist coverage

9631 bears to the total of both parents' uninsured coverage applicable to the accident.

9632 (d) A covered person's recovery under any available policies may not exceed the full
9633 amount of damages.

9634 (e) A covered person in Subsection (7)(b) is not barred against making subsequent
9635 elections if recovery is unavailable under previous elections.

9636 (f) (i) As used in this section, "interpolicy stacking" means recovering benefits for a
9637 single incident of loss under more than one insurance policy.

9638 (ii) Except to the extent permitted by Subsection (6) and this Subsection (7),
9639 interpolicy stacking is prohibited for uninsured motorist coverage.

9640 (8) (a) When a claim is brought by a named insured or a person described in
9641 Subsection (1) and is asserted against the covered person's uninsured motorist carrier, the
9642 claimant may elect to resolve the claim:

9643 (i) by submitting the claim to binding arbitration; or

9644 (ii) through litigation.

9645 (b) Unless otherwise provided in the policy under which uninsured benefits are
9646 claimed, the election provided in Subsection (8)(a) is available to the claimant only.

9647 (c) Once the claimant has elected to commence litigation under Subsection (8)(a)(ii),
9648 the claimant may not elect to resolve the claim through binding arbitration under this section
9649 without the written consent of the uninsured motorist carrier.

9650 (d) (i) Unless otherwise agreed to in writing by the parties, a claim that is submitted to
9651 binding arbitration under Subsection (8)(a)(i) shall be resolved by a single arbitrator.

9652 (ii) All parties shall agree on the single arbitrator selected under Subsection (8)(d)(i).

9653 (iii) If the parties are unable to agree on a single arbitrator as required under Subsection
9654 (8)(d)(ii), the parties shall select a panel of three arbitrators.

9655 (e) If the parties select a panel of three arbitrators under Subsection (8)(d)(iii):

9656 (i) each side shall select one arbitrator; and

9657 (ii) the arbitrators appointed under Subsection (8)(e)(i) shall select one additional
9658 arbitrator to be included in the panel.

- 9659 (f) Unless otherwise agreed to in writing:
- 9660 (i) each party shall pay an equal share of the fees and costs of the arbitrator selected
- 9661 under Subsection (8)(d)(i); or
- 9662 (ii) if an arbitration panel is selected under Subsection (8)(d)(iii):
- 9663 (A) each party shall pay the fees and costs of the arbitrator selected by that party; and
- 9664 (B) each party shall pay an equal share of the fees and costs of the arbitrator selected
- 9665 under Subsection (8)(e)(ii).
- 9666 (g) Except as otherwise provided in this section or unless otherwise agreed to in
- 9667 writing by the parties, an arbitration proceeding conducted under this section shall be governed
- 9668 by Title 78B, Chapter 11, Utah Uniform Arbitration Act.
- 9669 (h) The arbitration shall be conducted in accordance with Rules 26 through 37, 54, and
- 9670 68 of the Utah Rules of Civil Procedure.
- 9671 (i) All issues of discovery shall be resolved by the arbitrator or the arbitration panel.
- 9672 (j) A written decision by a single arbitrator or by a majority of the arbitration panel
- 9673 shall constitute a final decision.
- 9674 (k) (i) The amount of an arbitration award may not exceed the uninsured motorist
- 9675 policy limits of all applicable uninsured motorist policies, including applicable uninsured
- 9676 motorist umbrella policies.
- 9677 (ii) If the initial arbitration award exceeds the uninsured motorist policy limits of all
- 9678 applicable uninsured motorist policies, the arbitration award shall be reduced to an amount
- 9679 equal to the combined uninsured motorist policy limits of all applicable uninsured motorist
- 9680 policies.
- 9681 (l) The arbitrator or arbitration panel may not decide the issues of coverage or
- 9682 extra-contractual damages, including:
- 9683 (i) whether the claimant is a covered person;
- 9684 (ii) whether the policy extends coverage to the loss; or
- 9685 (iii) any allegations or claims asserting consequential damages or bad faith liability.
- 9686 (m) The arbitrator or arbitration panel may not conduct arbitration on a class-wide or

9687 class-representative basis.

9688 (n) If the arbitrator or arbitration panel finds that the action was not brought, pursued,
9689 or defended in good faith, the arbitrator or arbitration panel may award reasonable attorney fees
9690 and costs against the party that failed to bring, pursue, or defend the claim in good faith.

9691 (o) An arbitration award issued under this section shall be the final resolution of all
9692 claims not excluded by Subsection (8)(l) between the parties unless:

9693 (i) the award was procured by corruption, fraud, or other undue means; or

9694 (ii) either party, within 20 days after service of the arbitration award:

9695 (A) files a complaint requesting a trial de novo in the district court; and

9696 (B) serves the nonmoving party with a copy of the complaint requesting a trial de novo
9697 under Subsection (8)(o)(ii)(A).

9698 (p) (i) Upon filing a complaint for a trial de novo under Subsection (8)(o), the claim
9699 shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and Utah Rules
9700 of Evidence in the district court.

9701 (ii) In accordance with Rule 38, Utah Rules of Civil Procedure, either party may
9702 request a jury trial with a complaint requesting a trial de novo under Subsection (8)(o)(ii)(A).

9703 (q) (i) If the claimant, as the moving party in a trial de novo requested under
9704 Subsection (8)(o), does not obtain a verdict that is at least \$5,000 and is at least 20% greater
9705 than the arbitration award, the claimant is responsible for all of the nonmoving party's costs.

9706 (ii) If the uninsured motorist carrier, as the moving party in a trial de novo requested
9707 under Subsection (8)(o), does not obtain a verdict that is at least 20% less than the arbitration
9708 award, the uninsured motorist carrier is responsible for all of the nonmoving party's costs.

9709 (iii) Except as provided in Subsection (8)(q)(iv), the costs under this Subsection (8)(q)
9710 shall include:

9711 (A) any costs set forth in Rule 54(d), Utah Rules of Civil Procedure; and

9712 (B) the costs of expert witnesses and depositions.

9713 (iv) An award of costs under this Subsection (8)(q) may not exceed \$2,500.

9714 (r) For purposes of determining whether a party's verdict is greater or less than the

9715 arbitration award under Subsection (8)(q), a court may not consider any recovery or other relief
9716 granted on a claim for damages if the claim for damages:

- 9717 (i) was not fully disclosed in writing prior to the arbitration proceeding; or
- 9718 (ii) was not disclosed in response to discovery contrary to the Utah Rules of Civil
9719 Procedure.

9720 (s) If a district court determines, upon a motion of the nonmoving party, that the
9721 moving party's use of the trial de novo process was filed in bad faith in accordance with
9722 Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving
9723 party.

9724 (t) Nothing in this section is intended to limit any claim under any other portion of an
9725 applicable insurance policy.

9726 (u) If there are multiple uninsured motorist policies, as set forth in Subsection (7), the
9727 claimant may elect to arbitrate in one hearing the claims against all the uninsured motorist
9728 carriers.

9729 (9) (a) Within 30 days after a covered person elects to submit a claim for uninsured
9730 motorist benefits to binding arbitration or files litigation, the covered person shall provide to
9731 the uninsured motorist carrier:

9732 (i) a written demand for payment of uninsured motorist coverage benefits, setting forth:

- 9733 (A) the specific monetary amount of the demand; and
- 9734 (B) the factual and legal basis and any supporting documentation for the demand;

9735 (ii) a written statement under oath disclosing:

9736 (A) (I) the names and last known addresses of all health care providers who have
9737 rendered health care services to the covered person that are material to the claims for which
9738 uninsured motorist benefits are sought for a period of five years preceding the date of the event
9739 giving rise to the claim for uninsured motorist benefits up to the time the election for
9740 arbitration or litigation has been exercised; and

9741 (II) whether the covered person has seen other health care providers who have rendered
9742 health care services to the covered person, which the covered person claims are immaterial to

9743 the claims for which uninsured motorist benefits are sought, for a period of five years
9744 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the
9745 time the election for arbitration or litigation has been exercised that have not been disclosed
9746 under Subsection (9)(a)(ii)(A)(I);

9747 (B) (I) the names and last known addresses of all health insurers or other entities to
9748 whom the covered person has submitted claims for health care services or benefits material to
9749 the claims for which uninsured motorist benefits are sought, for a period of five years
9750 preceding the date of the event giving rise to the claim for uninsured motorist benefits up to the
9751 time the election for arbitration or litigation has been exercised; and

9752 (II) whether the identity of any health insurers or other entities to whom the covered
9753 person has submitted claims for health care services or benefits, which the covered person
9754 claims are immaterial to the claims for which uninsured motorist benefits are sought, for a
9755 period of five years preceding the date of the event giving rise to the claim for uninsured
9756 motorist benefits up to the time the election for arbitration or litigation have not been disclosed;

9757 (C) if lost wages, diminished earning capacity, or similar damages are claimed, all
9758 employers of the covered person for a period of five years preceding the date of the event
9759 giving rise to the claim for uninsured motorist benefits up to the time the election for
9760 arbitration or litigation has been exercised;

9761 (D) other documents to reasonably support the claims being asserted; and

9762 (E) all state and federal statutory lienholders including a statement as to whether the
9763 covered person is a recipient of Medicare or Medicaid benefits or Utah Children's Health
9764 Insurance Program benefits under Title 26, Chapter 40, Utah Children's Health Insurance Act,
9765 or if the claim is subject to any other state or federal statutory liens; and

9766 (iii) signed authorizations to allow the uninsured motorist carrier to only obtain records
9767 and billings from the individuals or entities disclosed.

9768 (b) (i) If the uninsured motorist carrier determines that the disclosure of undisclosed
9769 health care providers or health care insurers under Subsection (9)(a)(ii) is reasonably necessary,
9770 the uninsured motorist carrier may:

9771 (A) make a request for the disclosure of the identity of the health care providers or
9772 health care insurers; and

9773 (B) make a request for authorizations to allow the uninsured motorist carrier to only
9774 obtain records and billings from the individuals or entities not disclosed.

9775 (ii) If the covered person does not provide the requested information within 10 days:

9776 (A) the covered person shall disclose, in writing, the legal or factual basis for the
9777 failure to disclose the health care providers or health care insurers; and

9778 (B) either the covered person or the uninsured motorist carrier may request the
9779 arbitrator or arbitration panel to resolve the issue of whether the identities or records are to be
9780 provided if the covered person has elected arbitration.

9781 (iii) The time periods imposed by Subsection (9)(c)(i) are tolled pending resolution of
9782 the dispute concerning the disclosure and production of records of the health care providers or
9783 health care insurers.

9784 (c) (i) An uninsured motorist carrier that receives an election for arbitration or a notice
9785 of filing litigation and the demand for payment of uninsured motorist benefits under Subsection
9786 (9)(a)(i) shall have a reasonable time, not to exceed 60 days from the date of the demand and
9787 receipt of the items specified in Subsections (9)(a)(i) through (iii), to:

9788 (A) provide a written response to the written demand for payment provided for in
9789 Subsection (9)(a)(i);

9790 (B) except as provided in Subsection (9)(c)(i)(C), tender the amount, if any, of the
9791 uninsured motorist carrier's determination of the amount owed to the covered person; and

9792 (C) if the covered person is a recipient of Medicare or Medicaid benefits or Utah
9793 Children's Health Insurance Program benefits under Title 26, Chapter 40, Utah Children's
9794 Health Insurance Act, or if the claim is subject to any other state or federal statutory liens,
9795 tender the amount, if any, of the uninsured motorist carrier's determination of the amount owed
9796 to the covered person less:

9797 (I) if the amount of the state or federal statutory lien is established, the amount of the
9798 lien; or

9799 (II) if the amount of the state or federal statutory lien is not established, two times the
9800 amount of the medical expenses subject to the state or federal statutory lien until such time as
9801 the amount of the state or federal statutory lien is established.

9802 (ii) If the amount tendered by the uninsured motorist carrier under Subsection (9)(c)(i)
9803 is the total amount of the uninsured motorist policy limits, the tendered amount shall be
9804 accepted by the covered person.

9805 (d) A covered person who receives a written response from an uninsured motorist
9806 carrier as provided for in Subsection (9)(c)(i), may:

9807 (i) elect to accept the amount tendered in Subsection (9)(c)(i) as payment in full of all
9808 uninsured motorist claims; or

9809 (ii) elect to:

9810 (A) accept the amount tendered in Subsection (9)(c)(i) as partial payment of all
9811 uninsured motorist claims; and

9812 (B) litigate or arbitrate the remaining claim.

9813 (e) If a covered person elects to accept the amount tendered under Subsection (9)(c)(i)
9814 as partial payment of all uninsured motorist claims, the final award obtained through
9815 arbitration, litigation, or later settlement shall be reduced by any payment made by the
9816 uninsured motorist carrier under Subsection (9)(c)(i).

9817 (f) In an arbitration proceeding on the remaining uninsured claims:

9818 (i) the parties may not disclose to the arbitrator or arbitration panel the amount paid
9819 under Subsection (9)(c)(i) until after the arbitration award has been rendered; and

9820 (ii) the parties may not disclose the amount of the limits of uninsured motorist benefits
9821 provided by the policy.

9822 (g) If the final award obtained through arbitration or litigation is greater than the
9823 average of the covered person's initial written demand for payment provided for in Subsection
9824 (9)(a)(i) and the uninsured motorist carrier's initial written response provided for in Subsection
9825 (9)(c)(i), the uninsured motorist carrier shall pay:

9826 (i) the final award obtained through arbitration or litigation, except that if the award

9827 exceeds the policy limits of the subject uninsured motorist policy by more than \$15,000, the
9828 amount shall be reduced to an amount equal to the policy limits plus \$15,000; and

9829 (ii) any of the following applicable costs:

9830 (A) any costs as set forth in Rule 54(d), Utah Rules of Civil Procedure;

9831 (B) the arbitrator or arbitration panel's fee; and

9832 (C) the reasonable costs of expert witnesses and depositions used in the presentation of
9833 evidence during arbitration or litigation.

9834 (h) (i) The covered person shall provide an affidavit of costs within five days of an
9835 arbitration award.

9836 (ii) (A) Objection to the affidavit of costs shall specify with particularity the costs to
9837 which the uninsured motorist carrier objects.

9838 (B) The objection shall be resolved by the arbitrator or arbitration panel.

9839 (iii) The award of costs by the arbitrator or arbitration panel under Subsection (9)(g)(ii)
9840 may not exceed \$5,000.

9841 (i) (i) A covered person shall disclose all material information, other than rebuttal
9842 evidence, as specified in Subsection (9)(a).

9843 (ii) If the information under Subsection (9)(i)(i) is not disclosed, the covered person
9844 may not recover costs or any amounts in excess of the policy under Subsection (9)(g).

9845 (j) This Subsection (9) does not limit any other cause of action that arose or may arise
9846 against the uninsured motorist carrier from the same dispute.

9847 (k) The provisions of this Subsection (9) only apply to motor vehicle accidents that
9848 occur on or after March 30, 2010.

9849 Section 256. Section **31A-22-408** is amended to read:

9850 **31A-22-408. Standard Nonforfeiture Law for Life Insurance.**

9851 (1) This section is known as the "Standard Nonforfeiture Law for Life Insurance." It
9852 does not apply to group life insurance.

9853 (2) In the case of policies issued on or after July 1, 1961, no policy of life insurance,
9854 except as stated in Subsection (8), may be delivered or issued for delivery in this state unless it

9855 contains in substance the following provisions, or corresponding provisions which in the
9856 opinion of the commissioner are at least as favorable to the defaulting or surrendering
9857 policyholder as are the minimum requirements hereinafter specified, and are essentially in
9858 compliance with Subsection (8):

9859 (a) That, in the event of default in any premium payment, after premiums have been
9860 paid for at least one full year the company will grant, upon proper request not later than 60 days
9861 after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated
9862 in the policy, effective as of such due date, of such amount as is specified in this section. In
9863 lieu of that stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper
9864 request not later than 60 days after the due date of the premium in default, an actuarially
9865 equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer
9866 period of death benefits or, if applicable, a greater amount or earlier payment of endowment
9867 benefits.

9868 (b) That, upon surrender of the policy within 60 days after the due date of any premium
9869 payment in default after premiums have been paid for at least three full years in the case of
9870 ordinary insurance or five full years in the case of industrial insurance, the company will pay,
9871 in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as is
9872 specified in this section.

9873 (c) That a specified paid-up nonforfeiture benefit shall become effective as specified in
9874 the policy unless the person entitled to make such election elects another available option not
9875 later than 60 days after the due date of the premium in default.

9876 (d) That, if the policy shall have been paid by the completion of all premium payments
9877 or if it is continued under any paid-up nonforfeiture benefit which became effective on or after
9878 the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in
9879 the case of industrial insurance, the company will pay upon surrender of the policy within 30
9880 days after any policy anniversary, a cash surrender value in the amount specified in this section.

9881 (e) In the case of policies which cause, on a basis guaranteed in the policy, unscheduled
9882 changes in benefits or premiums, or which provide an option for changes in benefits or

9883 premiums other than a change to a new policy, a statement of the mortality table, interest rate,
9884 and method used in calculating cash surrender values and the paid-up nonforfeiture benefits
9885 available under the policy. In the case of all other policies, a statement of the mortality table
9886 and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture
9887 benefit, if any, available under the policy on each policy anniversary either during the first 20
9888 policy years or during the term of the policy, whichever is shorter, such values and benefits to
9889 be calculated upon the assumption that there are no dividends or paid-up additions credited to
9890 the policy and that there is no indebtedness to the company on the policy.

9891 (f) A statement that the cash surrender values and the paid-up nonforfeiture benefits
9892 available under the policy are not less than the minimum values and benefits required by or
9893 pursuant to the insurance law of the state in which the policy is delivered; an explanation of the
9894 manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by
9895 the existence of any paid-up additions credited to the policy or any indebtedness to the
9896 company on the policy; if a detailed statement of the method of computation of the values and
9897 benefits shown in the policy is not stated therein, a statement that such method of computation
9898 has been filed with the insurance supervisory official of the state in which the policy is
9899 delivered; and a statement of the method to be used in calculating the cash surrender value and
9900 paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the
9901 last anniversary for which such values and benefits are consecutively shown in the policy.

9902 Any of the foregoing provisions or portions thereof not applicable by reason of the plan
9903 of insurance may, to the extent inapplicable, be omitted from the policy.

9904 The company shall reserve the right to defer the payment of any cash surrender value
9905 for a period of six months after demand therefor with surrender of the policy with the consent
9906 of the commissioner; provided, however, that the policy shall remain in full force and effect
9907 until the insurer has made the payment.

9908 (3) Any cash surrender value available under the policy in the event of default in a
9909 premium payment due on any policy anniversary, whether or not required by Subsection (2),
9910 shall be an amount not less than the excess, if any, of the present value, on such anniversary, of

9911 the future guaranteed benefits which would have been provided for by the policy, including any
9912 existing paid-up additions, if there had been no default, over the sum of: (a) the then present
9913 value of the adjusted premiums as defined in Subsections (5) and (6), corresponding to
9914 premiums which would have fallen due on and after such anniversary, and (b) the amount of
9915 any indebtedness to the company on the policy.

9916 Provided, however, that for any policy issued on or after the operative date of
9917 Subsection (6)(d) as defined therein, which provides supplemental life insurance or annuity
9918 benefits at the option of the insured and for an identifiable additional premium by rider or
9919 supplemental policy provision, the cash surrender value referred to in the first paragraph of this
9920 subsection shall be an amount not less than the sum of the cash surrender value as defined in
9921 such paragraph for an otherwise similar policy issued at the same age without such rider or
9922 supplemental policy provision and the cash surrender value as defined in such paragraph for a
9923 policy which provides only the benefits otherwise provided by such rider or supplemental
9924 policy provision.

9925 Provided, further, that for any family policy issued on or after the operative date of
9926 Subsection (6)(d) as defined therein, which defines a primary insured and provides term
9927 insurance on the life of the spouse of the primary insured expiring before the spouse's age 71,
9928 the cash surrender value referred to in the first paragraph of this subsection shall be an amount
9929 not less than the sum of the cash surrender value as defined in such paragraph for an otherwise
9930 similar policy issued at the same age without such term insurance on the life of the spouse and
9931 the cash surrender value as defined in such paragraph for a policy which provides only the
9932 benefits otherwise provided by such term insurance on the life of the spouse. Any cash
9933 surrender value available within 30 days after any policy anniversary under any policy paid-up
9934 by completion of all premium payments or any policy continued under any paid-up
9935 nonforfeiture benefit, whether or not required by Subsection (2) shall be an amount not less
9936 than the present value, on such anniversary, of the future guaranteed benefits provided for by
9937 the policy, including any existing paid-up additions, decreased by any indebtedness to the
9938 company on the policy.

9939 (4) Any paid-up nonforfeiture benefit available under the policy in the event of default
9940 in a premium payment due on any policy anniversary shall be such that its present value as of
9941 such anniversary shall be at least equal to the cash surrender value then provided for by the
9942 policy or, if none is provided for, that cash surrender value which would have been required by
9943 this section in the absence of the condition that premiums shall have been paid for at least a
9944 specified period.

9945 (5) (a) This Subsection (5)(a) does not apply to policies issued on or after the operative
9946 date of Subsection (6)(d) as defined therein. Except as provided in Subsection (5)(c), the
9947 adjusted premiums for any policy shall be calculated on an annual basis and shall be such
9948 uniform percentage of the respective premiums specified in the policy for each policy year,
9949 excluding any extra premiums charged because of impairments or special hazards, that the
9950 present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to
9951 the sum of: (i) the then present value of the future guaranteed benefits provided for by the
9952 policy; (ii) 2% of the amount of insurance, if the insurance be uniform in amount, or of the
9953 equivalent uniform amount if the amount of insurance varies with duration of the policy; (iii)
9954 40% of the adjusted premium for the first policy year; and (iv) 25% of either the adjusted
9955 premium for the first policy year or the adjusted premium for a whole life policy of the same
9956 uniform or equivalent uniform amount with uniform premiums for the whole of life issued at
9957 the same age for the same amount of insurance, whichever is less. Provided, however, that in
9958 applying the percentages specified in Subsections (5)(a)(iii) and (iv), no adjusted premium
9959 shall be considered to exceed 4% of the amount of insurance or uniform amount equivalent
9960 thereto. The date of issue of a policy for the purpose of this section shall be the date as of
9961 which the rated age of the insured is determined.

9962 (b) In the case of a policy providing an amount of insurance varying with duration of
9963 the policy, the equivalent uniform amount thereof for the purpose of this section shall be
9964 considered to be the uniform amount of insurance provided by an otherwise similar policy,
9965 containing the same endowment benefit or benefits, if any, issued at the same age and for the
9966 same term, the amount of which does not vary with duration and the benefits under which have

9967 the same present value at the date of issue as the benefits under the policy; provided, however,
9968 that in the case of a policy providing a varying amount of insurance issued on the life of a child
9969 under age 10, the equivalent uniform amount may be computed as though the amount of
9970 insurance provided by the policy prior to the attainment of age 10 were the amount provided by
9971 such policy at age 10.

9972 (c) The adjusted premiums for any policy providing term insurance benefits by rider or
9973 supplemental policy provision shall be equal to: (i) the adjusted premiums for an otherwise
9974 similar policy issued at the same age without such term insurance benefits, increased, during
9975 the period for which premiums for such term insurance benefits are payable, by (ii) the adjusted
9976 premiums for such term insurance, the foregoing items (i) and (ii) of this [paragraph]
9977 Subsection (5)(c) being calculated separately and as specified in Subsections (5)(a) and (b)
9978 except that, for the purposes of (ii), (iii), and (iv) of Subsection (5)(a), the amount of insurance
9979 or equivalent uniform amount of insurance used in calculation of the adjusted premiums
9980 referred to in (ii) of this [paragraph] Subsection (5)(c) shall be equal to the excess of the
9981 corresponding amount determined for the entire policy over the amount used in the calculation
9982 of the adjusted premiums in (i) of this [paragraph] Subsection (5)(c).

9983 (d) Except as otherwise provided in Subsection (6), all adjusted premiums and present
9984 values referred to in this section shall for all policies of ordinary insurance be calculated on the
9985 basis of the Commissioner's 1941 Standard Ordinary Mortality Table, provided that for any
9986 category of ordinary insurance issued on female risks, adjusted premiums and present values
9987 may be calculated according to an age not more than three years younger than the actual age of
9988 the insured and such calculations for all policies of industrial insurance shall be made on the
9989 basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the
9990 basis of the rate of interest, not exceeding 3-1/2% per annum, specified in the policy for
9991 calculating cash surrender values and paid-up nonforfeiture benefits. Provided, however, that
9992 in calculating the present value of any paid-up term insurance with accompanying pure
9993 endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be
9994 not more than 130% of the rates of mortality according to such applicable table. Provided,

9995 further, that for insurance issued on a substandard basis, the calculation of any such adjusted
9996 premiums and present values may be based on such other table of mortality as may be specified
9997 by the company and approved by the commissioner.

9998 (6) (a) This Subsection (6)(a) does not apply to ordinary policies issued on or after the
9999 operative date of Subsection (6)(d) as defined therein. In the case of ordinary policies issued
10000 on or after the operative date of Subsection (6)(a) as defined in Subsection (6)(b), all adjusted
10001 premiums and present values referred to in this section shall be calculated on the basis of the
10002 Commissioner's 1958 Standard Ordinary Mortality Table and the rate of interest as specified in
10003 the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided
10004 that such rate of interest [~~shall not~~] may not exceed 3-1/2% per annum for policies issued
10005 before June 1, 1973, 4% per annum for policies issued on or after May 31, 1973, and before
10006 April 2, 1980, and the rate of interest [~~shall not~~] may not exceed 5-1/2% per annum for policies
10007 issued after April 2, 1980, except that for any single premium whole life or endowment
10008 insurance policy a rate of interest not exceeding 6-1/2% per annum may be used, and provided
10009 that for any category of ordinary insurance issued on female risks, adjusted premiums and
10010 present values may be calculated according to an age not more than six years younger than the
10011 actual age of the insured. Provided, however, that in calculating the present value of any
10012 paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture
10013 benefit, the rates of mortality assumed may be not more than those shown in the
10014 Commissioner's 1958 Extended Term Insurance Table. Provided, further, that for insurance
10015 issued on a substandard basis, the calculation of any such adjusted premiums and present
10016 values may be based on such other table of mortality as may be specified by the company and
10017 approved by the commissioner.

10018 (b) Any company may file with the commissioner a written notice of its election to
10019 comply with the provisions of Subsection (6)(a) after a specified date before January 1, 1966.
10020 After filing such notice, then upon such specified date, which is the operative date of
10021 Subsection (6)(a) for such company, this Subsection (6)(a) shall become operative with respect
10022 to the ordinary policies thereafter issued by such company. If a company makes no such

10023 election, the operative date of Subsection (6)(a) for such company is January 1, 1966.

10024 (c) This Subsection (6)(c) does not apply to industrial policies issued after the
10025 operative date of Subsection (6)(d) as defined therein. In the case of industrial policies issued
10026 on or after the operative date of this Subsection (6)(c) as defined herein, all adjusted premiums
10027 and present values referred to in this section shall be calculated on the basis of the
10028 Commissioner's 1961 Standard Industrial Mortality Table and the rate of interest specified in
10029 the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided
10030 that such rate of interest [~~shall not~~] may not exceed 3-1/2% per annum for policies issued
10031 before June 1, 1973, 4% per annum for policies issued after May 31, 1973, and before April 2,
10032 1980, and 5-1/2% per annum for policies issued after April 2, 1980, except that for any single
10033 premium whole life or endowment insurance policy issued after April 2, 1980, a rate of interest
10034 not exceeding 6-1/2% per annum may be used. Provided, however, that in calculating the
10035 present value of any paid-up term insurance with accompanying pure endowment, if any,
10036 offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those
10037 shown in the Commissioner's 1961 Industrial Extended Term Insurance Table. Provided,
10038 further, that for insurance issued on a substandard basis, the calculation of any such adjusted
10039 premiums and present values may be based on such other table of mortality as may be specified
10040 by the company and approved by the commissioner.

10041 Any company may file with the commissioner a written notice of its election to comply
10042 with the provisions of this Subsection (6)(c) after a specified date before January 1, 1968.
10043 After filing such notice, then upon that specified date, which is the operative date of this
10044 Subsection (6) (c) for such company, this Subsection (6)(c) shall become operative with respect
10045 to the industrial policies thereafter issued by such company. If a company makes no such
10046 election, the operative date of this [~~paragraph~~] Subsection (6)(c) for such company shall be
10047 January 1, 1968.

10048 (d) (i) This Subsection (6)(d) applies to all policies issued on or after the operative date
10049 of this subsection as defined herein. Except as provided in Subsection (6)(d)(vii), the adjusted
10050 premiums for any policy shall be calculated on an annual basis and shall be such uniform

10051 percentage of the respective premiums specified in the policy for each policy year, excluding
10052 amounts payable as extra premiums to cover impairments or special hazards and also excluding
10053 any uniform annual contract charge or policy fee specified in the policy in a statement of the
10054 method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits,
10055 that the present value, at the date of issue of policy, of all adjusted premiums shall be equal to
10056 the sum of: (A) the then present value of the future guaranteed benefits provided for by the
10057 policy; (B) 1% of either the amount of insurance, if the insurance be uniform in amount, or the
10058 average amount of insurance at the beginning of each of the first 10 policy years; and (C) 125%
10059 of the nonforfeiture net level premium as hereinafter defined. Provided, however, that in
10060 applying the percentage specified in (C), no nonforfeiture net level premium shall be
10061 considered to exceed 4% of either the amount of insurance, if the insurance be uniform in
10062 amount, or the average amount of insurance at the beginning of each of the first 10 policy
10063 years. The date of issue of a policy for the purpose of this subsection shall be the date as of
10064 which the rated age of the insured is determined.

10065 (ii) The nonforfeiture net level premium shall be equal to the present value, at the date
10066 of issue of the policy, of the guaranteed benefits provided for by the policy divided by the
10067 present value, at the date of issue of the policy, of an annuity of one per annum payable on the
10068 date of issue of the policy and on each anniversary of such policy on which a premium falls
10069 due.

10070 (iii) In the case of policies which cause on a basis guaranteed in the policy unscheduled
10071 changes in benefits or premiums, or which provide an option for changes in benefits or
10072 premiums other than change to a new policy, the adjusted premiums and present values shall
10073 initially be calculated on the assumption that future benefits and premiums do not change from
10074 those stipulated at the date of issue of the policy. At the time of any such change in the
10075 benefits or premiums the future adjusted premiums, nonforfeiture net level premiums, and
10076 present values shall be recalculated on the assumption that future benefits and premiums do not
10077 change from those stipulated by the policy immediately after the change.

10078 (iv) Except as otherwise provided in Subsection (6)(d)(vii), the recalculated future

10079 adjusted premiums for any such policy shall be such uniform percentage of the respective
10080 future premiums specified in the policy for each policy year, excluding amounts specified in
10081 the policy for each policy year, excluding amounts payable as extra premiums to cover
10082 impairments and special hazards, and also excluding any uniform annual contract charge or
10083 policy fee specified in the policy in a statement of the method to be used in calculating the cash
10084 surrender values and paid-up nonforfeiture benefits, that the present value, at the time of
10085 change to the newly defined benefits or premiums, of all such future adjusted premiums shall
10086 be equal to the excess of (A) the sum of: (I) the then present value of the then future guaranteed
10087 benefits provided for by the policy and (II) the additional expense allowance, if any, over (B)
10088 the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit
10089 under the policy.

10090 (v) The additional expense allowance, at the time of the change to the newly defined
10091 benefits or premiums, shall be the sum of: (A) 1% of the excess, if positive, of the average
10092 amount of insurance at the beginning of each of the first 10 policy years subsequent to the
10093 change over the average amount of insurance prior to the change at the beginning of each of the
10094 first 10 policy years subsequent to the time of the most recent previous change, or, if there has
10095 been no previous change, the date of issue of the policy; and (B) 125% of the increase, if
10096 positive, in the nonforfeiture net level premium.

10097 (vi) The recalculated nonforfeiture net level premium shall be equal to the result
10098 obtained by dividing (A) by (B) where

10099 (A) equals the sum of:

10100 (I) the nonforfeiture net level premium applicable prior to the change times the present
10101 value of an annuity of one per annum payable on each anniversary of the policy on or
10102 subsequent to the date of the change on which a premium would have fallen due had the
10103 change not occurred; and

10104 (II) the present value of the increase in future guaranteed benefits provided for by the
10105 policy; and

10106 (B) equals the present value of an annuity of one per annum payable on each

10107 anniversary of the policy on or subsequent to the date of change on which a premium falls due.

10108 (vii) Notwithstanding any other provision of this Subsection (6)(d) to the contrary, in
10109 the case of a policy issued on a substandard basis which provides reduced graded amounts of
10110 insurance so that, in each policy year, such policy has the same tabular mortality cost as an
10111 otherwise similar policy issued on the standard basis which provides higher uniform amounts
10112 of insurance, adjusted premiums and present values for such substandard policy may be
10113 calculated as if it were issued to provide such higher uniform amounts of insurance on the
10114 standard basis.

10115 (viii) All adjusted premiums and present values referred to in this section shall for all
10116 policies of ordinary insurance be calculated on the basis of: (A) the Commissioner's 1980
10117 Standard Ordinary Mortality Table; or (B) at the election of the company for any one or more
10118 specified plans of life insurance, the Commissioner's 1980 Standard Ordinary Mortality Table
10119 with Ten-Year Select Mortality Factors; shall for all policies of industrial insurance be
10120 calculated on the basis of the Commissioner's 1961 Standard Industrial Mortality Table; and
10121 shall for all policies issued in a particular calendar year be calculated on the basis of a rate of
10122 interest not exceeding the nonforfeiture interest rate as defined in this subsection, for policies
10123 issued in that calendar year. Provided, however, that:

10124 (I) At the option of the company, calculations for all policies issued in a particular
10125 calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture
10126 interest rate, as defined in this subsection, for policies issued in the immediately preceding
10127 calendar year.

10128 (II) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions,
10129 any cash surrender value available, whether or not required by Subsection (2), shall be
10130 calculated on the basis of the mortality table and rate of interest used in determining the
10131 amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.

10132 (III) A company may calculate the amount of any guaranteed paid-up nonforfeiture
10133 benefit, including paid-up additions under the policy, on the basis of an interest rate no lower
10134 than that specified in the policy for calculating cash surrender values.

10135 (IV) In calculating the present value of any paid-up term insurance with accompanying
10136 pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may
10137 be not more than those shown in the Commissioner's 1980 Extended Term Insurance Table for
10138 policies of ordinary insurance and not more than the Commissioner's 1961 Industrial Extended
10139 Term Insurance Table for policies of industrial insurance.

10140 (V) For insurance issued on a substandard basis, the calculation of any such adjusted
10141 premiums and present values may be based on appropriate modifications of the aforementioned
10142 tables.

10143 (VI) Any ordinary mortality tables, adopted after 1980 by the National Association of
10144 Insurance Commissioners, that are approved by rules adopted by the commissioner for use in
10145 determining the minimum nonforfeiture standard, may be substituted for the Commissioner's
10146 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or
10147 for the Commissioner's 1980 Extended Term Insurance Table.

10148 (VII) Any industrial mortality tables, adopted after 1980 by the National Association of
10149 Insurance Commissioners, that are approved by rules adopted by the commissioner for use in
10150 determining the minimum nonforfeiture standard may be substituted for the Commissioner's
10151 1961 Industrial Extended Term Insurance Table.

10152 (ix) The nonforfeiture interest rate per annum for any policy issued in a particular
10153 calendar year shall be equal to 125% of the calendar year statutory valuation interest rate for
10154 such policy as defined in the Standard Valuation Law, rounded to the nearest [~~1/4~~] one-fourth
10155 of 1%.

10156 (x) Notwithstanding any other provision in this title to the contrary, any refiling of
10157 nonforfeiture values or their methods of computation for any previously approved policy form
10158 which involves only a change in the interest rate or mortality table used to compute
10159 nonforfeiture values does not require refiling of any other provisions of that policy form.

10160 (xi) After the effective date of this Subsection (6)(d), any company may, at any time
10161 before January 1, 1989, file with the commissioner a written notice of its election to comply
10162 with the provisions of this subsection with regard to any number of plans of insurance after a

10163 specified date before January 1, 1989, which specified date shall be the operative date of this
10164 Subsection (6)(d) for the plan or plans, but if a company elects to make the provisions of this
10165 subsection operative before January 1, 1989, for fewer than all plans, the company [~~must~~] shall
10166 comply with rules adopted by the commissioner. There is no limit to the number of times this
10167 election may be made. If the company makes no such election, the operative date of this
10168 subsection for such company shall be January 1, 1989.

10169 (7) In the case of any plan of life insurance which provides for future premium
10170 determination, the amounts of which are to be determined by the insurance company based on
10171 the estimates of future experience, or in the case of any plan of life insurance which is of such
10172 nature that minimum values cannot be determined by the methods described in Subsection (2),
10173 (3), (4), (5), (6)(a), (6)(b), (6)(c), or (6)(d) herein, then:

10174 (a) the insurer shall demonstrate to the satisfaction of the commissioner [~~must be~~
10175 ~~satisfied~~] that the benefits provided under the plan are substantially as favorable to
10176 policyholders and insureds as the minimum benefits otherwise required by Subsection (2), (3),
10177 (4), (5), (6)(a), (6)(b), (6)(c), or (6)(d);

10178 (b) the plan of life insurance shall satisfy the commissioner [~~must be satisfied~~] that the
10179 benefits and the pattern of premiums of that plan are not such as to mislead prospective
10180 policyholders or insureds; and

10181 (c) the cash surrender values and paid-up nonforfeiture benefits provided by [~~such~~] the
10182 plan [~~must not~~] may not be less than the minimum values and benefits required for the plan
10183 computed by a method consistent with the principles of this Standard Nonforfeiture Law for
10184 Life Insurance, as determined by rules adopted by the commissioner.

10185 (8) Any cash surrender value and any paid-up nonforfeiture benefit, available under the
10186 policy in the event of default in a premium payment due at any time other than on the policy
10187 anniversary, shall be calculated with allowance for the lapse of time and the payment of
10188 fractional premiums beyond the last preceding policy anniversary. All values referred to in
10189 Subsections (3), (4), (5), and (6) of this section may be calculated upon the assumption that any
10190 death benefit is payable at the end of the policy year of death. The net value of any paid-up

10191 additions, other than paid-up term additions, may not be less than the amounts used to provide
10192 such additions. Notwithstanding the provisions of Subsection (3), additional benefits payable:
10193 (a) in the event of death or dismemberment by accident or accidental means, (b) in the event of
10194 total and permanent disability, (c) as reversionary annuity or deferred reversionary annuity
10195 benefits, (d) as term insurance benefits provided by a rider or supplemental policy provision to
10196 which, if issued as a separate policy, this section would not apply, (e) as term insurance on the
10197 life of a child or on the lives of children provided in a policy on the life of a parent of the child,
10198 if such term insurance expires before the child's age is 26, if uniform in amount after the child's
10199 age is one, and has not become paid-up by reason of the death of a parent of the child, and (f)
10200 as other policy benefits additional to life insurance endowment benefits, and premiums for all
10201 such additional benefits, shall be disregarded in ascertaining cash surrender values and
10202 nonforfeiture benefits required by this section, and no such additional benefits shall be required
10203 to be included in any paid-up nonforfeiture benefits.

10204 (9) This Subsection (9), in addition to all other applicable subsections of this section,
10205 applies to all policies issued on or after January 1, 1985. Any cash surrender value available
10206 under the policy in the event of default in a premium payment due on any policy anniversary
10207 shall be in an amount which does not differ by more than $\frac{2}{10}$ of 1% of either the amount of
10208 insurance, if the insurance be uniform in amount, or the average amount of insurance at the
10209 beginning of each of the first 10 policy years, from the sum of: (a) the greater of zero and the
10210 basic cash value hereinafter specified, and (b) the present value of any existing paid-up
10211 additions less the amount of any indebtedness to the company under the policy.

10212 The basic cash value shall be equal to the present value, on such anniversary of the
10213 future guaranteed benefits which would have been provided for by the policy, excluding any
10214 existing paid-up additions and before deduction of any indebtedness to the company, if there
10215 had been no default, less the then present value of the nonforfeiture factors, as hereinafter
10216 defined, corresponding to premiums which would have fallen due on and after such
10217 anniversary. Provided, however, that the effects on the basic cash value of supplemental life
10218 insurance or annuity benefits or of family coverage, as described in Subsection (3) or (5),

10219 whichever is applicable, shall be the same as are the effects specified in Subsection (3) or (5),
10220 whichever is applicable, on the cash surrender values defined in that subsection.

10221 The nonforfeiture factor for each policy year shall be an amount equal to a percentage
10222 of the adjusted premium for the policy year, as defined in Subsection (5) or (6)(d), whichever is
10223 applicable. Except as is required by the next succeeding sentence of this paragraph, such
10224 percentage:

10225 (a) [~~must~~] shall be the same percentage for each policy year between the second policy
10226 anniversary and the later of: (i) the fifth policy anniversary and (ii) the first policy anniversary
10227 at which there is available under the policy a cash surrender value in an amount, before
10228 including any paid-up additions and before deducting any indebtedness, of at least 2/10 of 1%
10229 of either the amount of insurance, if the insurance be uniform in amount, or the average amount
10230 of insurance at the beginning of each of the first 10 policy years; and

10231 (b) [~~must~~] shall be such that no percentage after the later of the two policy
10232 anniversaries specified in Subsection (9)(a) may apply to fewer than five consecutive policy
10233 years.

10234 Provided, that no basic cash value may be less than the value which would be obtained
10235 if the adjusted premiums for the policy, as defined in Subsection (5) or Subsection (6)(d),
10236 whichever is applicable, were substituted for the nonforfeiture factors in the calculation of the
10237 basic value.

10238 All adjusted premiums and present values referred to in this Subsection (9) shall for a
10239 particular policy be calculated on the same mortality and interest bases as are used in
10240 demonstrating the policy's compliance with the other subsections of this law. The cash
10241 surrender values referred to in this subsection shall include any endowment benefits provided
10242 for by the policy.

10243 Any cash surrender value available other than in the event of default in a premium
10244 payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit
10245 available under the policy in the event of default in a premium payment shall be determined in
10246 manners consistent with the manners specified for determining the analogous minimum

10247 amounts in Subsections (2), (3), (4), (5), (6), and (8). The amounts of any cash surrender
10248 values and of any paid-up nonforfeiture benefits granted in connection with additional benefits
10249 such as those listed as Subsections (8)(a) through (f) shall conform with the principles of this
10250 Subsection (9).

10251 (10) This section does not apply to any of the following:

10252 (a) reinsurance;

10253 (b) group insurance;

10254 (c) pure endowment;

10255 (d) an annuity or reversionary annuity contract;

10256 (e) a term policy of uniform amount, which provides no guaranteed nonforfeiture or
10257 endowment benefits, or renewal thereof, of 20 years or less expiring before age 71, for which
10258 uniform premiums are payable during the entire term of the policy;

10259 (f) a term policy of decreasing amount, which provides no guaranteed nonforfeiture or
10260 endowment benefits, on which each adjusted premium, calculated as specified in Subsections
10261 (5) and (6), is less than the adjusted premium so calculated, on a term policy of uniform
10262 amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment
10263 benefits, issued at the same age and for the same initial amount of insurance, and for a term of
10264 20 years or less expiring before age 71, for which uniform premiums are payable during the
10265 entire term of the policy;

10266 (g) a policy, which provides no guaranteed nonforfeiture or endowment benefits, for
10267 which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at
10268 the beginning of any policy year, calculated as specified in Subsections (3), (4), (5), and (6)
10269 exceeds 2-1/2% of the amount of insurance at the beginning of the same policy year; or

10270 (h) a policy which shall be delivered outside this state through an agent or other
10271 representative of the company issuing the policy.

10272 For purposes of determining the applicability of this section, the age of expiry for a
10273 joint term insurance policy shall be the age of expiry of the oldest life.

10274 (11) The commissioner may adopt rules interpreting, describing, and clarifying the

10275 application of this nonforfeiture law to any form of life insurance for which the interpretation,
10276 description, or clarification is [~~deemed~~] considered necessary by the commissioner, including
10277 [~~but not limited to,~~] unusual and new forms of life insurance.

10278 Section 257. Section **31A-22-610.5** is amended to read:

10279 **31A-22-610.5. Dependent coverage.**

10280 (1) As used in this section, "child" has the same meaning as defined in Section
10281 78B-12-102.

10282 (2) (a) Any individual or group accident and health insurance policy or health
10283 maintenance organization contract that provides coverage for a policyholder's or certificate
10284 holder's dependent may not terminate coverage of an unmarried dependent by reason of the
10285 dependent's age before the dependent's 26th birthday and shall, upon application, provide
10286 coverage for all unmarried dependents up to age 26.

10287 (b) The cost of coverage for unmarried dependents 19 to 26 years of age shall be
10288 included in the premium on the same basis as other dependent coverage.

10289 (c) This section does not prohibit the employer from requiring the employee to pay all
10290 or part of the cost of coverage for unmarried dependents.

10291 (d) An individual health insurance policy, group health insurance policy, or health
10292 maintenance organization shall continue in force coverage for a dependent through the last day
10293 of the month in which the dependent ceases to be a dependent:

10294 (i) if premiums are paid; and

10295 (ii) notwithstanding Section 31A-8-402.3, 31A-8-402.5, 31A-22-721, 31A-30-107.1,
10296 or 31A-30-107.3.

10297 (3) An individual or group accident and health insurance policy or health maintenance
10298 organization contract shall reinstate dependent coverage, and for purposes of all exclusions and
10299 limitations, shall treat the dependent as if the coverage had been in force since it was
10300 terminated; if:

10301 (a) the dependent has not reached the age of 26 by July 1, 1995;

10302 (b) the dependent had coverage prior to July 1, 1994;

10303 (c) prior to July 1, 1994, the dependent's coverage was terminated solely due to the age
10304 of the dependent; and

10305 (d) the policy has not been terminated since the dependent's coverage was terminated.

10306 (4) (a) When a parent is required by a court or administrative order to provide health
10307 insurance coverage for a child, an accident and health insurer may not deny enrollment of a
10308 child under the accident and health insurance plan of the child's parent on the grounds the
10309 child:

10310 (i) was born out of wedlock and is entitled to coverage under Subsection (5);

10311 (ii) was born out of wedlock and the custodial parent seeks enrollment for the child
10312 under the custodial parent's policy;

10313 (iii) is not claimed as a dependent on the parent's federal tax return; or

10314 (iv) does not reside with the parent or in the insurer's service area.

10315 (b) A child enrolled as required under Subsection (4)(a)(iv) is subject to the terms of
10316 the accident and health insurance plan contract pertaining to services received outside of an
10317 insurer's service area. A health maintenance organization [~~must~~] shall comply with Section
10318 31A-8-502.

10319 (5) When a child has accident and health coverage through an insurer of a noncustodial
10320 parent, and when requested by the noncustodial or custodial parent, the insurer shall:

10321 (a) provide information to the custodial parent as necessary for the child to obtain
10322 benefits through that coverage, but the insurer or employer, or the agents or employees of either
10323 of them, are not civilly or criminally liable for providing information in compliance with this
10324 Subsection (5)(a), whether the information is provided pursuant to a verbal or written request;

10325 (b) permit the custodial parent or the service provider, with the custodial parent's
10326 approval, to submit claims for covered services without the approval of the noncustodial
10327 parent; and

10328 (c) make payments on claims submitted in accordance with Subsection (5)(b) directly
10329 to the custodial parent, the child who obtained benefits, the provider, or the state Medicaid
10330 agency.

- 10331 (6) When a parent is required by a court or administrative order to provide health
10332 coverage for a child, and the parent is eligible for family health coverage, the insurer shall:
- 10333 (a) permit the parent to enroll, under the family coverage, a child who is otherwise
10334 eligible for the coverage without regard to an enrollment season restrictions;
- 10335 (b) if the parent is enrolled but fails to make application to obtain coverage for the
10336 child, enroll the child under family coverage upon application of the child's other parent, the
10337 state agency administering the Medicaid program, or the state agency administering 42 U.S.C.
10338 Sec. 651 through 669, the child support enforcement program; and
- 10339 (c) (i) when the child is covered by an individual policy, not disenroll or eliminate
10340 coverage of the child unless the insurer is provided satisfactory written evidence that:
- 10341 (A) the court or administrative order is no longer in effect; or
10342 (B) the child is or will be enrolled in comparable accident and health coverage through
10343 another insurer which will take effect not later than the effective date of disenrollment; or
- 10344 (ii) when the child is covered by a group policy, not disenroll or eliminate coverage of
10345 the child unless the employer is provided with satisfactory written evidence, which evidence is
10346 also provided to the insurer, that Subsection (9)(c)(i), (ii) or (iii) has happened.
- 10347 (7) An insurer may not impose requirements on a state agency that has been assigned
10348 the rights of an individual eligible for medical assistance under Medicaid and covered for
10349 accident and health benefits from the insurer that are different from requirements applicable to
10350 an agent or assignee of any other individual so covered.
- 10351 (8) Insurers may not reduce their coverage of pediatric vaccines below the benefit level
10352 in effect on May 1, 1993.
- 10353 (9) When a parent is required by a court or administrative order to provide health
10354 coverage, which is available through an employer doing business in this state, the employer
10355 shall:
- 10356 (a) permit the parent to enroll under family coverage any child who is otherwise
10357 eligible for coverage without regard to any enrollment season restrictions;
- 10358 (b) if the parent is enrolled but fails to make application to obtain coverage of the child,

10359 enroll the child under family coverage upon application by the child's other parent, by the state
10360 agency administering the Medicaid program, or the state agency administering 42 U.S.C. Sec.
10361 651 through 669, the child support enforcement program;

10362 (c) not disenroll or eliminate coverage of the child unless the employer is provided
10363 satisfactory written evidence that:

10364 (i) the court order is no longer in effect;

10365 (ii) the child is or will be enrolled in comparable coverage which will take effect no
10366 later than the effective date of disenrollment; or

10367 (iii) the employer has eliminated family health coverage for all of its employees; and

10368 (d) withhold from the employee's compensation the employee's share, if any, of
10369 premiums for health coverage and to pay this amount to the insurer.

10370 (10) An order issued under Section 62A-11-326.1 may be considered a "qualified
10371 medical support order" for the purpose of enrolling a dependent child in a group accident and
10372 health insurance plan as defined in Section 609(a), Federal Employee Retirement Income
10373 Security Act of 1974.

10374 (11) This section does not affect any insurer's ability to require as a precondition of any
10375 child being covered under any policy of insurance that:

10376 (a) the parent continues to be eligible for coverage;

10377 (b) the child shall be identified to the insurer with adequate information to comply with
10378 this section; and

10379 (c) the premium shall be paid when due.

10380 (12) The provisions of this section apply to employee welfare benefit plans as defined
10381 in Section 26-19-2.

10382 (13) The commissioner shall adopt rules interpreting and implementing this section
10383 with regard to out-of-area court ordered dependent coverage.

10384 Section 258. Section **31A-22-611** is amended to read:

10385 **31A-22-611. Coverage for children with a disability.**

10386 (1) For the purposes of this section:

10387 (a) "Disabled dependent" means a child who is and continues to be both:
10388 (i) unable to engage in substantial gainful employment to the degree that the child can
10389 achieve economic independence due to a medically determinable physical or mental
10390 impairment which can be expected to result in death, or which has lasted or can be expected to
10391 last for a continuous period of not less than 12 months; and

10392 (ii) chiefly dependent upon an insured for support and maintenance since the child
10393 reached the age specified in Subsection 31A-22-610.5(2).

10394 [~~(e)~~] (b) "Mental impairment" means a mental or psychological disorder such as:

10395 (i) mental retardation;

10396 (ii) organic brain syndrome;

10397 (iii) emotional or mental illness; or

10398 (iv) specific learning disabilities as determined by the insurer.

10399 [~~(b)~~] (c) "Physical impairment" means a physiological disorder, condition, or
10400 disfigurement, or anatomical loss affecting one or more of the following body systems:

10401 (i) neurological;

10402 (ii) musculoskeletal;

10403 (iii) special sense organs;

10404 (iv) respiratory organs;

10405 (v) speech organs;

10406 (vi) cardiovascular;

10407 (vii) reproductive;

10408 (viii) digestive;

10409 (ix) genito-urinary;

10410 (x) hemic and lymphatic;

10411 (xi) skin; or

10412 (xii) endocrine.

10413 (2) The insurer may require proof of the incapacity and dependency be furnished by the
10414 person insured under the policy within 30 days of the effective date or the date the child attains

10415 the age specified in Subsection 31A-22-610.5(2), and at any time thereafter, except that the
10416 insurer may not require proof more often than annually after the two-year period immediately
10417 following attainment of the limiting age by the disabled dependent.

10418 (3) Any individual or group accident and health insurance policy or health maintenance
10419 organization contract that provides coverage for a policyholder's or certificate holder's
10420 dependent shall, upon application, provide coverage for all unmarried disabled dependents who
10421 have been continuously covered, with no break of more than 63 days, under any accident and
10422 health insurance since the age specified in Subsection 31A-22-610.5(2).

10423 (4) Every accident and health insurance policy or contract that provides coverage of a
10424 disabled dependent ~~[shall not]~~ may not terminate the policy due to an age limitation.

10425 Section 259. Section **31A-22-613.5** is amended to read:

10426 **31A-22-613.5. Price and value comparisons of health insurance -- Basic Health**
10427 **Care Plan.**

10428 (1) (a) This section applies to all health benefit plans.

10429 (b) Subsection (2) applies to:

10430 (i) all health benefit plans; and

10431 (ii) coverage offered to state employees under Subsection 49-20-202(1)(a).

10432 (2) (a) The commissioner shall promote informed consumer behavior and responsible
10433 health benefit plans by requiring an insurer issuing a health benefit plan to:

10434 (i) provide to all enrollees, prior to enrollment in the health benefit plan written
10435 disclosure of:

10436 (A) restrictions or limitations on prescription drugs and biologics including:

10437 (I) the use of a formulary;

10438 (II) co-payments and deductibles for prescription drugs; and

10439 (III) requirements for generic substitution;

10440 (B) coverage limits under the plan; and

10441 (C) any limitation or exclusion of coverage including:

10442 (I) a limitation or exclusion for a secondary medical condition related to a limitation or

10443 exclusion from coverage; and
10444 (II) easily understood examples of a limitation or exclusion of coverage for a secondary
10445 medical condition; and
10446 (ii) provide the commissioner with:
10447 (A) the information described in Subsections 63M-1-2506(3) through (6) in the
10448 standardized electronic format required by Subsection 63M-1-2506(1); and
10449 (B) information regarding insurer transparency in accordance with Subsection (5).
10450 (b) An insurer shall provide the disclosure required by Subsection (2)(a)(i) in writing to
10451 the commissioner:
10452 (i) upon commencement of operations in the state; and
10453 (ii) anytime the insurer amends any of the following described in Subsection (2)(a)(i):
10454 (A) treatment policies;
10455 (B) practice standards;
10456 (C) restrictions;
10457 (D) coverage limits of the insurer's health benefit plan or health insurance policy; or
10458 (E) limitations or exclusions of coverage including a limitation or exclusion for a
10459 secondary medical condition related to a limitation or exclusion of the insurer's health
10460 insurance plan.
10461 (c) An insurer shall provide the enrollee with notice of an increase in costs for
10462 prescription drug coverage due to a change in benefit design under Subsection (2)(a)(i)(A):
10463 (i) either:
10464 (A) in writing; or
10465 (B) on the insurer's website; and
10466 (ii) at least 30 days prior to the date of the implementation of the increase in cost, or as
10467 soon as reasonably possible.
10468 (d) If under Subsection (2)(a)(i)(A) a formulary is used, the insurer shall make
10469 available to prospective enrollees and maintain evidence of the fact of the disclosure of:
10470 (i) the drugs included;

10471 (ii) the patented drugs not included;
10472 (iii) any conditions that exist as a precedent to coverage; and
10473 (iv) any exclusion from coverage for secondary medical conditions that may result
10474 from the use of an excluded drug.

10475 (e) (i) The department shall develop examples of limitations or exclusions of a
10476 secondary medical condition that an insurer may use under Subsection (2)(a)(i)(C).

10477 (ii) Examples of a limitation or exclusion of coverage provided under Subsection
10478 (2)(a)(i)(C) or otherwise are for illustrative purposes only, and the failure of a particular fact
10479 situation to fall within the description of an example does not, by itself, support a finding of
10480 coverage.

10481 (3) An insurer who offers a health benefit plan under Chapter 30, Individual, Small
10482 Employer, and Group Health Insurance Act, shall offer a basic health care plan subject to the
10483 open enrollment provisions of Chapter 30, Individual, Small Employer, and Group Health
10484 Insurance Act, that:

10485 (a) is a federally qualified high deductible health plan;
10486 (b) has a deductible that is within \$250 of the lowest deductible that qualifies under a
10487 federally qualified high deductible health plan, as adjusted by federal law; and
10488 (c) does not exceed an annual out of pocket maximum equal to three times the amount
10489 of the annual deductible.

10490 (4) The commissioner:

10491 (a) shall forward the information submitted by an insurer under Subsection (2)(a)(ii) to
10492 the Health Insurance Exchange created under Section 63M-1-2504; and
10493 (b) may request information from an insurer to verify the information submitted by the
10494 insurer under this section.

10495 (5) The commissioner shall:

10496 (a) convene a group of insurers, a member representing the Public Employees' Benefit
10497 and Insurance Program, consumers, and an organization described in Subsection
10498 31A-22-614.6(3)(b), to develop information for consumers to compare health insurers and

10499 health benefit plans on the Health Insurance Exchange, which shall include consideration of:
10500 (i) the number and cost of an insurer's denied health claims;
10501 (ii) the cost of denied claims that is transferred to providers;
10502 (iii) the average out-of-pocket expenses incurred by participants in each health benefit
10503 plan that is offered by an insurer in the Health Insurance Exchange;
10504 (iv) the relative efficiency and quality of claims administration and other administrative
10505 processes for each insurer offering plans in the Health Insurance Exchange; and
10506 (v) consumer assessment of each insurer or health benefit plan;
10507 (b) adopt an administrative rule that establishes:
10508 (i) definition of terms;
10509 (ii) the methodology for determining and comparing the insurer transparency
10510 information;
10511 (iii) the data, and format of the data, that an insurer [~~must~~] shall submit to the
10512 department in order to facilitate the consumer comparison on the Health Insurance Exchange in
10513 accordance with Section 63M-1-2506; and
10514 (iv) the dates on which the insurer [~~must~~] shall submit the data to the department in
10515 order for the department to transmit the data to the Health Insurance Exchange in accordance
10516 with Section 63M-1-2506; and
10517 (c) implement the rules adopted under Subsection (5)(b) in a manner that protects the
10518 business confidentiality of the insurer.

10519 Section 260. Section **31A-22-618.5** is amended to read:

10520 **31A-22-618.5. Health benefit plan offerings.**

10521 (1) The purpose of this section is to increase the range of health benefit plans available
10522 in the small group, small employer group, large group, and individual insurance markets.

10523 (2) A health maintenance organization that is subject to Chapter 8, Health Maintenance
10524 Organizations and Limited Health Plans:

10525 (a) shall offer to potential purchasers at least one health benefit plan that is subject to
10526 the requirements of Chapter 8, Health Maintenance Organizations and Limited Health Plans;

10527 and

10528 (b) may offer to a potential purchaser one or more health benefit plans that:

10529 (i) are not subject to one or more of the following:

10530 (A) the limitations on insured indemnity benefits in Subsection 31A-8-105(4);

10531 (B) the limitation on point of service products in Subsections 31A-8-408(3) through

10532 (6);

10533 (C) except as provided in Subsection (2)(b)(ii), basic health care services as defined in

10534 Section 31A-8-101; or

10535 (D) coverage mandates enacted after January 1, 2009 that are not required by federal

10536 law, provided that the insurer offers one plan under Subsection (2)(a) that covers the mandate

10537 enacted after January 1, 2009; and

10538 (ii) when offering a health plan under this section, provide coverage for an emergency

10539 medical condition as required by Section 31A-22-627 as follows:

10540 (A) within the organization's service area, covered services shall include health care

10541 services from non-affiliated providers when medically necessary to stabilize an emergency

10542 medical condition; and

10543 (B) outside the organization's service area, covered services shall include medically

10544 necessary health care services for the treatment of an emergency medical condition that are

10545 immediately required while the enrollee is outside the geographic limits of the organization's

10546 service area.

10547 (3) An insurer that offers a health benefit plan that is not subject to Chapter 8, Health

10548 Maintenance Organizations and Limited Health Plans:

10549 (a) notwithstanding Subsection 31A-22-617(2), may offer a health benefit plan that

10550 groups providers into the following reimbursement levels:

10551 (i) tier one contracted providers;

10552 (ii) tier two contracted providers who the insurer [~~must~~] shall reimburse at least 75% of

10553 tier one providers; and

10554 (iii) one or more tiers of non-contracted providers; and

10555 (b) notwithstanding Subsection 31A-22-617(9) may offer a health benefit plan that is
10556 not subject to Section 31A-22-618;

10557 (c) beginning July 1, 2012, may offer products under Subsection (3)(a) that:

10558 (i) are not subject to Subsection 31A-22-617(2); and

10559 (ii) are subject to the reimbursement requirements in Section 31A-8-501;

10560 (d) when offering a health plan under this Subsection (3), shall provide coverage of
10561 emergency care services as required by Section 31A-22-627 by providing coverage at a
10562 reimbursement level of at least 75% of tier one providers; and

10563 (e) are not subject to coverage mandates enacted after January 1, 2009 that are not
10564 required by federal law, provided that an insurer offers one plan that covers a mandate enacted
10565 after January 1, 2009.

10566 (4) Section 31A-8-106 does not prohibit the offer of a health benefit plan under
10567 Subsection (2)(b).

10568 (5) (a) Any difference in price between a health benefit plan offered under Subsections
10569 (2)(a) and (b) shall be based on actuarially sound data.

10570 (b) Any difference in price between a health benefit plan offered under Subsections
10571 (3)(a) and (b) shall be based on actuarially sound data.

10572 (6) Nothing in this section limits the number of health benefit plans that an insurer may
10573 offer.

10574 Section 261. Section **31A-22-625** is amended to read:

10575 **31A-22-625. Catastrophic coverage of mental health conditions.**

10576 (1) As used in this section:

10577 (a) (i) "Catastrophic mental health coverage" means coverage in a health benefit plan
10578 that does not impose a lifetime limit, annual payment limit, episodic limit, inpatient or
10579 outpatient service limit, or maximum out-of-pocket limit that places a greater financial burden
10580 on an insured for the evaluation and treatment of a mental health condition than for the
10581 evaluation and treatment of a physical health condition.

10582 (ii) "Catastrophic mental health coverage" may include a restriction on cost sharing

10583 factors, such as deductibles, copayments, or coinsurance, before reaching a maximum
10584 out-of-pocket limit.

10585 (iii) "Catastrophic mental health coverage" may include one maximum out-of-pocket
10586 limit for physical health conditions and another maximum out-of-pocket limit for mental health
10587 conditions, except that if separate out-of-pocket limits are established, the out-of-pocket limit
10588 for mental health conditions may not exceed the out-of-pocket limit for physical health
10589 conditions.

10590 (b) (i) "50/50 mental health coverage" means coverage in a health benefit plan that
10591 pays for at least 50% of covered services for the diagnosis and treatment of mental health
10592 conditions.

10593 (ii) "50/50 mental health coverage" may include a restriction on:

10594 (A) episodic limits;

10595 (B) inpatient or outpatient service limits; or

10596 (C) maximum out-of-pocket limits.

10597 (c) "Large employer" is as defined in 42 U.S.C. Sec. 300gg-91.

10598 (d) (i) "Mental health condition" means a condition or disorder involving mental illness
10599 that falls under a diagnostic category listed in the Diagnostic and Statistical Manual, as
10600 periodically revised.

10601 (ii) "Mental health condition" does not include the following when diagnosed as the
10602 primary or substantial reason or need for treatment:

10603 (A) a marital or family problem;

10604 (B) a social, occupational, religious, or other social maladjustment;

10605 (C) a conduct disorder;

10606 (D) a chronic adjustment disorder;

10607 (E) a psychosexual disorder;

10608 (F) a chronic organic brain syndrome;

10609 (G) a personality disorder;

10610 (H) a specific developmental disorder or learning disability; or

- 10611 (I) mental retardation.
- 10612 (e) "Small employer" is as defined in 42 U.S.C. Sec. 300gg-91.
- 10613 (2) (a) At the time of purchase and renewal, an insurer shall offer to a small employer
10614 that it insures or seeks to insure a choice between catastrophic mental health coverage and
10615 50/50 mental health coverage.
- 10616 (b) In addition to complying with Subsection (2)(a), an insurer may offer to provide:
- 10617 (i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels
10618 that exceed the minimum requirements of this section; or
- 10619 (ii) coverage that excludes benefits for mental health conditions.
- 10620 (c) A small employer may, at its option, choose either catastrophic mental health
10621 coverage, 50/50 mental health coverage, or coverage offered under Subsection (2)(b),
10622 regardless of the employer's previous coverage for mental health conditions.
- 10623 (d) An insurer is exempt from the 30% index rating restriction in Section
10624 31A-30-106.1 and, for the first year only that catastrophic mental health coverage is chosen, the
10625 15% annual adjustment restriction in Section 31A-30-106.1, for any small employer with 20 or
10626 less enrolled employees who chooses coverage that meets or exceeds catastrophic mental
10627 health coverage.
- 10628 (3) An insurer shall offer a large employer mental health and substance use disorder
10629 benefit in compliance with Section 2705 of the Public Health Service Act, 42 U.S.C. Sec.
10630 300gg-5, and federal regulations adopted pursuant to that act.
- 10631 (4) (a) An insurer may provide catastrophic mental health coverage to a small employer
10632 through a managed care organization or system in a manner consistent with Chapter 8, Health
10633 Maintenance Organizations and Limited Health Plans, regardless of whether the insurance
10634 policy uses a managed care organization or system for the treatment of physical health
10635 conditions.
- 10636 (b) (i) Notwithstanding any other provision of this title, an insurer may:
- 10637 (A) establish a closed panel of providers for catastrophic mental health coverage; and
- 10638 (B) refuse to provide a benefit to be paid for services rendered by a nonpanel provider

10639 unless:

10640 (I) the insured is referred to a nonpanel provider with the prior authorization of the
10641 insurer; and

10642 (II) the nonpanel provider agrees to follow the insurer's protocols and treatment
10643 guidelines.

10644 (ii) If an insured receives services from a nonpanel provider in the manner permitted by
10645 Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the
10646 average amount paid by the insurer for comparable services of panel providers under a
10647 noncapitated arrangement who are members of the same class of health care providers.

10648 (iii) This Subsection (4)(b) may not be construed as requiring an insurer to authorize a
10649 referral to a nonpanel provider.

10650 (c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a
10651 mental health condition [~~must~~] shall be rendered:

10652 (i) by a mental health therapist as defined in Section 58-60-102; or

10653 (ii) in a health care facility:

10654 (A) licensed or otherwise authorized to provide mental health services pursuant to:

10655 (I) Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

10656 (II) Title 62A, Chapter 2, Licensure of Programs and Facilities; and

10657 (B) that provides a program for the treatment of a mental health condition pursuant to a
10658 written plan.

10659 (5) The commissioner may prohibit an insurance policy that provides mental health
10660 coverage in a manner that is inconsistent with this section.

10661 (6) The commissioner shall:

10662 (a) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative
10663 Rulemaking Act, as necessary to ensure compliance with this section; and

10664 (b) provide general figures on the percentage of insurance policies that include:

10665 (i) no mental health coverage;

10666 (ii) 50/50 mental health coverage;

10667 (iii) catastrophic mental health coverage; and
10668 (iv) coverage that exceeds the minimum requirements of this section.
10669 (7) This section may not be construed as discouraging or otherwise preventing an
10670 insurer from providing mental health coverage in connection with an individual insurance
10671 policy.

10672 (8) This section shall be repealed in accordance with Section 63I-1-231.

10673 Section 262. Section **31A-22-634** is amended to read:

10674 **31A-22-634. Prohibition against certain use of Social Security number --**

10675 **Exceptions -- Applicability of section.**

10676 (1) As used in this section:

10677 (a) "Insurer" means:

10678 (i) insurers governed by this part as described in Section 31A-22-600, and includes:

10679 (A) a health maintenance organization; and

10680 (B) a third-party administrator that is subject to this title; and

10681 (ii) notwithstanding Subsection 31A-1-103(3)(f) and Section 31A-22-600, a health,
10682 dental, medical, Medicare supplement, or conversion program offered under Title 49, Chapter
10683 20, Public Employees' Benefit and Insurance Program Act.

10684 (b) "Publicly display" or "publicly post" means to intentionally communicate or
10685 otherwise make available to the general public.

10686 (2) An insurer or its subcontractors, including a pharmacy benefit manager, [~~shall not~~]
10687 may not do any of the following:

10688 (a) publicly display or publicly post in any manner an individual's Social Security
10689 number; or

10690 (b) print an individual's Social Security number on any card required for the individual
10691 to access products or services provided or covered by the insurer.

10692 (3) This section does not prevent the collection, use, or release of a Social Security
10693 number as required by state or federal law, or the use of a Social Security number for internal
10694 verification or administrative purposes, or the release of a Social Security number to a health

10695 care provider for claims administration purposes, or as part of the verification, eligibility, or
 10696 payment process.

10697 (4) If a federal law takes effect requiring the United States Department of Health and
 10698 Human Services to establish a national unique patient health identifier program, an insurer that
 10699 complies with the federal law shall be considered in compliance with this section.

10700 (5) An insurer [~~must~~] shall comply with the provisions of this section by July 1, 2004.

10701 (6) (a) An insurer may obtain an extension for compliance with the requirements of this
 10702 section in accordance with Subsections (6)(b) and (c).

10703 (b) The request for extension:

10704 (i) [~~must~~] shall be submitted in writing to the department prior to July 1, 2004; and

10705 (ii) [~~must~~] shall provide an explanation as to why the insurer cannot comply with the
 10706 requirements of this section by July 1, 2004.

10707 (c) The commissioner shall grant a request for extension:

10708 (i) for a period of time not to exceed March 1, 2005; and

10709 (ii) if the commissioner finds that the explanation provided under Subsection (6)(b)(ii)
 10710 is a reasonable explanation.

10711 Section 263. Section **31A-22-636** is amended to read:

10712 **31A-22-636. Standardized health benefit plan cards.**

10713 (1) As used in this section, "insurer" means:

10714 (a) an insurer governed by this part as described in Section 31A-22-600;

10715 (b) a health maintenance organization governed by Chapter 8, Health Maintenance
 10716 Organizations and Limited Health Benefit Plans;

10717 (c) a third party administrator; and

10718 (d) notwithstanding Subsection 31A-1-103(3)(f) and Section 31A-22-600, a health,
 10719 medical, or conversion policy offered under Title 49, Chapter 20, Public Employees' Benefit
 10720 and Insurance Program Act.

10721 (2) In accordance with Subsection (3), an insurer [~~must~~] shall use and issue a health
 10722 benefit plan information card for the insurer's enrollees upon the purchase or renewal of, or

10723 enrollment in, a health benefit plan on or after July 1, 2010.

10724 (3) The health benefit plan card shall include:

10725 (a) the covered person's name;

10726 (b) the name of the carrier and the carrier network name;

10727 (c) the contact information for the carrier or health benefit plan administrator;

10728 (d) general information regarding copayments and deductibles; and

10729 (e) an indication of whether the health benefit plan is regulated by the state.

10730 (4) (a) The commissioner shall work with the Department of Health, the Health Data
10731 Authority, health care providers groups, and with state and national organizations that are
10732 developing uniform standards for the electronic exchange of health insurance claims or
10733 uniform standards for the electronic exchange of clinical health records.

10734 (b) When the commissioner determines that the groups described in Subsection (4)(a)
10735 have reached a consensus regarding the electronic technology and standards necessary to
10736 electronically exchange insurance enrollment and coverage information, the commissioner
10737 shall begin the rulemaking process under Title 63G, Chapter 3, Utah Administrative
10738 Rulemaking Act, to adopt standardized electronic interchange technology.

10739 (c) After rules are adopted under Subsection (4)(a), health care providers and their
10740 licensing boards under Title 58, Occupations and Professions, and health facilities licensed
10741 under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, shall work
10742 together to implement the adoption of card swipe technology.

10743 Section 264. Section **31A-22-637** is amended to read:

10744 **31A-22-637. Health care provider payment information -- Notice of admissions.**

10745 (1) For purposes of this section, "insurer" is as defined in Section 31A-22-636.

10746 (2) (a) An insurer shall provide its health care providers who are under contract with
10747 the insurer access to current information necessary for the health care provider to determine:

10748 (i) the effect of procedure codes on payment or compensation before a claim is
10749 submitted for a procedure;

10750 (ii) the plans and carrier networks that the health care provider is subject to as part of

10751 the contract with the carrier; and

10752 (iii) in accordance with Subsection 31A-26-301.6(10)(f), the specific rate and terms
10753 under which the provider will be paid for health care services.

10754 (b) The information required by Subsection (2)(a) may be provided through a website,
10755 and if requested by the health care provider, notice of the updated website shall be provided by
10756 the carrier.

10757 (3) (a) An insurer [~~shall not~~] may not require a health care provider by contract,
10758 reimbursement procedure, or otherwise to notify the insurer of a hospital in-patient emergency
10759 admission within a period of time that is less than one business day of the hospital in-patient
10760 admission, if compliance with the notification requirement would result in notification by the
10761 health care provider on a weekend or federal holiday.

10762 (b) Subsection (3)(a) does not prohibit the applicability or administration of other
10763 contract provisions between an insurer and a health care provider that require pre-authorization
10764 for scheduled in-patient admissions.

10765 Section 265. Section **31A-22-716** is amended to read:

10766 **31A-22-716. Required provision for notice of termination.**

10767 (1) Every policy for group or blanket accident and health coverage issued or renewed
10768 after July 1, 1990, shall include a provision that obligates the policyholder to give 30 days prior
10769 written notice of termination to each employee or group member and to notify each employee
10770 or group member of [~~his~~] the employee's or group member's rights to continue coverage upon
10771 termination.

10772 (2) An insurer's monthly notice to the policyholder of premium payments due shall
10773 include a statement of the policyholder's obligations as set forth in Subsection (1). Insurers
10774 shall provide a sample notice to the policyholder at least once a year.

10775 (3) For the purpose of compliance with federal law and the Health Insurance Portability
10776 and Accountability Act, P.L. No. 104-191, 110 Stat. 1960, all health benefit plans, health
10777 insurers, and student health plans [~~must~~] shall provide a certificate of creditable coverage to
10778 each covered person upon the person's termination from the plan as soon as reasonably

10779 possible.

10780 Section 266. Section **31A-22-722.5** is amended to read:

10781 **31A-22-722.5. Mini-COBRA election -- American Recovery and Reinvestment**
10782 **Act.**

10783 (1) (a) If the provisions of Subsection (1)(b) are met, an individual has a right to
10784 contact the individual's employer or the insurer for the employer to participate in a transition
10785 period for mini-COBRA benefits under Section 31A-22-722 in accordance with Section 3001
10786 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended.

10787 (b) An individual has the right under Subsection (1)(a) if the individual:

10788 (i) was involuntarily terminated from employment during the period of time identified
10789 in Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as
10790 amended;

10791 (ii) is eligible for COBRA premium assistance under Section 3001 of the American
10792 Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as amended;

10793 (iii) was eligible for Utah mini-COBRA as provided in Section 31A-22-722 at the time
10794 of termination;

10795 (iv) elected Utah mini-Cobra; and

10796 (v) voluntarily dropped coverage, which includes dropping coverage through
10797 non-payment of premiums, between December 1, 2009 and February 1, 2010.

10798 (2) (a) An individual or the employer of the individual shall contact the insurer and
10799 inform the insurer that the individual wants to maintain coverage and pay retroactive premiums
10800 under a transition period for mini-COBRA coverage in accordance with the provisions of
10801 Section 3001 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), as
10802 amended.

10803 (b) An individual or an employer on behalf of an eligible individual [~~must~~] shall
10804 submit the applicable forms and premiums for coverage under Subsection (1) to the insurer in
10805 accordance with the provisions of Section 3001 of the American Recovery and Reinvestment
10806 Act of 2009 (Pub. L. 11-5), as amended.

10807 (3) An insured has the right to extend the employee's coverage under mini-cobra with
10808 the current employer's group policy beyond the 12 months to the period of time the insured is
10809 eligible to receive assistance in accordance with Section 3001 of the American Recovery and
10810 Reinvestment Act of 2009 (Pub. L. 111-5) as amended.

10811 (4) An insurer that violates this section is subject to penalties in accordance with
10812 Section 31A-2-308.

10813 Section 267. Section **31A-22-723** is amended to read:

10814 **31A-22-723. Group and blanket conversion coverage.**

10815 (1) Notwithstanding Subsection 31A-1-103(3)(f), and except as provided in Subsection
10816 (3), all policies of accident and health insurance offered on a group basis under this title, or
10817 Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act, shall provide that
10818 a person whose insurance under the group policy has been terminated is entitled to choose a
10819 converted individual policy in accordance with this section and Section 31A-22-724.

10820 (2) A person who has lost group coverage may elect conversion coverage with the
10821 insurer that provided prior group coverage if the person:

10822 (a) has been continuously covered for a period of three months by the group policy or
10823 the group's preceding policies immediately prior to termination;

10824 (b) has exhausted either:

10825 (i) Utah mini-COBRA coverage as required in Section 31A-22-722;

10826 (ii) federal COBRA coverage; or

10827 (iii) alternative coverage under Section 31A-22-724;

10828 (c) has not acquired or is not covered under any other group coverage that covers all
10829 preexisting conditions, including maternity, if the coverage exists; and

10830 (d) resides in the insurer's service area.

10831 (3) This section does not apply if the person's prior group coverage:

10832 (a) is a stand alone policy that only provides one of the following:

10833 (i) catastrophic benefits;

10834 (ii) aggregate stop loss benefits;

- 10835 (iii) specific stop loss benefits;
- 10836 (iv) benefits for specific diseases;
- 10837 (v) accidental injuries only;
- 10838 (vi) dental; or
- 10839 (vii) vision;
- 10840 (b) is an income replacement policy;
- 10841 (c) was terminated because the insured:
- 10842 (i) failed to pay any required individual contribution;
- 10843 (ii) performed an act or practice that constitutes fraud in connection with the coverage;
- 10844 or
- 10845 (iii) made intentional misrepresentation of material fact under the terms of coverage; or
- 10846 (d) was terminated pursuant to Subsection 31A-8-402.3(2)(a), 31A-22-721(2)(a), or
- 10847 31A-30-107(2)(a).
- 10848 (4) (a) The employer shall provide written notification of the right to an individual
- 10849 conversion policy within 30 days of the insured's termination of coverage to:
- 10850 (i) the terminated insured;
- 10851 (ii) the ex-spouse; or
- 10852 (iii) in the case of the death of the insured:
- 10853 (A) the surviving spouse; and
- 10854 (B) the guardian of any dependents, if different from a surviving spouse.
- 10855 (b) The notification required by Subsection (4)(a) shall:
- 10856 (i) be sent by first class mail;
- 10857 (ii) contain the name, address, and telephone number of the insurer that will provide
- 10858 the conversion coverage; and
- 10859 (iii) be sent to the insured's last-known address as shown on the records of the
- 10860 employer of:
- 10861 (A) the insured;
- 10862 (B) the ex-spouse; and

10863 (C) if the policy terminates by reason of the death of the insured to:
10864 (I) the surviving spouse; and
10865 (II) the guardian of any dependents, if different from a surviving spouse.
10866 (5) (a) An insurer is not required to issue a converted policy which provides benefits in
10867 excess of those provided under the group policy from which conversion is made.
10868 (b) Except as provided in Subsection (5)(c), if the conversion is made from a health
10869 benefit plan, the employee or member shall be offered:
10870 (i) at least the basic benefit plan as provided in Section 31A-22-613.5 through
10871 December 31, 2009; and
10872 (ii) beginning January 1, 2010, only the alternative coverage as provided in Subsection
10873 31A-22-724(1)(a).
10874 (c) If the benefit levels required under Subsection (5)(b) exceed the benefit levels
10875 provided under the group policy, the conversion policy may offer benefits which are
10876 substantially similar to those provided under the group policy.
10877 (6) Written application for the converted policy shall be made and the first premium
10878 paid to the insurer no later than 60 days after termination of the group accident and health
10879 insurance.
10880 (7) The converted policy shall be issued without evidence of insurability.
10881 (8) (a) The initial premium for the converted policy for the first 12 months and
10882 subsequent renewal premiums shall be determined in accordance with premium rates
10883 applicable to age, class of risk of the person, and the type and amount of insurance provided.
10884 (b) The initial premium for the first 12 months may not be raised based on pregnancy
10885 of a covered insured.
10886 (c) The premium for converted policies shall be payable monthly or quarterly as
10887 required by the insurer for the policy form and plan selected, unless another mode or premium
10888 payment is mutually agreed upon.
10889 (9) The converted policy becomes effective at the time the insurance under the group
10890 policy terminates.

10891 (10) (a) A newly issued converted policy covers the employee or the member and
10892 [~~must~~] shall also cover all dependents covered by the group policy at the date of termination of
10893 the group coverage.

10894 (b) The only dependents that may be added after the policy has been issued are children
10895 and dependents as required by Section 31A-22-610 and Subsections 31A-22-610.5(6) and (7).

10896 (c) At the option of the insurer, a separate converted policy may be issued to cover any
10897 dependent.

10898 (11) (a) To the extent the group policy provided maternity benefits, the conversion
10899 policy shall provide maternity benefits equal to the lesser of the maternity benefits of the group
10900 policy or the conversion policy until termination of a pregnancy that exists on the date of
10901 conversion if one of the following is pregnant on the date of the conversion:

- 10902 (i) the insured;
- 10903 (ii) a spouse of the insured; or
- 10904 (iii) a dependent of the insured.

10905 (b) The requirements of this Subsection (11) do not apply to a pregnancy that occurs
10906 after the date of conversion.

10907 (12) Except as provided in this Subsection (12), a converted policy is renewable with
10908 respect to all individuals or dependents at the option of the insured. An insured may be
10909 terminated from a converted policy for the following reasons:

- 10910 (a) a dependent is no longer eligible under the policy;
- 10911 (b) for a network plan, if the individual no longer lives, resides, or works in:
 - 10912 (i) the insured's service area; or
 - 10913 (ii) the area for which the covered carrier is authorized to do business;
- 10914 (c) the individual fails to pay premiums or contributions in accordance with the terms
10915 of the converted policy, including any timeliness requirements;
- 10916 (d) the individual performs an act or practice that constitutes fraud in connection with
10917 the coverage;
- 10918 (e) the individual makes an intentional misrepresentation of material fact under the

10919 terms of the coverage; or

10920 (f) coverage is terminated uniformly without regard to any health status-related factor
10921 relating to any covered individual.

10922 (13) Conditions pertaining to health may not be used as a basis for classification under
10923 this section.

10924 (14) An insurer is only required to offer a conversion policy that complies with
10925 Subsection 31A-22-724(1)(b) and, notwithstanding Sections 31A-8-402.5 and 31A-30-107.1,
10926 may discontinue any other conversion policy if:

10927 (a) the discontinued conversion policy is discontinued uniformly without regard to any
10928 health related factor;

10929 (b) any affected individual is provided with 90 days' advanced written notice of the
10930 discontinuation of the existing conversion policy;

10931 (c) the policy holder is offered the insurer's conversion policy that complies with
10932 Subsection 31A-22-724(1)(b); and

10933 (d) the policy holder is not re-rated for purposes of premium calculation.

10934 Section 268. Section **31A-22-806** is amended to read:

10935 **31A-22-806. Provisions of policies and certificates.**

10936 (1) All credit life insurance and credit accident and health insurance shall be evidenced
10937 by an individual policy, or, in the case of group insurance, by a certificate of insurance
10938 delivered to the debtor.

10939 (2) Each of these types of policies or certificates shall, in addition to satisfying the
10940 requirements of Chapter 21, Insurance Contracts in General, set forth:

10941 (a) the name and home office address of the insurer;

10942 (b) the identity, by name or otherwise, of the persons insured;

10943 (c) the rate, premium, or amount of payment by the debtor, if any, given separately for
10944 credit life insurance and credit accident and health insurance;

10945 (d) a description of the amount, term, and coverage, including any exceptions,
10946 limitations, and restrictions;

10947 (e) that the benefits shall be paid to the creditor to reduce or extinguish the unpaid
10948 indebtedness; and

10949 (f) that whenever the amount of insurance exceeds the unpaid indebtedness, that excess
10950 is payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate.

10951 (3) Except as provided in Subsection (4), the policy or certificate shall be delivered to
10952 the debtor within 30 days after the date when the indebtedness is incurred.

10953 (4) (a) If the policy or certificate is not delivered to the debtor within 30 days after the
10954 date the indebtedness is incurred, a copy of the application for the policy or a notice of
10955 proposed insurance shall be delivered to the debtor.

10956 (b) The application or the notice shall be signed by the debtor and shall set forth:

10957 (i) the name and home office address of the insurer;

10958 (ii) the name of the debtor;

10959 (iii) the premium or amount of payment by the debtor, if any, separately for credit life
10960 insurance and credit accident and health insurance; and

10961 (iv) the amount, term, and a brief description of the coverage provided.

10962 (c) The copy of the application for or notice of proposed insurance, shall also refer
10963 exclusively to insurance coverage, and shall be separate from the loan, sale, or other credit
10964 statement of account or instrument, unless the information required by this Subsection (4)(c) is
10965 prominently set forth therein.

10966 (d) Upon acceptance of the insurance by the insurer and within 60 days after the later
10967 of the date on which the indebtedness is incurred or the date on which the credit life or credit
10968 accident and health policy was purchased, the insurer shall deliver the individual policy or
10969 group certificate of insurance to the debtor.

10970 (e) The application or notice shall state that upon acceptance by the insurer, the
10971 insurance is effective as provided in Section 31A-22-805.

10972 (5) If the named insurer does not accept the risk, the debtor shall receive a policy or
10973 certificate of insurance setting forth the name and home office address of the substituted
10974 insurer and the amount of the premium to be charged. If the premium is less than that set forth

10975 in the notice of proposed insurance, an appropriate refund shall be made.

10976 (6) If a creditor makes available to the debtors more than one plan of credit life or
10977 credit accident and health insurance, all debtors [~~must~~] shall be informed of the plans
10978 applicable to the specific type of loan transaction for which the debtor is applying.

10979 Section 269. Section **31A-22-1406** is amended to read:

10980 **31A-22-1406. Preexisting conditions.**

10981 (1) A long-term care insurance policy or certificate [~~shall not~~] may not use a definition
10982 of a preexisting condition which is more restrictive than the following: "Preexisting condition
10983 means a condition for which medical advice or treatment was recommended by or received
10984 from a provider of health care services, within six months preceding the effective date of
10985 coverage of an insured person."

10986 (2) A long-term care insurance policy or certificate may not exclude coverage for a loss
10987 or confinement which is the result of a preexisting condition unless such loss or confinement
10988 begins within six months following the effective date of coverage of an insured person.

10989 (3) The commissioner may extend the preexisting condition periods provided in
10990 Subsections (1) and (2) as to specific age group categories in specific policy forms upon
10991 finding that the extension is in the best interest of the public.

10992 (4) (a) The definition of preexisting condition does not prohibit an insurer from using
10993 an application form designed to elicit the complete health history of an applicant and from
10994 underwriting in accordance with that insurer's established underwriting standards on the basis
10995 of the answers on that application.

10996 (b) Unless otherwise provided in the policy or certificate, a preexisting condition,
10997 regardless of whether it is disclosed on the application, need not be covered until the waiting
10998 period described in Subsection (2) expires.

10999 (c) A long-term care insurance policy or certificate may not exclude or use waivers or
11000 riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or
11001 described preexisting diseases or physical condition beyond the waiting period described in
11002 Subsection (2).

11003 Section 270. Section **31A-22-1409** is amended to read:

11004 **31A-22-1409. Statements of coverage.**

11005 (1) An outline of coverage shall be delivered to a prospective applicant for long-term
11006 care insurance at the time of initial solicitation through means which prominently direct the
11007 attention of the applicant to the document and its purpose.

11008 (2) The commissioner may prescribe a standard format of an outline of coverage,
11009 including style, arrangement, and overall appearance, and the content.

11010 (3) In the case of agent solicitations an agent [~~must~~] shall deliver the outline of
11011 coverage prior to the presentation of any application or enrollment form.

11012 (4) In the case of direct response solicitations, the outline of coverage [~~must~~] shall be
11013 presented in conjunction with any application or enrollment form.

11014 (5) An outline of coverage under this section shall include:

11015 (a) a description of the principal benefits and coverage provided in the policy;

11016 (b) a statement of the principal exclusions, reductions, and limitations contained in the
11017 policy;

11018 (c) a statement of the terms under which the policy or certificate, or both, may be
11019 continued in force or discontinued, including any reservation in the policy of a right to change
11020 premium;

11021 (d) a specific description of continuation or conversion provisions of group coverage;

11022 (e) a statement that the outline of coverage is not a contract of insurance but a summary
11023 only and that the policy or group master policy contains governing contractual provisions;

11024 (f) a description of the terms under which the policy or certificate may be returned and
11025 premium refunded;

11026 (g) a brief description of the relationship of cost of care and benefits; and

11027 (h) a statement that discloses to the policyholder or certificate holder whether the
11028 policy is intended to be a federally tax-qualified, long-term care insurance contract under
11029 Section 7702B(b), Internal Revenue Code.

11030 (6) A certificate issued pursuant to a group long-term care insurance policy, which

11031 policy is delivered or issued for delivery in this state, shall include:

11032 (a) a description of the principal benefits and coverage provided in the policy;

11033 (b) a statement of the principal exclusions, reductions, and limitations contained in the
11034 policy;

11035 (c) a statement that the group master policy determines governing contractual
11036 provisions; and

11037 (d) a statement that any long-term care inflation protection option required by rule is
11038 not available under the policy.

11039 (7) If an application for a long-term care contract or certificate is approved, the issuer
11040 shall deliver the contract or certificate of insurance to the applicant no later than 30 days after
11041 the date of approval.

11042 (8) At the time of policy delivery, a policy summary shall be delivered for an
11043 individual life insurance policy which provides long-term care benefits within the policy or by
11044 rider. In the case of direct response solicitations, the insurer shall deliver the policy summary
11045 upon the applicant's request. However, the insurer shall deliver the summary to the applicant no
11046 later than at the time of policy delivery regardless of request. In addition to complying with all
11047 applicable requirements, the summary shall also include:

11048 (a) an explanation of how the long-term care benefit interacts with other components of
11049 the policy, including deductions from death benefits;

11050 (b) an illustration for each covered person of the amount of benefits, the length of
11051 benefit, and the guaranteed lifetime benefits if any;

11052 (c) any exclusions, reductions, and limitations on benefits of long-term care; and

11053 (d) if applicable to the policy type, the summary shall also include:

11054 (i) a disclosure of the effects of exercising other rights under the policy;

11055 (ii) a disclosure of guarantees related to long-term care costs of insurance charges; and

11056 (iii) current and projected maximum lifetime benefits.

11057 (9) The provisions of the policy summary required under Subsection (8) may be
11058 incorporated into:

11059 (a) a basic illustration; or
11060 (b) the life insurance policy summary required to be delivered in accordance with rule.
11061 Section 271. Section **31A-23a-501** is amended to read:

11062 **31A-23a-501. Licensee compensation.**

11063 (1) As used in this section:

11064 (a) "Commission compensation" includes funds paid to or credited for the benefit of a
11065 licensee from:

11066 (i) commission amounts deducted from insurance premiums on insurance sold by or
11067 placed through the licensee; or

11068 (ii) commission amounts received from an insurer or another licensee as a result of the
11069 sale or placement of insurance.

11070 (b) (i) "Compensation from an insurer or third party administrator" means
11071 commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options,
11072 gifts, prizes, or any other form of valuable consideration:

11073 (A) whether or not payable pursuant to a written agreement; and

11074 (B) received from:

11075 (I) an insurer; or

11076 (II) a third party to the transaction for the sale or placement of insurance.

11077 (ii) "Compensation from an insurer or third party administrator" does not mean
11078 compensation from a customer that is:

11079 (A) a fee or pass-through costs as provided in Subsection (1)(e); or

11080 (B) a fee or amount collected by or paid to the producer that does not exceed an
11081 amount established by the commissioner by administrative rule.

11082 (c) (i) "Customer" means:

11083 (A) the person signing the application or submission for insurance; or

11084 (B) the authorized representative of the insured actually negotiating the placement of
11085 insurance with the producer.

11086 (ii) "Customer" does not mean a person who is a participant or beneficiary of:

- 11087 (A) an employee benefit plan; or
- 11088 (B) a group or blanket insurance policy or group annuity contract sold, solicited, or
- 11089 negotiated by the producer or affiliate.
- 11090 (d) (i) "Noncommission compensation" includes all funds paid to or credited for the
- 11091 benefit of a licensee other than commission compensation.
- 11092 (ii) "Noncommission compensation" does not include charges for pass-through costs
- 11093 incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.
- 11094 (e) "Pass-through costs" include:
- 11095 (i) costs for copying documents to be submitted to the insurer; and
- 11096 (ii) bank costs for processing cash or credit card payments.
- 11097 (2) A licensee may receive from an insured or from a person purchasing an insurance
- 11098 policy, noncommission compensation if the noncommission compensation is stated on a
- 11099 separate, written disclosure.
- 11100 (a) The disclosure required by this Subsection (2) shall:
- 11101 (i) include the signature of the insured or prospective insured acknowledging the
- 11102 noncommission compensation;
- 11103 (ii) clearly specify the amount or extent of the noncommission compensation; and
- 11104 (iii) be provided to the insured or prospective insured before the performance of the
- 11105 service.
- 11106 (b) Noncommission compensation shall be:
- 11107 (i) limited to actual or reasonable expenses incurred for services; and
- 11108 (ii) uniformly applied to all insureds or prospective insureds in a class or classes of
- 11109 business or for a specific service or services.
- 11110 (c) A copy of the signed disclosure required by this Subsection (2) [~~must~~] shall be
- 11111 maintained by any licensee who collects or receives the noncommission compensation or any
- 11112 portion of the noncommission compensation.
- 11113 (d) All accounting records relating to noncommission compensation shall be
- 11114 maintained by the person described in Subsection (2)(c) in a manner that facilitates an audit.

11115 (3) (a) A licensee may receive noncommission compensation when acting as a
11116 producer for the insured in connection with the actual sale or placement of insurance if:

11117 (i) the producer and the insured have agreed on the producer's noncommission
11118 compensation; and

11119 (ii) the producer has disclosed to the insured the existence and source of any other
11120 compensation that accrues to the producer as a result of the transaction.

11121 (b) The disclosure required by this Subsection (3) shall:

11122 (i) include the signature of the insured or prospective insured acknowledging the
11123 noncommission compensation;

11124 (ii) clearly specify the amount or extent of the noncommission compensation and the
11125 existence and source of any other compensation; and

11126 (iii) be provided to the insured or prospective insured before the performance of the
11127 service.

11128 (c) The following additional noncommission compensation is authorized:

11129 (i) compensation received by a producer of a compensated corporate surety who under
11130 procedures approved by a rule or order of the commissioner is paid by surety bond principal
11131 debtors for extra services;

11132 (ii) compensation received by an insurance producer who is also licensed as a public
11133 adjuster under Section 31A-26-203, for services performed for an insured in connection with a
11134 claim adjustment, so long as the producer does not receive or is not promised compensation for
11135 aiding in the claim adjustment prior to the occurrence of the claim;

11136 (iii) compensation received by a consultant as a consulting fee, provided the consultant
11137 complies with the requirements of Section 31A-23a-401; or

11138 (iv) other compensation arrangements approved by the commissioner after a finding
11139 that they do not violate Section 31A-23a-401 and are not harmful to the public.

11140 (4) (a) For purposes of this Subsection (4), "producer" includes:

11141 (i) a producer;

11142 (ii) an affiliate of a producer; or

11143 (iii) a consultant.

11144 (b) Beginning January 1, 2010, in addition to any other disclosures required by this
11145 section, a producer may not accept or receive any compensation from an insurer or third party
11146 administrator for the placement of a health benefit plan, other than a hospital confinement
11147 indemnity policy, unless prior to the customer's purchase of the health benefit plan the
11148 producer:

11149 (i) except as provided in Subsection (4)(c), discloses in writing to the customer that the
11150 producer will receive compensation from the insurer or third party administrator for the
11151 placement of insurance, including the amount or type of compensation known to the producer
11152 at the time of the disclosure; and

11153 (ii) except as provided in Subsection (4)(c):

11154 (A) obtains the customer's signed acknowledgment that the disclosure under
11155 Subsection (4)(b)(i) was made to the customer; or

11156 (B) (I) signs a statement that the disclosure required by Subsection (4)(b)(i) was made
11157 to the customer; and

11158 (II) keeps the signed statement on file in the producer's office while the health benefit
11159 plan placed with the customer is in force.

11160 (c) If the compensation to the producer from an insurer or third party administrator is
11161 for the renewal of a health benefit plan, once the producer has made an initial disclosure that
11162 complies with Subsection (4)(b), the producer does not have to disclose compensation received
11163 for the subsequent yearly renewals in accordance with Subsection (4)(b) until the renewal
11164 period immediately following 36 months after the initial disclosure.

11165 (d) (i) A licensee who collects or receives any part of the compensation from an insurer
11166 or third party administrator in a manner that facilitates an audit shall, while the health benefit
11167 plan placed with the customer is in force, maintain a copy of:

11168 (A) the signed acknowledgment described in Subsection (4)(b)(i); or

11169 (B) the signed statement described in Subsection (4)(b)(ii).

11170 (ii) The standard application developed in accordance with Section 31A-22-635 shall

11171 include a place for a producer to provide the disclosure required by this Subsection (4), and if
11172 completed, shall satisfy the requirement of Subsection (4)(d)(i).

11173 (e) Subsection (4)(b)(ii) does not apply to:

11174 (i) a person licensed as a producer who acts only as an intermediary between an insurer
11175 and the customer's producer, including a managing general agent; or

11176 (ii) the placement of insurance in a secondary or residual market.

11177 (5) This section does not alter the right of any licensee to recover from an insured the
11178 amount of any premium due for insurance effected by or through that licensee or to charge a
11179 reasonable rate of interest upon past-due accounts.

11180 (6) This section does not apply to bail bond producers or bail enforcement agents as
11181 defined in Section 31A-35-102.

11182 Section 272. Section **31A-23a-602** is amended to read:

11183 **31A-23a-602. Required contract provisions.**

11184 A person, firm, association, or corporation acting in the capacity of a managing general
11185 agent may not place business with an insurer unless there is in force a written contract between
11186 the parties which sets forth the responsibilities of each party, and where both parties share
11187 responsibility for a particular function, the contract specifies the division of shared
11188 responsibilities. The written contract shall contain the following minimum provisions:

11189 (1) The insurer may terminate the contract for cause upon written notice to the
11190 managing general agent. The insurer may suspend the underwriting authority of the managing
11191 general agent during the pendency of any dispute regarding the cause for termination.

11192 (2) The managing general agent will render accounts to the insurer detailing all
11193 transactions and remit all funds due under the contract to the insurer at least monthly.

11194 (3) All funds collected for the account of an insurer will be held by the managing
11195 general agent in a fiduciary capacity in a bank which is insured by the FDIC. This account
11196 shall be used for all payments on behalf of the insurer. The managing general agent may retain
11197 no more than three months estimated claims payments and allocated loss adjustment expenses.

11198 (4) Separate records of business written by the managing general agent shall be

11199 maintained. The insurer shall have access and the right to copy all accounts and records related
11200 to its business and shall have access to all books, bank accounts, and records of the managing
11201 general agent. The records shall be retained according to Section 31A-23a-412 and shall be
11202 kept in a form usable by the insurer and the commissioner.

11203 (5) The contract may not be assigned in whole or part by the managing general agent.

11204 (6) The insurer shall have the right to cancel or nonrenew any policy of insurance
11205 subject to the applicable laws and rules. The contract shall contain appropriate underwriting
11206 guidelines including:

11207 (a) the maximum annual premium volume;

11208 (b) the basis of the rates to be charged;

11209 (c) the types of risks which may be written;

11210 (d) maximum limits of liability;

11211 (e) applicable exclusions;

11212 (f) territorial limitations;

11213 (g) policy cancellation provisions; and

11214 (h) the maximum policy period.

11215 (7) If the contract permits the managing general agent to settle claims on behalf of the
11216 insurer:

11217 (a) All claims [~~must~~] shall be reported to the company in a timely manner.

11218 (b) A copy of the claim file shall be sent to the insurer at its request, or as soon as it
11219 becomes known that the claim:

11220 (i) has the potential to exceed the lesser of an amount determined by the commissioner
11221 or the limit set by the company;

11222 (ii) involves a coverage dispute;

11223 (iii) may exceed the managing general agent's claims settlement authority;

11224 (iv) is open for more than six months; or

11225 (v) is closed by payment the lesser of an amount set by the commissioner or an amount
11226 set by the company.

11227 (c) All claim files will be the joint property of the insurer and managing general agent.
11228 However, upon an order of liquidation of the insurer, the files become the sole property of the
11229 insurer or its estate. The managing general agent shall have reasonable access to and the right
11230 to copy the files on a timely basis.

11231 (d) Any settlement authority granted to the managing general agent may be terminated
11232 for cause upon the insurer's written notice to the managing general agent or upon the
11233 termination of the contract. The insurer may suspend the settlement authority during the
11234 pendency of any dispute regarding the cause for termination.

11235 (8) Where electronic claims files are in existence, the contract [~~must~~] shall address the
11236 timely transmission of the data.

11237 (9) If the contract provides for a sharing of interim profits by the managing general
11238 agent, and the managing general agent has the authority to determine the amount of the interim
11239 profits by establishing loss reserves, controlling claim payments, or in any other manner,
11240 interim profits may not be paid to the managing general agent until one year after they are
11241 earned for property insurance business, and five years after they are earned on casualty
11242 business, but not until the profits have been verified by a review conducted pursuant to Section
11243 31A-23a-603.

11244 (10) The managing general agent may not:

11245 (a) bind reinsurance or retrocessions on behalf of the insurer, except that the managing
11246 general agent may bind facultative reinsurance contracts pursuant to obligatory facultative
11247 agreements if the contract with the insurer contains reinsurance underwriting guidelines
11248 including, for both reinsurance assumed and ceded, a list of reinsurers with which the
11249 automatic agreements are in effect, the coverages and amounts or percentages that may be
11250 reinsured, and commission schedules;

11251 (b) commit the insurer to participate in insurance or reinsurance syndicates;

11252 (c) appoint any producer without assuring that the producer is lawfully licensed to
11253 transact the type of insurance for which [~~he~~] the producer is appointed;

11254 (d) without prior approval of the insurer, pay or commit the insurer to pay a claim over

11255 a specified amount, net of reinsurance, which [~~shall not~~] may not exceed 1% of the insurer's
11256 policyholder's surplus as of December 31 of the last completed calendar year;

11257 (e) collect any payment from a reinsurer or commit the insurer to any claim settlement
11258 with a reinsurer without prior approval of the insurer; if prior approval is given, a report [~~must~~]
11259 shall be promptly forwarded to the insurer;

11260 (f) permit its subproducer to serve on the insurer's board of directors;

11261 (g) jointly employ an individual who is employed with the insurer; or

11262 (h) appoint a submanaging general agent.

11263 Section 273. Section **31A-23a-702** is amended to read:

11264 **31A-23a-702. Minimum standards.**

11265 (1) This section applies if, in any calendar year, the aggregate amount of gross written
11266 premium on business placed with a controlled insurer by a controlling producer is equal to or
11267 greater than 5% of the admitted assets of the controlled insurer, as reported in the controlled
11268 insurer's quarterly statement filed as of September 30 of the prior year.

11269 (2) Notwithstanding Subsection (1), this section does not apply if:

11270 (a) the controlling producer places insurance only with the controlled insurer, or only
11271 with the controlled insurer and members of the controlled insurer's holding company system, or
11272 with the controlled insurer's parent, affiliate, or subsidiary and receives no compensation based
11273 upon the amount of premiums written in connection with the insurance placed;

11274 (b) the controlling producer accepts insurance placements only from nonaffiliated
11275 producers who are not controlling producers, and not directly from insureds; and

11276 (c) the controlled insurer, except for insurance business written through a residual
11277 market facility, accepts insurance business only from a controlling producer, a producer
11278 controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

11279 (3) A controlled insurer may not accept business from a controlling producer and a
11280 controlling producer may not place business with a controlled insurer unless there is a written
11281 contract between the controlling producer and the insurer that specifies the responsibilities of
11282 each party and that has been approved by the board of directors of the insurer. The contract

11283 shall contain the following minimum provisions:

11284 (a) The controlled insurer may terminate the contract for cause, upon written notice to
11285 the controlling producer. The controlled insurer shall suspend the authority of the controlling
11286 producer to write business during the pendency of any dispute regarding the cause for the
11287 termination.

11288 (b) The controlling producer shall render accounts to the controlled insurer detailing all
11289 material transactions, including information necessary to support all commissions, charges, and
11290 other fees received by, or owing to, the controlling producer.

11291 (c) The controlling producer shall remit all funds due under the terms of the contract to
11292 the controlled insurer at least monthly. The due date shall be fixed so that premiums or
11293 premium installments collected shall be remitted no later than 90 days after the effective date
11294 of any policy placed with the controlled insurer under the contract.

11295 (d) All funds collected for the controlled insurer's account shall be held by the
11296 controlling producer in a fiduciary capacity, in one or more appropriately identified bank
11297 accounts in banks that are members of the Federal Reserve System FDIC, in accordance with
11298 applicable provisions of this title. However, funds of a controlling producer not required to be
11299 licensed in this state shall be maintained in compliance with the requirements of the controlling
11300 producer's domiciliary jurisdiction.

11301 (e) The controlling producer shall maintain separately identifiable records of business
11302 written for the controlled insurer.

11303 (f) The contract may not be assigned in whole or in part by the controlling producer.

11304 (g) The controlled insurer shall provide the controlling producer with its underwriting
11305 standards, rules, procedures, and manuals setting forth the rates to be charged, and the
11306 conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the
11307 standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and
11308 conditions shall be the same as those applicable to comparable business placed with the
11309 controlled insurer by a producer other than the controlling producer.

11310 (h) The contract shall state the rates and terms of the controlling producer's

11311 commissions, charges, or other fees and the purposes for those charges or fees. The rates of the
11312 commissions, charges, and other fees may not be greater than those applicable to comparable
11313 business and services placed with the controlled insurer by producers other than controlling
11314 producers. For purposes of Subsections (3)(g) and (h), examples of "comparable business and
11315 services" include the same lines of insurance, same kinds of insurance, same kinds of risks,
11316 similar policy limits, and similar quality of business.

11317 (i) If the contract provides that the controlling producer, on insurance business placed
11318 with the insurer, is to be compensated contingent upon the insurer's profits on that business,
11319 then the compensation may not be determined and paid until at least five years after the
11320 premiums on liability insurance are earned, and at least one year after the premiums are earned
11321 on any other insurance. In no event may the commissions be paid until the adequacy of the
11322 controlled insurer's reserves on remaining claims has been independently verified pursuant to
11323 Subsection (5).

11324 (j) The contract shall include a limit on the controlling producer's writings in relation to
11325 the controlled insurer's surplus and total writings. The insurer may establish a different limit to
11326 each line or subline of business. The controlled insurer shall notify the controlling producer
11327 when the applicable limit is approached and ~~shall not~~ may not accept business from the
11328 controlling producer if the limit is reached. The controlling producer may not place business
11329 with the controlled insurer if it has been notified by the controlled insurer that the limit has
11330 been reached.

11331 (k) The controlling producer may negotiate but may not bind reinsurance on behalf of
11332 the controlled insurer on business the controlling producer places with the controlled insurer.
11333 However, the controlling producer may bind facultative reinsurance contracts pursuant to
11334 obligatory facultative agreements if the contract with the controlled insurer contains
11335 underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers
11336 with which the automatic agreements are in effect, the coverages and amounts or percentages
11337 that may be reinsured, and commission schedules.

11338 (4) Each controlled insurer shall have an audit committee of the board of directors.

11339 The audit committee shall annually meet to review the adequacy of the insurer's loss reserves.
11340 The committee shall meet with management, the insurer's independent certified public
11341 accountants, and an independent casualty actuary or any other independent loss reserve
11342 specialists acceptable to the commissioner.

11343 (5) (a) In addition to any other required loss reserve certification, the controlled insurer
11344 shall file with the commissioner on April 1 of each year an opinion of an independent casualty
11345 actuary, or any other independent loss reserve specialist acceptable to the commissioner. The
11346 opinion shall report loss ratios for each line of business written and shall attest to the adequacy
11347 of loss reserves established for losses incurred and outstanding as of year-end on business
11348 placed by the producer including losses incurred but not reported.

11349 (b) The controlled insurer shall annually report to the commissioner the amount of
11350 commissions paid to the producer, the percentage that amount represents of the net premiums
11351 written, and comparable amounts and percentage paid to noncontrolling producers for
11352 placements of the same kinds of insurance.

11353 Section 274. Section **31A-23a-806** is amended to read:

11354 **31A-23a-806. Prohibited acts.**

11355 (1) The reinsurance intermediary-manager may not cede retrocessions on behalf of the
11356 reinsurer, except that the reinsurance intermediary-manager may cede facultative retrocessions
11357 pursuant to obligatory facultative agreements if the contract with the reinsurer contains
11358 reinsurance underwriting guidelines for facultative retrocessions. The guidelines shall include
11359 a list of reinsurers with which automatic agreements are in effect, and for each listed reinsurer,
11360 the coverages and amounts or percentages that may be reinsured, and commission schedules.

11361 (2) The reinsurance intermediary-manager may not commit the reinsurer to participate
11362 in reinsurance syndicates.

11363 (3) The reinsurance intermediary-manager may not appoint any producer without
11364 assuring that the producer is lawfully licensed to transact the type of reinsurance for which ~~he~~
11365 the producer is appointed.

11366 (4) The reinsurance intermediary-manager may not, without prior approval of the

11367 reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the
11368 lesser of an amount specified by the reinsurer or 1% of the reinsurer's policyholder's surplus as
11369 of December 31 of the last complete calendar year.

11370 (5) The reinsurance intermediary-manager may not collect any payment from a
11371 retrocessionaire or commit the reinsurer to any claim settlement with a retrocessionaire,
11372 without prior approval of the reinsurer. If prior approval is given, a report [~~must~~] shall be
11373 promptly forwarded to the reinsurer.

11374 (6) The reinsurance intermediary-manager may not jointly employ an individual who is
11375 employed by the reinsurer unless the reinsurance intermediary-manager is under common
11376 control with the reinsurer subject to Title 31A, Chapter 16, Insurance Holding Companies.

11377 (7) The reinsurance intermediary-manager may not appoint a subreinsurance
11378 intermediary-manager.

11379 Section 275. Section **31A-27a-202** is amended to read:

11380 **31A-27a-202. Commencement of formal delinquency proceeding.**

11381 (1) A formal delinquency proceeding against a person shall be commenced by filing a
11382 petition in the name of the commissioner or department.

11383 (2) (a) The petition required by Subsection (1):

11384 (i) shall state:

11385 (A) the grounds upon which the proceeding is based; and

11386 (B) the relief requested; and

11387 (ii) may include a request for restraining orders and injunctive relief as described in
11388 Section 31A-27a-108.

11389 (b) Upon the filing of a petition, the commissioner shall forward a notice of the petition
11390 by first-class mail or electronic communication, as permitted by the receivership court, to the
11391 commissioners and guaranty associations in states in which the insurer did business.

11392 (3) (a) A petition that requests injunctive relief:

11393 (i) shall be verified by the commissioner or the commissioner's designee; and

11394 (ii) is not required to plead or prove irreparable harm or inadequate remedy at law.

- 11395 (b) The commissioner shall provide only the notice the receivership court requires.
- 11396 (4) If a temporary restraining order is requested:
- 11397 (a) the receivership court may issue an initial order containing the relief requested;
- 11398 (b) the order shall state the time and date of its issuance;
- 11399 (c) the receivership court shall set a time and date for the return of summons:
- 11400 (i) not more than 10 days from the time and date the initial order is issued; and
- 11401 (ii) at which time the person proceeded against may appear before the receivership
- 11402 court for a summary hearing; and
- 11403 (d) the order may not continue in effect beyond the time and date set for the return of
- 11404 summons, unless the receivership court expressly enters one or more orders extending the
- 11405 restraining order.
- 11406 (5) (a) If no temporary restraining order is requested, the receivership court shall cause
- 11407 summons to be issued.
- 11408 (b) The summons shall specify:
- 11409 (i) a return date not more than 30 days after the day on which the summons is issued;
- 11410 and
- 11411 (ii) that an answer [~~must~~] shall be filed at or before the return date.
- 11412 Section 276. Section **31A-27a-205** is amended to read:
- 11413 **31A-27a-205. Decision and appeals.**
- 11414 (1) The receivership court shall enter judgment on the petition to commence formal
- 11415 delinquency proceeding within 15 days after the day on which the evidence is concluded.
- 11416 (2) (a) An order entered pursuant to Subsection (1) is final when entered.
- 11417 (b) An appeal shall be:
- 11418 (i) handled on an expedited basis; and
- 11419 (ii) taken within five days of the day on which judgment is entered.
- 11420 (3) (a) Absent entry of an order staying the order pursuant to Subsection (4), the order
- 11421 has full force and effect and the receiver shall carry out the order's terms and this chapter.
- 11422 (b) A request for reconsideration, review, or appeal, or posting of a bond, may not

11423 dissolve or stay the judgment.

11424 (4) (a) The following motions [~~must~~] shall first be presented to the receivership court:

11425 (i) a motion for a stay of a judgment;

11426 (ii) a motion for approval of a supersedes bond; or

11427 (iii) a motion for other relief pending appeal.

11428 (b) Except for a grant of a petition for rehabilitation which shall remain in effect

11429 pending a decision on appeal, during the pendency of an appeal the receivership court may do

11430 any of the following in accordance with the Utah Rules of Civil Procedure:

11431 (i) suspend an order entered under Subsection (1);

11432 (ii) modify an order entered under Subsection (1); or

11433 (iii) make any other appropriate order governing the enforceability of an order entered

11434 under Subsection (1).

11435 (c) The receivership court or an appellate court to which the matter is presented may

11436 condition any relief it grants under this Subsection (4) on the filing of a bond or other

11437 appropriate security with the receivership court.

11438 (5) Section 31A-27a-114 applies to all acts taken during the pendency of an appeal

11439 regardless of the appeal's ultimate disposition.

11440 (6) The reversal or modification on appeal of an order of rehabilitation or liquidation

11441 does not affect the validity of an act of the receiver pursuant to the order unless the order is

11442 stayed pending appeal.

11443 Section 277. Section **31A-27a-502** is amended to read:

11444 **31A-27a-502. Recovery from affiliates.**

11445 (1) (a) If a receivership order is entered under this chapter, the receiver appointed under

11446 the receivership order may recover on behalf of the insurer from an affiliate as defined in

11447 Subsection 31A-1-301(5) the value received by the affiliate at any time during the five years

11448 preceding the filing date of the delinquency proceedings.

11449 (b) A person disputing that person's status as an affiliate [~~must~~] shall prove by clear

11450 and convincing evidence the person's nonaffiliate status.

11451 (c) Recovery from an affiliate is subject to the limitations of Subsections (2) and (6).

11452 (2) If the insurer is a stock corporation, a stock dividend distribution to an affiliate is
11453 not recoverable if the recipient shows by a preponderance of the evidence that:

11454 (a) when paid, the stock dividend distribution to an affiliate is lawful and reasonable;

11455 (b) the department had notice to and approved the stock dividend; and

11456 (c) the insurer did not know and could not reasonably have known that the stock
11457 dividend distribution to the affiliate might adversely affect the solvency of the insurer.

11458 (3) The maximum amount recoverable under this section is the amount needed to pay
11459 all claims under the receivership:

11460 (a) in excess of all other available recoverable assets; and

11461 (b) reduced for each recipient affiliate by any amount that the recipient affiliate pays to
11462 any receiver under similar laws of other states.

11463 (4) (a) A person who is an affiliate at the time value is received is liable up to the
11464 amount of value received by the affiliate.

11465 (b) If two or more affiliates are liable regarding the same value received, they are
11466 jointly and severally liable.

11467 (5) If any affiliate liable under Subsection (4) is insolvent or unable to pay within one
11468 year, all affiliates at the time the value is received are jointly and severally liable for any
11469 resulting deficiency in the amount that would have been recovered from the nonpaying
11470 affiliate.

11471 (6) This section does not enlarge the personal liability of a director under existing law.

11472 (7) An action or proceeding under this section may not be commenced after the earlier
11473 of:

11474 (a) six years after the day on which a receiver is appointed; or

11475 (b) the day on which the receivership is terminated.

11476 Section 278. Section **31A-27a-701** is amended to read:

11477 **31A-27a-701. Priority of distribution.**

11478 (1) (a) The priority of payment of distributions on unsecured claims shall be in

11479 accordance with the order in which each class of claim is set forth in this section except as
11480 provided in Section 31A-27a-702.

11481 (b) All claims in each class shall be paid in full or adequate funds retained for the
11482 claim's payment before a member of the next class receives payment.

11483 (c) All claims within a class shall be paid substantially the same percentage.

11484 (d) Except as provided in Subsections (2)(a)(i)(E), (2)(k), and (2)(m), subclasses may
11485 not be established within a class.

11486 (e) A claim by a shareholder, policyholder, or other creditor may not be permitted to
11487 circumvent the priority classes through the use of equitable remedies.

11488 (2) The order of distribution of claims shall be as follows:

11489 (a) a Class 1 claim, which:

11490 (i) is a cost or expense of administration expressly approved or ratified by the
11491 liquidator, including the following:

11492 (A) the actual and necessary costs of preserving or recovering the property of the
11493 insurer;

11494 (B) reasonable compensation for all services rendered on behalf of the administrative
11495 supervisor or receiver;

11496 (C) a necessary filing fee;

11497 (D) the fees and mileage payable to a witness;

11498 (E) an unsecured loan obtained by the receiver, which:

11499 (I) unless its terms otherwise provide, has priority over all other costs of
11500 administration; and

11501 (II) absent agreement to the contrary, shares pro rata with all other claims described in
11502 this Subsection (2)(a)(i)(E); and

11503 (F) an expense approved by the rehabilitator of the insurer, if any, incurred in the
11504 course of the rehabilitation that is unpaid at the time of the entry of the order of liquidation; and

11505 (ii) except as expressly approved by the receiver, excludes any expense arising from a
11506 duty to indemnify a director, officer, or employee of the insurer which expense, if allowed, is a

11507 Class 7 claim;

11508 (b) a Class 2 claim, which:

11509 (i) is a reasonable expense of a guaranty association, including overhead, salaries, or

11510 other general administrative expenses allocable to the receivership such as:

11511 (A) an administrative or claims handling expense;

11512 (B) an expense in connection with arrangements for ongoing coverage; and

11513 (C) in the case of a property and casualty guaranty association, a loss adjustment

11514 expense, including:

11515 (I) an adjusting or other expense; and

11516 (II) a defense or cost containment expense; and

11517 (ii) excludes an expense incurred in the performance of duties under Section

11518 31A-28-112 or similar duties under the statute governing a similar organization in another

11519 state;

11520 (c) a Class 3 claim, which:

11521 (i) is:

11522 (A) a claim under a policy of insurance including a third party claim;

11523 (B) a claim under an annuity contract or funding agreement;

11524 (C) a claim under a nonassessable policy for unearned premium;

11525 (D) a claim of an obligee and, subject to the discretion of the receiver, a completion

11526 contractor under a surety bond or surety undertaking, except for:

11527 (I) a bail bond;

11528 (II) a mortgage guaranty;

11529 (III) a financial guaranty; or

11530 (IV) other form of insurance offering protection against investment risk or warranties;

11531 (E) a claim by a principal under a surety bond or surety undertaking for wrongful

11532 dissipation of collateral by the insurer or its agents;

11533 (F) an indemnity payment on:

11534 (I) a covered claim;

11535 (II) unearned premium; or
11536 (III) a payment for the continuation of coverage made by an entity responsible for the
11537 payment of a claim or continuation of coverage of an insolvent health maintenance
11538 organization;
11539 (G) a claim incurred during the extension of coverage provided for in Sections
11540 31A-27a-402 and 31A-27a-403; or
11541 (H) all other claims incurred in fulfilling the statutory obligations of a guaranty
11542 association not included in Class 2, including:
11543 (I) an indemnity payment on covered claims; and
11544 (II) in the case of a life and health guaranty association, a claim:
11545 (Aa) as a creditor of the impaired or insolvent insurer for a payment of and liabilities
11546 incurred on behalf of a covered claim or covered obligation of the insurer; and
11547 (Bb) for the funds needed to reinsure the obligations described under this Subsection
11548 (2)(c)(i)(H)(II) with a solvent insurer; and
11549 (ii) notwithstanding any other provision of this chapter, excludes the following which
11550 shall be paid under Class 7, except as provided in this section:
11551 (A) an obligation of the insolvent insurer arising out of a reinsurance contract;
11552 (B) an obligation that is incurred pursuant to an occurrence policy or reported pursuant
11553 to a claims made policy after:
11554 (I) the expiration date of the policy;
11555 (II) the policy is replaced by the insured;
11556 (III) the policy is canceled at the insured's request; or
11557 (IV) the policy is canceled as provided in this chapter;
11558 (C) an obligation to an insurer, insurance pool, or underwriting association and the
11559 insurer's, insurance pool's, or underwriting association's claim for contribution, indemnity, or
11560 subrogation, equitable or otherwise, except for direct claims under a policy where the insurer is
11561 the named insured;
11562 (D) an amount accrued as punitive or exemplary damages unless expressly covered

11563 under the terms of the policy, which shall be paid as a claim in Class 9;

11564 (E) a tort claim of any kind against the insurer;

11565 (F) a claim against the insurer for bad faith or wrongful settlement practices; and

11566 (G) a claim of a guaranty association for assessments not paid by the insurer, which

11567 claims shall be paid as claims in Class 7; and

11568 (iii) notwithstanding Subsection (2)(c)(ii)(B), does not exclude an unearned premium

11569 claim on a policy, other than a reinsurance agreement;

11570 (d) a Class 4 claim, which is a claim under a policy for mortgage guaranty, financial

11571 guaranty, or other forms of insurance offering protection against investment risk or warranties;

11572 (e) a Class 5 claim, which is a claim of the federal government not included in Class 3

11573 or 4;

11574 (f) a Class 6 claim, which is a debt due an employee for services or benefits:

11575 (i) to the extent that the expense:

11576 (A) does not exceed the lesser of:

11577 (I) \$5,000; or

11578 (II) two months' salary; and

11579 (B) represents payment for services performed within one year before the day on which

11580 the initial order of receivership is issued; and

11581 (ii) which priority is in lieu of any other similar priority that may be authorized by law

11582 as to wages or compensation of employees;

11583 (g) a Class 7 claim, which is a claim of an unsecured creditor not included in Classes 1

11584 through 6, including:

11585 (i) a claim under a reinsurance contract;

11586 (ii) a claim of a guaranty association for an assessment not paid by the insurer; and

11587 (iii) other claims excluded from Class 3 or 4, unless otherwise assigned to Classes 8

11588 through 13;

11589 (h) subject to Subsection (3), a Class 8 claim, which is:

11590 (i) a claim of a state or local government, except a claim specifically classified

11591 elsewhere in this section; or

11592 (ii) a claim for services rendered and expenses incurred in opposing a formal

11593 delinquency proceeding;

11594 (i) a Class 9 claim, which is a claim for penalties, punitive damages, or forfeitures,

11595 unless expressly covered under the terms of a policy of insurance;

11596 (j) a Class 10 claim, which is, except as provided in Subsections 31A-27a-601(2) and

11597 31A-27a-601(3), a late filed claim that would otherwise be classified in Classes 3 through 9;

11598 (k) subject to Subsection (4), a Class 11 claim, which is:

11599 (i) a surplus note;

11600 (ii) a capital note;

11601 (iii) a contribution note;

11602 (iv) a similar obligation;

11603 (v) a premium refund on an assessable policy; or

11604 (vi) any other claim specifically assigned to this class;

11605 (l) a Class 12 claim, which is a claim for interest on an allowed claim of Classes 1

11606 through 11, according to the terms of a plan to pay interest on allowed claims proposed by the

11607 liquidator and approved by the receivership court; and

11608 (m) subject to Subsection (4), a Class 13 claim, which is a claim of a shareholder or

11609 other owner arising out of:

11610 (i) the shareholder's or owner's capacity as shareholder or owner or any other capacity;

11611 and

11612 (ii) except as the claim may be qualified in Class 3, 4, 7, or 12.

11613 (3) To prove a claim described in Class 8, the claimant [~~must~~] shall show that:

11614 (a) the insurer that is the subject of the delinquency proceeding incurred the fee or

11615 expense on the basis of the insurer's best knowledge, information, and belief:

11616 (i) formed after reasonable inquiry indicating opposition is in the best interests of the

11617 insurer;

11618 (ii) that is well grounded in fact; and

11619 (iii) is warranted by existing law or a good faith argument for the extension,
11620 modification, or reversal of existing law; and

11621 (b) opposition is not pursued for any improper purpose, such as to harass, to cause
11622 unnecessary delay, or to cause needless increase in the cost of the litigation.

11623 (4) (a) A claim in Class 11 is subject to a subordination agreement related to other
11624 claims in Class 11 that exist before the entry of a liquidation order.

11625 (b) A claim in Class 13 is subject to a subordination agreement, related to other claims
11626 in Class 13 that exist before the entry of a liquidation order.

11627 Section 279. Section **31A-30-107.3** is amended to read:

11628 **31A-30-107.3. Discontinuance and nonrenewal limitations and conditions.**

11629 (1) (a) A carrier that elects to discontinue offering a health benefit plan under
11630 Subsection 31A-30-107(3)(e) or 31A-30-107.1(3)(e) is prohibited from writing new business:

11631 (i) in the small employer and individual market in this state; and

11632 (ii) for a period of five years beginning on the date of discontinuation of the last
11633 coverage that is discontinued.

11634 (b) The prohibition described in Subsection (1)(a) may be waived if the commissioner
11635 finds that waiver is in the public interest:

11636 (i) to promote competition; or

11637 (ii) to resolve inequity in the marketplace.

11638 (2) (a) If the Comprehensive Health Insurance Pool as set forth under Title 31A,
11639 Chapter 29, Comprehensive Health Insurance Pool Act, is dissolved or discontinued, or if
11640 enrollment is capped or suspended, an individual carrier:

11641 (i) may elect to discontinue offering new individual health benefit plans, except to
11642 HIPAA eligibles, but [~~must~~] shall keep existing individual health benefit plans in effect, except
11643 those individual plans that are not renewed under the provisions of Subsection 31A-30-107(2)
11644 or 31A-30-107.1(2);

11645 (ii) may elect to continue to offer new individual and small employer health benefit
11646 plans; or

11647 (iii) may elect to discontinue all of the covered carrier's health benefit plans in the
11648 individual or small group market under the provisions of Subsection 31A-30-107(3)(e) or
11649 31A-30-107.1(3)(e).

11650 (b) A carrier that makes an election under Subsection (2)(a)(i):

11651 (i) is prohibited from writing new business:

11652 (A) in the individual market in this state; and

11653 (B) for a period of five years beginning on the date of discontinuation;

11654 (ii) may continue to write new business in the small employer market; and

11655 (iii) ~~must~~ shall provide written notice of the election under Subsection (2)(a)(i) within
11656 two calendar days of the election to the Utah Insurance Department.

11657 (c) The prohibition described in Subsection (2)(b)(i) may be waived if the
11658 commissioner finds that waiver is in the public interest:

11659 (i) to promote competition; or

11660 (ii) to resolve inequity in the marketplace.

11661 (d) A carrier that makes an election under Subsection (2)(a)(iii) is subject to the
11662 provisions of Subsection (1).

11663 (3) If a carrier is doing business in one established geographic service area of the state,
11664 Sections 31A-30-107 and 31A-30-107.1 apply only to the carrier's operations in that
11665 geographic service area.

11666 (4) If a small employer employs less than two eligible employees, a carrier may not
11667 discontinue or not renew the health benefit plan until the first renewal date following the
11668 beginning of a new plan year, even if the carrier knows as of the beginning of the plan year that
11669 the employer no longer has at least two current employees.

11670 Section 280. Section **31A-30-107.5** is amended to read:

11671 **31A-30-107.5. Preexisting condition exclusion -- Condition-specific exclusion**
11672 **riders -- Limitation periods.**

11673 (1) A health benefit plan may impose a preexisting condition exclusion only if the
11674 provision complies with Subsection 31A-22-605.1(4).

11675 (2) (a) In accordance with Subsection (2)(b), an individual carrier:
11676 (i) may, when the individual carrier and the insured mutually agree in writing to a
11677 condition-specific exclusion rider, offer to issue an individual policy that excludes all treatment
11678 and prescription drugs related to:
11679 (A) a specific physical condition;
11680 (B) a specific disease or disorder; and
11681 (C) any specific or class of prescription drugs; and
11682 (ii) may offer an individual policy that may establish separate cost sharing
11683 requirements including, deductibles and maximum limits that are specific to covered services
11684 and supplies, including drugs, when utilized for the treatment and care of the conditions,
11685 diseases, or disorders listed in Subsection (2)(b).
11686 (b) (i) Except as provided in Section 31A-22-630 and Subsection (2)(b)(ii), the
11687 following may be the subject of a condition-specific exclusion rider:
11688 (A) conditions, diseases, and disorders of the bones or joints of the ankle, arm, elbow,
11689 fingers, foot, hand, hip, knee, leg, mandible, mastoid, wrist, shoulder, spine, and toes, including
11690 bone spurs, bunions, carpal tunnel syndrome, club foot, cubital tunnel syndrome, hammertoe,
11691 syndactylism, and treatment and prosthetic devices related to amputation;
11692 (B) anal fistula, anal fissure, anal stricture, breast implants, breast reduction, chronic
11693 cystitis, chronic prostatitis, cystocele, rectocele, enuresis, hemorrhoids, hydrocele, hypospadias,
11694 interstitial cystitis, kidney stones, uterine leiomyoma, varicocele, spermatocele, endometriosis;
11695 (C) allergic rhinitis, nonallergic rhinitis, hay fever, dust allergies, pollen allergies,
11696 deviated nasal septum, and sinus related conditions, diseases, and disorders;
11697 (D) hemangioma, keloids, scar revisions, and other skin related conditions, diseases,
11698 and disorders;
11699 (E) goiter and other thyroid related conditions, diseases, or disorders;
11700 (F) cataracts, cornea transplant, detached retina, glaucoma, keratoconus, macular
11701 degeneration, strabismus and other eye related conditions, diseases, and disorders;
11702 (G) otitis media, cholesteatoma, otosclerosis, and other internal/external ear conditions,

11703 diseases, and disorders;

11704 (H) Baker's cyst, ganglion cyst;

11705 (I) abdominoplasty, esophageal reflux, hernia, Meniere's disease, migraines, TIC

11706 Doulourex, varicose veins, vestibular disorders;

11707 (J) sleep disorders and speech disorders; and

11708 (K) any specific or class of prescription drugs.

11709 (ii) Subsection (2)(b)(i) does not apply:

11710 (A) for the treatment of asthma; or

11711 (B) when the condition is due to cancer.

11712 (iii) A condition-specific exclusion rider:

11713 (A) shall be limited to the excluded condition, disease, or disorder and any

11714 complications from that condition, disease, or disorder;

11715 (B) may not extend to any secondary medical condition; and

11716 (C) ~~must~~ shall include the following informed consent paragraph: "I agree by signing

11717 below, to the terms of this rider, which excludes coverage for all treatment, including

11718 medications, related to the specific condition(s), disease(s), and/or disorder(s) stated herein and

11719 that if treatment or medications are received that I have the responsibility for payment for those

11720 services and items. I further understand that this rider does not extend to any secondary

11721 medical condition, disease, or disorder."

11722 (c) If an individual carrier issues a condition-specific exclusion rider, the

11723 condition-specific exclusion rider shall remain in effect for the duration of the policy at the

11724 individual carrier's option.

11725 (d) An individual policy issued in accordance with this Subsection (2) is not subject to

11726 Subsection 31A-26-301.6(7).

11727 (3) Notwithstanding the other provisions of this section, a health benefit plan may

11728 impose a limitation period if:

11729 (a) each policy that imposes a limitation period under the health benefit plan specifies

11730 the physical condition, disease, or disorder that is excluded from coverage during the limitation

11731 period;

11732 (b) the limitation period does not exceed 12 months;

11733 (c) the limitation period is applied uniformly; and

11734 (d) the limitation period is reduced in compliance with Subsections

11735 31A-22-605.1(4)(a) and (4)(b).

11736 Section 281. Section **31A-30-110** is amended to read:

11737 **31A-30-110. Individual enrollment cap.**

11738 (1) The commissioner shall set the individual enrollment cap at .5% on July 1, 1997.

11739 (2) The commissioner shall raise the individual enrollment cap by .5% at the later of

11740 the following dates:

11741 (a) six months from the last increase in the individual enrollment cap; or

11742 (b) the date when CCI/TI is greater than .90, where:

11743 (i) "CCI" is the total individual coverage count for all carriers certifying that their

11744 uninsurable percentage has reached the individual enrollment cap; and

11745 (ii) "TI" is the total individual coverage count for all carriers.

11746 (3) The commissioner may establish a minimum number of uninsurable individuals

11747 that a carrier entering the market who is subject to this chapter [~~must~~] shall accept under the

11748 individual enrollment provisions of this chapter.

11749 (4) Beginning July 1, 1997, an individual carrier may decline to accept individuals

11750 applying for individual enrollment under Subsection 31A-30-108(3), other than individuals

11751 applying for coverage as set forth in P.L. 104-191, 110 Stat. 1979, Sec. 2741 (a)-(b), if:

11752 (a) the uninsurable percentage for that carrier equals or exceeds the cap established in

11753 Subsection (1); and

11754 (b) the covered carrier has certified on forms provided by the commissioner that its

11755 uninsurable percentage equals or exceeds the individual enrollment cap.

11756 (5) The department may audit a carrier's records to verify whether the carrier's

11757 uninsurable classification meets industry standards for underwriting criteria as established by

11758 the commissioner in accordance with Subsection 31A-30-106(1)(I).

11759 (6) (a) If the commissioner determines that individual enrollment is causing a
11760 substantial adverse effect on premiums, enrollment, or experience, the commissioner may
11761 suspend, limit, or delay further individual enrollment for up to 12 months.

11762 (b) The commissioner shall adopt rules to establish a uniform methodology for
11763 calculating and reporting loss ratios for individual policies for determining whether the
11764 individual enrollment provisions of Section 31A-30-108 should be waived for an individual
11765 carrier experiencing significant and adverse financial impact as a result of complying with
11766 those provisions.

11767 Section 282. Section **31A-30-206** is amended to read:

11768 **31A-30-206. Minimum participation and contribution levels -- Premium**
11769 **payments.**

11770 An insurer who offers a health benefit plan for which an employer has established a
11771 defined contribution arrangement under the provisions of this part:

11772 (1) [~~shall not~~] may not:

11773 (a) establish an employer minimum contribution level for the health benefit plan
11774 premium under Section 31A-30-112, or any other law; or

11775 (b) discontinue or non-renew a policy under Subsection 31A-30-107(4) for failure to
11776 maintain a minimum employer contribution level;

11777 (2) shall accept premium payments for an enrollee from multiple sources through the
11778 Internet portal, including:

11779 (a) government assistance programs;

11780 (b) contributions from a Section 125 Cafeteria plan, a health reimbursement
11781 arrangement, or other qualified mechanism for pre-tax payments established by any employer
11782 of the enrollee;

11783 (c) contributions from a Section 125 Cafeteria plan, a health reimbursement
11784 arrangement, or other qualified mechanism for pre-tax payments established by an employer of
11785 a spouse or dependent of the enrollee; and

11786 (d) contributions from private sources of premium assistance; and

11787 (3) may require, as a condition of coverage, a minimum participation level for eligible
11788 employees of an employer, which for purposes of the defined contribution arrangement market
11789 may not exceed 75% participation.

11790 Section 283. Section **31A-34-104** is amended to read:

11791 **31A-34-104. Alliance -- Required license.**

11792 (1) A person [~~must~~] shall be licensed as an alliance pursuant to this chapter to directly
11793 or indirectly make available or otherwise arrange for health insurance through multiple
11794 unaffiliated insurers through the use of coordinated actuarial models, coordinated underwriting,
11795 or coordinated marketing methodologies.

11796 (2) (a) A person may not hold itself out as a health insurance purchasing alliance,
11797 purchasing alliance, health insurance purchasing cooperative, purchasing cooperative, or
11798 otherwise use a similar name unless licensed by the commissioner as an alliance.

11799 (b) Notwithstanding Subsection (2)(a), a person may hold itself out as a voluntary
11800 health insurance purchasing association without being licensed by the commissioner as
11801 provided in Section 31A-34-105.

11802 (3) To apply for licensure as an alliance, a person shall complete an application in a
11803 form designated by the commissioner and file it with the commissioner, together with the
11804 applicable filing fees determined by the commissioner under Section 63J-1-504.

11805 Section 284. Section **31A-34-107** is amended to read:

11806 **31A-34-107. Directors, trustees, and officers.**

11807 (1) To ensure representation of consumer interests, at least 25% of the board [~~must~~]
11808 shall be enrollees, chosen under a plan proposed by the alliance and approved by the
11809 commissioner.

11810 (2) Those who sit as directors or trustees on the board or as officers or principals of the
11811 corporation or trust [~~must~~] shall be trustworthy and collectively have the competence and
11812 experience to carry out the activities of the alliance.

11813 Section 285. Section **31A-36-107** is amended to read:

11814 **31A-36-107. Examinations and retention of records.**

11815 (1) The commissioner may conduct an examination of a life settlement provider or life
11816 settlement producer in accordance with Sections 31A-2-203, 31A-2-203.5, 31A-2-204, and
11817 31A-2-205.

11818 (2) A life settlement provider or life settlement producer shall retain for five years
11819 copies of:

11820 (a) the following records, whether proposed, offered, or executed, from the later of the
11821 date of the proposal, offer, or execution:

11822 (i) contracts;

11823 (ii) purchase agreements;

11824 (iii) underwriting documents;

11825 (iv) policy forms; and

11826 (v) applications;

11827 (b) checks, drafts, and other evidence or documentation relating to the payment,
11828 transfer, or release of money, from the date of the transaction; and

11829 (c) records and documents related to the requirements of this chapter.

11830 (3) This section does not relieve a person of the obligation to produce a document
11831 described in Subsection (2) to the commissioner after the expiration of the relevant period if
11832 the person has retained the document.

11833 (4) A record required by this section to be retained:

11834 (a) [~~must~~] shall be legible and complete; and

11835 (b) may be retained in any form or by any process that accurately reproduces or is a
11836 durable medium for the reproduction of the record.

11837 (5) An examiner may not be appointed by the commissioner if the examiner, either
11838 directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a
11839 pecuniary interest in a person subject to examination under this chapter. This Subsection (5)
11840 does not automatically preclude an examiner from being:

11841 (a) an owner;

11842 (b) an insured in a settled policy; or

11843 (c) a beneficiary in a policy that is proposed to be settled.

11844 (6) (a) An examinee under this section shall reimburse the cost of an examination to the
11845 department consistent with Section 31A-2-205.

11846 (b) Notwithstanding Subsection (6)(a), an individual life settlement producer is not
11847 subject to Section 31A-2-205.

11848 Section 286. Section **31A-36-109** is amended to read:

11849 **31A-36-109. General requirements.**

11850 (1) If a life settlement provider transfers ownership or changes the beneficiary of a
11851 settled policy, the life settlement provider shall inform the insured of the transfer or change
11852 within 20 calendar days.

11853 (2) A life settlement provider that enters a life settlement shall first obtain:

11854 (a) if the owner is the insured, a written statement from a licensed attending physician
11855 that the owner is of sound mind and under no constraint or undue influence to enter a life
11856 settlement;

11857 (b) a witnessed document in which the owner represents that:

11858 (i) the owner has a full and complete understanding of the life settlement and the
11859 benefits of the policy;

11860 (ii) the owner has entered the life settlement freely and voluntarily; and

11861 (iii) if applicable, the insured is terminally ill or chronically ill and that the illness was
11862 diagnosed after the policy was issued; and

11863 (c) a document in which the insured consents to the release of the insured's medical
11864 records to:

11865 (i) a life settlement provider;

11866 (ii) a life settlement producer; and

11867 (iii) the insurer that issued the policy covering the insured.

11868 (3) Within 20 calendar days after an owner executes documents necessary to transfer
11869 rights under a policy, or enters into an agreement in any form, express or implied, to settle the
11870 policy, the life settlement provider shall give written notice to the issuer of the policy that the

11871 policy has or will become settled. The notice [~~must~~] shall be accompanied by a copy of the
11872 documents required by Subsection (4).

11873 (4) The life settlement provider shall deliver a copy of the following to the insurer that
11874 issued the policy that is the subject of the life settlement:

11875 (a) the medical release required under Subsection (2)(c);

11876 (b) a copy of the owner's application for the life settlement; and

11877 (c) the notice required under Subsection (3).

11878 (5) (a) An insurer shall complete and return a request for verification of coverage not
11879 later than 30 calendar days after the day on which the request is received. In its response, the
11880 insurer shall indicate whether the insurer intends to pursue an investigation regarding the
11881 validity of the insurance contract.

11882 (b) An insurer may not require that a person making a request under Subsection (5)(a)
11883 provide the insurer additional information in order for the insurer to comply with Subsection
11884 (5)(a), if the person provides the insurer:

11885 (i) a request for verification of coverage made on an original, facsimile, or electronic
11886 copy of a verification of coverage for a policy document adopted by the commissioner by rule
11887 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

11888 (ii) an authorization that accompanies the verification described in Subsection (5)(b)(i)
11889 signed by the owner.

11890 (6) Medical information solicited or obtained by a life settlement provider or life
11891 settlement producer is subject to:

11892 (a) other laws of this state relating to the confidentiality of the information; and

11893 (b) a rule relating to privacy of medical or personal information promulgated by the
11894 commissioner under Title V, Section 505 of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C.
11895 Sec. 6805.

11896 (7) (a) (i) A life settlement entered into in this state [~~must~~] shall reserve to the owner
11897 an unconditional right to rescind the life settlement within the rescission period provided for in
11898 this Subsection (7).

11899 (ii) The rescission period ends 15 calendar days after the day on which the owner
11900 receives the proceeds of the life settlement.

11901 (iii) Rescission by an owner may be conditioned on the owner giving notice and
11902 repaying to the life settlement provider within the rescission period all proceeds of the life
11903 settlement and any premium, loan, or loan interest paid by or on behalf of the life settlement
11904 provider in connection with or as a consequence of the life settlement.

11905 (b) If the insured dies during the rescission period, the life settlement is considered to
11906 be rescinded if the proceeds, premiums, loans, and loan interest paid by the life settlement
11907 provider or life settlement purchaser are repaid within 60 calendar days of the day on which the
11908 insured dies.

11909 (8) (a) Contact with an insured to determine the health status of the insured after a life
11910 settlement may be made only by a life settlement provider or life settlement producer that is
11911 licensed in this state, or its authorized representative, and no more than:

- 11912 (i) once every three months if the insured has a life expectancy of one year or more; or
- 11913 (ii) once every month if the insured has a life expectancy of less than one year.

11914 (b) A life settlement provider or life settlement producer shall explain the procedure for
11915 the contacts allowed under this Subsection (8) to the owner when the application for the life
11916 settlement is signed by all participants in the life settlement.

11917 (c) The limitations of this Subsection (8) do not apply to contacts for purposes other
11918 than determining health status.

11919 (d) A life settlement provider or life settlement producer is responsible for the acts of
11920 its authorized representative in violation of this Subsection (8).

11921 (9) The trustee of a related provider trust [~~must~~] shall agree in writing with the life
11922 settlement provider that:

11923 (a) the life settlement provider is responsible for ensuring compliance with all statutory
11924 and regulatory requirements; and

11925 (b) the trustee will make all records and files related to life settlements available to the
11926 commissioner as if those records and files were maintained directly by the life settlement

11927 provider.

11928 (10) Regardless of the method of compensation, a life settlement producer:

11929 (a) represents only the owner; and

11930 (b) owes a fiduciary duty to the owner to act according to the owner's instructions and

11931 in the best interest of the owner.

11932 Section 287. Section **31A-36-110** is amended to read:

11933 **31A-36-110. Payment and document requirements.**

11934 (1) (a) A life settlement provider shall instruct the owner to send the executed
11935 documents required to effect the change in ownership or assignment or change of beneficiary
11936 of the affected policy to a designated independent escrow agent.

11937 (b) Within three business days after the day on which the escrow agent receives the
11938 documents, or within three business days after the day on which the life settlement provider
11939 receives the documents if by mistake they are sent directly to the life settlement provider, the
11940 life settlement provider shall deposit the proceeds of the life settlement into an escrow or trust
11941 account of the escrow agent in a federally insured depository institution.

11942 (2) (a) Upon completion of the requirements of Subsection (1), the escrow agent shall
11943 deliver the original documents executed by the owner to:

11944 (i) the life settlement provider; or

11945 (ii) a related provider trust or other designated representative of the life settlement
11946 provider.

11947 (b) Upon the life settlement provider's receipt from the insurer of an acknowledgment
11948 of the change in ownership or assignment or change of beneficiary of the affected policy, the
11949 life settlement provider shall instruct the escrow agent to pay the proceeds of the life settlement
11950 to the owner.

11951 (3) Payment to the owner [~~must~~] shall be made within three business days after the day
11952 on which the life settlement provider receives the acknowledgment from the insurer. Failure to
11953 make the payment within that time makes the life settlement voidable by the owner for lack of
11954 consideration until payment is tendered to and accepted by the owner.

11955 Section 288. Section **31A-36-112** is amended to read:

11956 **31A-36-112. Advertising regulations.**

11957 (1) (a) A life settlement provider or life settlement producer shall establish and
11958 continuously maintain a system of control over the content, form, and method of dissemination
11959 of advertisements of the life settlement provider's or life settlement producer's contracts and
11960 services.

11961 (b) An advertisement is the responsibility of the life settlement provider or life
11962 settlement producer as well as the person that creates or presents the advertisement.

11963 (c) A system of control [~~must~~] shall include at least annual notification to persons
11964 authorized by the life settlement provider or life settlement producer that disseminate
11965 advertisements of the requirements and procedures for approval before use of any
11966 advertisements not furnished by the life settlement provider or life settlement producer.

11967 (2) An advertisement [~~must~~] shall be truthful and not misleading in fact or by
11968 implication, as determined by the commissioner from the overall impression it may reasonably
11969 be expected to create upon a person of average education or intelligence in the segment of the
11970 public to which it is directed.

11971 (3) A false or misleading statement is not remedied by:

11972 (a) making a life settlement available for inspection before it is consummated; or

11973 (b) offering to refund payment if the owner is not satisfied within the period prescribed
11974 in Subsection 31A-36-109(7).

11975 Section 289. Section **31A-36-114** is amended to read:

11976 **31A-36-114. Reporting of fraud and immunity.**

11977 (1) A person engaged in the business of life settlements that knows or reasonably
11978 suspects that a violation of Section 31A-36-113 is being, has been, or will be committed shall
11979 provide to the commissioner the information required by, and in a manner prescribed by, the
11980 commissioner.

11981 (2) A person not engaged in the business of life settlements that knows or reasonably
11982 believes that a violation of Section 31A-36-113 is being, has been, or will be committed may

11983 furnish to the commissioner the information required by, and in a manner prescribed by, the
11984 commissioner.

11985 (3) Except as provided in Subsection (4), a person furnishing information of the kind
11986 described in this section is immune from liability and civil action if the information is
11987 furnished to or received from:

11988 (a) the commissioner or the commissioner's employees, agents, or representatives;

11989 (b) federal, state, or local law enforcement or regulatory officials or their employees,
11990 agents, or representatives;

11991 (c) another person involved in the prevention or detection of violations of Section
11992 31A-36-113 or that person's employees, agents, or representatives;

11993 (d) the following organizations or their employees, agents, or representatives:

11994 (i) the National Association of Insurance Commissioners;

11995 (ii) the Financial Industry Regulatory Authority;

11996 (iii) the North American Securities Administrators Association; or

11997 (iv) another regulatory body overseeing life insurance, life settlements, securities, or
11998 investment fraud; or

11999 (e) the insurer that issued the policy concerned in the information.

12000 (4) The immunity provided in Subsection (3) does not extend to a statement made with
12001 actual malice. In an action brought against a person for filing a report or furnishing other
12002 information concerning a violation of this section, the plaintiff [~~must~~] shall plead specifically
12003 that the defendant acted with actual malice.

12004 (5) A person furnishing information as identified in Subsection (3) is entitled to an
12005 award of attorney fees and costs if:

12006 (a) the person is the prevailing party in a civil cause of action for libel, slander, or
12007 another relevant tort arising out of activities in carrying out the provisions of this chapter; and

12008 (b) the action did not have a reasonable basis in law or fact at the time it was initiated.

12009 (6) This section does not supplant or modify any other privilege or immunity at
12010 common law or under another statute.

12011 Section 290. Section **31A-37-105** is amended to read:

12012 **31A-37-105. Operation of a branch captive insurance company.**

12013 Except as otherwise provided in this chapter, a branch captive insurance company

12014 [~~must~~] shall be a pure captive insurance company with respect to operations in this state, unless

12015 otherwise permitted by the commissioner under Section 31A-37-106.

12016 Section 291. Section **31A-37-106** is amended to read:

12017 **31A-37-106. Authority to make rules -- Authority to issue orders.**

12018 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

12019 commissioner may adopt rules to:

12020 (a) determine circumstances under which a branch captive insurance company is not

12021 required to be a pure captive insurance company;

12022 (b) require a statement, document, or information that a captive insurance company

12023 [~~must~~] shall provide to the commissioner to obtain a certificate of authority;

12024 (c) determine a factor a captive insurance company shall provide evidence of under

12025 Subsection 31A-37-202(4)(c);

12026 (d) prescribe one or more capital requirements for a captive insurance company in

12027 addition to those required under Section 31A-37-204 based on the type, volume, and nature of

12028 insurance business transacted by the captive insurance company;

12029 (e) establish:

12030 (i) the amount of capital or surplus required to be retained under Subsection

12031 31A-37-205(4) at the payment of a dividend or other distribution by a captive insurance

12032 company; or

12033 (ii) a formula to determine the amount described in Subsection 31A-37-205(4);

12034 (f) waive or modify a requirement for public notice and hearing for the following by a

12035 captive insurance company:

12036 (i) merger;

12037 (ii) consolidation;

12038 (iii) conversion;

- 12039 (iv) mutualization; or
- 12040 (v) redomestication;
- 12041 (g) approve the use of one or more reliable methods of valuation and rating for:
- 12042 (i) an association captive insurance company;
- 12043 (ii) a sponsored captive insurance company; or
- 12044 (iii) an industrial insured group;
- 12045 (h) prohibit or limit an investment that threatens the solvency or liquidity of:
- 12046 (i) a pure captive insurance company; or
- 12047 (ii) an industrial insured captive insurance company;
- 12048 (i) determine the financial reports a sponsored captive insurance company shall
- 12049 annually file with the commissioner;
- 12050 (j) prescribe the required forms and reports under Section 31A-37-501; and
- 12051 (k) establish one or more standards to ensure that:
- 12052 (i) one of the following is able to exercise control of the risk management function of a
- 12053 controlled unaffiliated business to be insured by a pure captive insurance company:
- 12054 (A) a parent; or
- 12055 (B) an affiliated company of a parent; or
- 12056 (ii) one of the following is able to exercise control of the risk management function of
- 12057 a controlled unaffiliated business to be insured by an industrial insured captive insurance
- 12058 company:
- 12059 (A) an industrial insured; or
- 12060 (B) an affiliated company of the industrial insured.
- 12061 (2) Notwithstanding Subsection (1)(k), until the commissioner adopts the rules
- 12062 authorized under Subsection (1)(k), the commissioner may by temporary order grant authority
- 12063 to insure risks to:
- 12064 (a) a pure captive insurance company; or
- 12065 (b) an industrial insured captive insurance company.
- 12066 (3) The commissioner may issue prohibitory, mandatory, and other orders relating to a

12067 captive insurance company as necessary to enable the commissioner to secure compliance with
12068 this chapter.

12069 Section 292. Section **31A-37-202** is amended to read:

12070 **31A-37-202. Permissive areas of insurance.**

12071 (1) (a) Except as provided in Subsection (1)(b), when permitted by its articles of
12072 incorporation or charter, a captive insurance company may apply to the commissioner for a
12073 certificate of authority to do all insurance authorized by this title except workers' compensation
12074 insurance.

12075 (b) Notwithstanding Subsection (1)(a):

12076 (i) a pure captive insurance company may not insure a risk other than a risk of:

12077 (A) its parent or affiliate;

12078 (B) a controlled unaffiliated business; or

12079 (C) a combination of Subsections (1)(b)(i)(A) and (B);

12080 (ii) an association captive insurance company may not insure a risk other than a risk of:

12081 (A) an affiliate;

12082 (B) a member organization of its association; and

12083 (C) an affiliate of a member organization of its association;

12084 (iii) an industrial insured captive insurance company may not insure a risk other than a
12085 risk of:

12086 (A) an industrial insured that is part of the industrial insured group;

12087 (B) an affiliate of an industrial insured that is part of the industrial insured group; and

12088 (C) a controlled unaffiliated business of:

12089 (I) an industrial insured that is part of the industrial insured group; or

12090 (II) an affiliate of an industrial insured that is part of the industrial insured group;

12091 (iv) a special purpose captive insurance company may only insure a risk of its parent;

12092 (v) a captive insurance company may not provide:

12093 (A) personal motor vehicle insurance coverage;

12094 (B) homeowner's insurance coverage; or

12095 (C) a component of a coverage described in this Subsection (1)(b)(v); and
12096 (vi) a captive insurance company may not accept or cede reinsurance except as
12097 provided in Section 31A-37-303.

12098 (c) Notwithstanding Subsection (1)(b)(iv), for a risk approved by the commissioner a
12099 special purpose captive insurance company may provide:

12100 (i) insurance;

12101 (ii) reinsurance; or

12102 (iii) both insurance and reinsurance.

12103 (2) To conduct insurance business in this state a captive insurance company shall:

12104 (a) obtain from the commissioner a certificate of authority authorizing it to conduct
12105 insurance business in this state;

12106 (b) hold at least once each year in this state:

12107 (i) a board of directors meeting; or

12108 (ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting;

12109 (c) maintain in this state:

12110 (i) the principal place of business of the captive insurance company; or

12111 (ii) in the case of a branch captive insurance company, the principal place of business
12112 for the branch operations of the branch captive insurance company; and

12113 (d) except as provided in Subsection (3), appoint a resident registered agent to accept
12114 service of process and to otherwise act on behalf of the captive insurance company in this state.

12115 (3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company
12116 formed as a corporation or a reciprocal insurer, if the registered agent cannot with reasonable
12117 diligence be found at the registered office of the captive insurance company, the commissioner
12118 is the agent of the captive insurance company upon whom process, notice, or demand may be
12119 served.

12120 (4) (a) Before receiving a certificate of authority, a captive insurance company:

12121 (i) formed as a corporation shall file with the commissioner:

12122 (A) a certified copy of:

- 12123 (I) articles of incorporation or the charter of the corporation; and
12124 (II) bylaws of the corporation;
12125 (B) a statement under oath of the president and secretary of the corporation showing
12126 the financial condition of the corporation; and
12127 (C) any other statement or document required by the commissioner under Section
12128 31A-37-106;
- 12129 (ii) formed as a reciprocal shall:
12130 (A) file with the commissioner:
12131 (I) a certified copy of the power of attorney of the attorney-in-fact of the reciprocal;
12132 (II) a certified copy of the subscribers' agreement of the reciprocal;
12133 (III) a statement under oath of the attorney-in-fact of the reciprocal showing the
12134 financial condition of the reciprocal; and
12135 (IV) any other statement or document required by the commissioner under Section
12136 31A-37-106; and
12137 (B) submit to the commissioner for approval a description of the:
12138 (I) coverages;
12139 (II) deductibles;
12140 (III) coverage limits;
12141 (IV) rates; and
12142 (V) any other information the commissioner requires under Section 31A-37-106.
- 12143 (b) (i) If there is a subsequent material change in an item in the description required
12144 under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal
12145 captive insurance company shall submit to the commissioner for approval an appropriate
12146 revision to the description required under Subsection (4)(a)(ii)(B).
- 12147 (ii) A reciprocal captive insurance company that is required to submit a revision under
12148 Subsection (4)(b)(i) may not offer any additional types of insurance until the commissioner
12149 approves a revision of the description.
- 12150 (iii) A reciprocal captive insurance company shall inform the commissioner of a

12151 material change in a rate within 30 days of the adoption of the change.

12152 (c) In addition to the information required by Subsection (4)(a), an applicant captive
12153 insurance company shall file with the commissioner evidence of:

12154 (i) the amount and liquidity of the assets of the applicant captive insurance company
12155 relative to the risks to be assumed by the applicant captive insurance company;

12156 (ii) the adequacy of the expertise, experience, and character of the person who will
12157 manage the applicant captive insurance company;

12158 (iii) the overall soundness of the plan of operation of the applicant captive insurance
12159 company;

12160 (iv) the adequacy of the loss prevention programs for the following of the applicant
12161 captive insurance company:

12162 (A) a parent;

12163 (B) a member organization; or

12164 (C) an industrial insured; and

12165 (v) any other factor the commissioner:

12166 (A) adopts by rule under Section 31A-37-106; and

12167 (B) considers relevant in ascertaining whether the applicant captive insurance company
12168 will be able to meet the policy obligations of the applicant captive insurance company.

12169 (d) In addition to the information required by Subsections (4)(a), (b), and (c), an
12170 applicant sponsored captive insurance company shall file with the commissioner:

12171 (i) a business plan at the level of detail required by the commissioner under Section
12172 31A-37-106 demonstrating:

12173 (A) the manner in which the applicant sponsored captive insurance company will
12174 account for the losses and expenses of each protected cell; and

12175 (B) the manner in which the applicant sponsored captive insurance company will report
12176 to the commissioner the financial history, including losses and expenses, of each protected cell;

12177 (ii) a statement acknowledging that the applicant sponsored captive insurance company
12178 will make all financial records of the applicant sponsored captive insurance company,

12179 including records pertaining to a protected cell, available for inspection or examination by the
12180 commissioner;

12181 (iii) a contract or sample contract between the applicant sponsored captive insurance
12182 company and a participant; and

12183 (iv) evidence that expenses will be allocated to each protected cell in an equitable
12184 manner.

12185 (5) (a) Information submitted pursuant to Subsection (4) is classified as a protected
12186 record under Title 63G, Chapter 2, Government Records Access and Management Act.

12187 (b) Notwithstanding Title 63G, Chapter 2, Government Records Access and
12188 Management Act, the commissioner may disclose information submitted pursuant to
12189 Subsection (4) to a public official having jurisdiction over the regulation of insurance in
12190 another state if:

12191 (i) the public official receiving the information agrees in writing to maintain the
12192 confidentiality of the information; and

12193 (ii) the laws of the state in which the public official serves require the information to be
12194 confidential.

12195 (c) This Subsection (5) does not apply to information provided by an industrial insured
12196 captive insurance company insuring the risks of an industrial insured group.

12197 (6) (a) A captive insurance company shall pay to the department the following
12198 nonrefundable fees established by the department under Sections 31A-3-103 and 63J-1-504:

12199 (i) a fee for examining, investigating, and processing, by a department employee, of an
12200 application for a certificate of authority made by a captive insurance company;

12201 (ii) a fee for obtaining a certificate of authority for the year the captive insurance
12202 company is issued a certificate of authority by the department; and

12203 (iii) a certificate of authority renewal fee.

12204 (b) The commissioner may:

12205 (i) retain legal, financial, and examination services from outside the department to
12206 perform the services described in:

12207 (A) Subsection (6)(a); and
12208 (B) Section 31A-37-502; and
12209 (ii) charge the reasonable cost of services described in Subsection (6)(b)(i) to the
12210 applicant captive insurance company.
12211 (7) If the commissioner is satisfied that the documents and statements filed by the
12212 applicant captive insurance company comply with this chapter, the commissioner may grant a
12213 certificate of authority authorizing the company to do insurance business in this state.
12214 (8) A certificate of authority granted under this section expires annually and [~~must~~]
12215 shall be renewed by July 1 of each year.
12216 Section 293. Section **31A-37-301** is amended to read:
12217 **31A-37-301. Incorporation.**
12218 (1) A pure captive insurance company or a sponsored captive insurance company shall
12219 be incorporated as a stock insurer with the capital of the pure captive insurance company or
12220 sponsored captive insurance company:
12221 (a) divided into shares; and
12222 (b) held by the stockholders of the pure captive insurance company or sponsored
12223 captive insurance company.
12224 (2) An association captive insurance company or an industrial insured captive
12225 insurance company may be:
12226 (a) incorporated as a stock insurer with the capital of the association captive insurance
12227 company or industrial insured captive insurance company:
12228 (i) divided into shares; and
12229 (ii) held by the stockholders of the association captive insurance company or industrial
12230 insured captive insurance company;
12231 (b) incorporated as a mutual insurer without capital stock, with a governing body
12232 elected by the member organizations of the association captive insurance company or industrial
12233 insured captive insurance company; or
12234 (c) organized as a reciprocal.

12235 (3) A captive insurance company may not have fewer than three incorporators of whom
12236 not fewer than two [~~must~~] shall be residents of this state.

12237 (4) (a) Before a captive insurance company formed as a corporation files the
12238 corporation's articles of incorporation with the Division of Corporations and Commercial
12239 Code, the incorporators shall obtain from the commissioner a certificate finding that the
12240 establishment and maintenance of the proposed corporation will promote the general good of
12241 the state.

12242 (b) In considering a request for a certificate under Subsection (4)(a), the commissioner
12243 shall consider:

12244 (i) the character, reputation, financial standing, and purposes of the incorporators;

12245 (ii) the character, reputation, financial responsibility, insurance experience, business
12246 qualifications of the officers and directors;

12247 (iii) any information in:

12248 (A) the application for a certificate of authority; or

12249 (B) the department's files; and

12250 (iv) other aspects the commissioner considers advisable.

12251 (5) (a) A captive insurance company formed as a corporation shall file with the
12252 Division of Corporations and Commercial Code:

12253 (i) the captive insurance company's articles of incorporation;

12254 (ii) the certificate issued pursuant to Subsection (4); and

12255 (iii) the fees required by the Division of Corporations and Commercial Code.

12256 (b) The Division of Corporations and Commercial Code shall file both the articles of
12257 incorporation and the certificate described in Subsection (4) for a captive insurance company
12258 that complies with this section.

12259 (6) (a) The organizers of a captive insurance company formed as a reciprocal insurer
12260 shall obtain from the commissioner a certificate finding that the establishment and maintenance
12261 of the proposed association will promote the general good of the state.

12262 (b) In considering a request for a certificate under Subsection (6)(a), the commissioner

12263 shall consider:

12264 (i) the character, reputation, financial standing, and purposes of the incorporators;

12265 (ii) the character, reputation, financial responsibility, insurance experience, and

12266 business qualifications of the officers and directors;

12267 (iii) any information in:

12268 (A) the application for a certificate of authority; or

12269 (B) the department's files; and

12270 (iv) other aspects the commissioner considers advisable.

12271 (7) (a) An alien captive insurance company that has received a certificate of authority

12272 to act as a branch captive insurance company shall obtain from the commissioner a certificate

12273 finding that:

12274 (i) the home state of the alien captive insurance company imposes statutory or
12275 regulatory standards in a form acceptable to the commissioner on companies transacting the

12276 business of insurance in that state; and

12277 (ii) after considering the character, reputation, financial responsibility, insurance
12278 experience, and business qualifications of the officers and directors of the alien captive
12279 insurance company, and other relevant information, the establishment and maintenance of the
12280 branch operations will promote the general good of the state.

12281 (b) After the commissioner issues a certificate under Subsection (7)(a) to an alien
12282 captive insurance company, the alien captive insurance company may register to do business in
12283 this state.

12284 (8) The capital stock of a captive insurance company incorporated as a stock insurer
12285 may not be issued at less than par value.

12286 (9) At least one of the members of the board of directors of a captive insurance
12287 company formed as a corporation shall be a resident of this state.

12288 (10) At least one of the members of the subscribers' advisory committee of a captive
12289 insurance company formed as a reciprocal insurer shall be a resident of this state.

12290 (11) (a) A captive insurance company formed as a corporation under this chapter has

12291 the privileges and is subject to the provisions of the general corporation law as well as the
12292 applicable provisions contained in this chapter.

12293 (b) If a conflict exists between a provision of the general corporation law and a
12294 provision of this chapter, this chapter shall control.

12295 (c) Except as provided in Subsection (11)(d), the provisions of this title pertaining to a
12296 merger, consolidation, conversion, mutualization, and redomestication apply in determining the
12297 procedures to be followed by a captive insurance company in carrying out any of the
12298 transactions described in those provisions.

12299 (d) Notwithstanding Subsection (11)(c), the commissioner may waive or modify the
12300 requirements for public notice and hearing in accordance with rules adopted under Section
12301 31A-37-106.

12302 (e) If a notice of public hearing is required, but no one requests a hearing, the
12303 commissioner may cancel the public hearing.

12304 (12) (a) A captive insurance company formed as a reciprocal insurer under this chapter
12305 has the powers set forth in Section 31A-4-114 in addition to the applicable provisions of this
12306 chapter.

12307 (b) If a conflict exists between the provisions of Section 31A-4-114 and the provisions
12308 of this chapter with respect to a captive insurance company, this chapter shall control.

12309 (c) To the extent a reciprocal insurer is made subject to other provisions of this title
12310 pursuant to Section 31A-14-208, the provisions are not applicable to a reciprocal insurer
12311 formed under this chapter unless the provisions are expressly made applicable to a captive
12312 insurance company under this chapter.

12313 (d) In addition to the provisions of this Subsection (12), a captive insurance company
12314 organized as a reciprocal insurer that is an industrial insured group has the privileges of Section
12315 31A-4-114 in addition to applicable provisions of this title.

12316 (13) The articles of incorporation or bylaws of a captive insurance company may not
12317 authorize a quorum of a board of directors to consist of fewer than [~~1/3~~] one-third of the fixed
12318 or prescribed number of directors as provided in Section 16-10a-824.

12319 Section 294. Section **31A-37-302** is amended to read:

12320 **31A-37-302. Investment requirements.**

12321 (1) (a) Except as provided in Subsection (1)(b), an association captive insurance
12322 company, a sponsored captive insurance company, and an industrial insured group shall
12323 comply with the investment requirements contained in this title.

12324 (b) Notwithstanding Subsection (1)(a) and any other provision of this title, the
12325 commissioner may approve the use of alternative reliable methods of valuation and rating
12326 under Section 31A-37-106 for:

- 12327 (i) an association captive insurance company;
- 12328 (ii) a sponsored captive insurance company; or
- 12329 (iii) an industrial insured group.

12330 (2) (a) Except as provided in Subsection (2)(b), a pure captive insurance company or
12331 industrial insured captive insurance company is not subject to any restrictions on allowable
12332 investments contained in this title.

12333 (b) Notwithstanding Subsection (2)(a), the commissioner may, under Section
12334 31A-37-106, prohibit or limit an investment that threatens the solvency or liquidity of:

- 12335 (i) a pure captive insurance company; or
- 12336 (ii) an industrial insured captive insurance company.

12337 (3) (a) (i) Except as provided in Subsection (3)(a)(ii), a captive insurance company may
12338 not make loans to:

- 12339 (A) the parent company of the captive insurance company; or
- 12340 (B) an affiliate of the captive insurance company.

12341 (ii) Notwithstanding Subsection (3)(a)(i), a pure captive insurance company may make
12342 loans to:

- 12343 (A) the parent company of the pure captive insurance company; or
- 12344 (B) an affiliate of the pure captive insurance company.

12345 (b) A loan under Subsection (3)(a):

- 12346 (i) may be made only on the prior written approval of the commissioner; and

12347 (ii) [~~must~~] shall be evidenced by a note in a form approved by the commissioner.

12348 (c) A pure captive insurance company may not make a loan from:

12349 (i) the paid-in capital required under Subsection 31A-37-204(1); or

12350 (ii) the free surplus required under Subsection 31A-37-205(1).

12351 Section 295. Section **31A-37-306** is amended to read:

12352 **31A-37-306. Conversion or merger.**

12353 (1) An association captive insurance company or industrial insured group formed as a
12354 stock or mutual corporation may be:

12355 (a) converted to a reciprocal insurer in accordance with a plan and this section; or

12356 (b) merged with and into a reciprocal insurer in accordance with a plan and this
12357 section.

12358 (2) A plan for a conversion or merger under this section:

12359 (a) shall be fair and equitable to:

12360 (i) the shareholders, in the case of a stock insurer; or

12361 (ii) the policyholders, in the case of a mutual insurer; and

12362 (b) shall provide for the purchase of:

12363 (i) the shares of any nonconsenting shareholder of a stock insurer in substantially the
12364 same manner and subject to the same rights and conditions as are provided a dissenting
12365 shareholder; or

12366 (ii) the policyholder interest of any nonconsenting policyholder of a mutual insurer in
12367 substantially the same manner and subject to the same rights and conditions as are provided a
12368 dissenting policyholder.

12369 (3) In the case of a conversion authorized under Subsection (1):

12370 (a) the conversion [~~must~~] shall be accomplished under a reasonable plan and procedure
12371 that are approved by the commissioner;

12372 (b) the commissioner may not approve the plan of conversion under this section unless
12373 the plan:

12374 (i) satisfies Subsections (2) and (6);

12375 (ii) provides for the conversion of existing stockholder or policyholder interests into
12376 subscriber interests in the resulting reciprocal insurer, proportionate to stockholder or
12377 policyholder interests in the stock or mutual insurer; and
12378 (iii) is approved:
12379 (A) in the case of a stock insurer, by a majority of the shares entitled to vote
12380 represented in person or by proxy at a duly called regular or special meeting at which a quorum
12381 is present; or
12382 (B) in the case of a mutual insurer, by a majority of the voting interests of
12383 policyholders represented in person or by proxy at a duly called regular or special meeting at
12384 which a quorum is present;
12385 (c) the commissioner shall approve a plan of conversion if the commissioner finds that
12386 the conversion will promote the general good of the state in conformity with the standards
12387 under Subsection 31A-37-301(4);
12388 (d) if the commissioner approves a plan of conversion, the commissioner shall amend
12389 the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and
12390 issue the amended certificate of authority to the company's attorney-in-fact;
12391 (e) upon issuance of an amended certificate of authority of a reciprocal insurer by the
12392 commissioner, the conversion is effective; and
12393 (f) upon the effectiveness of the conversion:
12394 (i) the corporate existence of the converting insurer shall cease; and
12395 (ii) the resulting reciprocal insurer shall notify the Division of Corporations and
12396 Commercial Code of the conversion.
12397 (4) A merger authorized under Subsection (1) shall be accomplished substantially in
12398 accordance with the procedures set forth in this title except that, solely for purposes of the
12399 merger:
12400 (a) the plan or merger shall satisfy Subsection (2);
12401 (b) the subscribers' advisory committee of a reciprocal insurer shall be equivalent to the
12402 board of directors of a stock or mutual insurance company;

12403 (c) the subscribers of a reciprocal insurer shall be the equivalent of the policyholders of
12404 a mutual insurance company;

12405 (d) if a subscribers' advisory committee does not have a president or secretary, the
12406 officers of the committee having substantially equivalent duties are the president and secretary
12407 of the committee;

12408 (e) the commissioner shall approve the articles of merger if the commissioner finds that
12409 the merger will promote the general good of the state in conformity with the standards under
12410 Subsection 31A-37-301(4);

12411 (f) notwithstanding Sections 31A-37-204 and 31A-37-205, the commissioner may
12412 permit the formation, without capital and surplus, of a captive insurance company organized as
12413 a reciprocal insurer, into which an existing captive insurance company may be merged to
12414 facilitate a transaction under this section, if there is no more than one authorized insurance
12415 company surviving the merger; and

12416 (g) an alien insurer may be a party to a merger authorized under Subsection (1) if:

12417 (i) the requirements for the merger between a domestic and a foreign insurer under
12418 Chapter 16, Insurance Holding Companies, are applied to the merger; and

12419 (ii) the alien insurer is treated as a foreign insurer under Chapter 16, Insurance Holding
12420 Companies.

12421 (5) If the commissioner approves the articles of merger under this section:

12422 (a) the commissioner shall endorse the commissioner's approval on the articles; and

12423 (b) the surviving insurer shall present the name to the Division of Corporations and
12424 Commercial Code.

12425 (6) (a) Except as provided in Subsection (6)(b), a conversion authorized under
12426 Subsection (1) [~~must~~] shall provide for a hearing, of which notice has been given to the insurer,
12427 its directors, officers and stockholders, in the case of a stock insurer, or policyholders, in the
12428 case of a mutual insurer, all of whom have the right to appear at the hearing.

12429 (b) Notwithstanding Subsection (6)(a), the commissioner may waive or modify the
12430 requirements for the hearing.

12431 (c) If a notice of hearing is required, but no hearing is requested, after notice has been
12432 given under Subsection (6)(a), the commissioner may cancel the hearing.

12433 Section 296. Section **31A-37-402** is amended to read:

12434 **31A-37-402. Sponsored captive insurance companies -- Certificate of authority**
12435 **mandatory.**

12436 (1) A sponsor of a sponsored captive insurance company shall be:

12437 (a) an insurer authorized or approved under the laws of a state;

12438 (b) a reinsurer authorized or approved under the laws of a state;

12439 (c) a captive insurance company holding a certificate of authority under this chapter;

12440 (d) an insurance holding company that:

12441 (i) controls an insurer licensed pursuant to the laws of a state; and

12442 (ii) is subject to registration pursuant to the holding company system of laws of the
12443 state of domicile of the insurer described in Subsection (1)(d)(i); or

12444 (e) another person approved by the commissioner after finding that the approval of the
12445 person as a sponsor is not inconsistent with the purposes of this chapter.

12446 (2) (a) The business written by a sponsored captive insurance company with respect to
12447 a protected cell shall be fronted by an insurer that is:

12448 (i) authorized or approved:

12449 (A) under the laws of a state; or

12450 (B) under any jurisdiction if the insurance company is a wholly owned subsidiary of an
12451 insurance company licensed pursuant to the laws of a state;

12452 (ii) reinsured by a reinsurer authorized or approved by this state; or

12453 (iii) subject to Subsection (2)(b), secured by a trust fund:

12454 (A) in the United States;

12455 (B) for the benefit of policyholders and claimants; and

12456 (C) funded by an irrevocable letter of credit or other asset acceptable to the
12457 commissioner.

12458 (b) (i) The amount of security provided by the trust fund described in Subsection

12459 (2)(a)(iii) may not be less than the reserves associated with the liabilities of the trust fund,
12460 including:

- 12461 (A) reserves for losses;
- 12462 (B) allocated loss adjustment expenses;
- 12463 (C) incurred but unreported losses; and
- 12464 (D) unearned premiums for business written through the participant's protected cell.

12465 (ii) The commissioner may require the sponsored captive insurance company to
12466 increase the funding of a trust established pursuant to this Subsection (2).

12467 (iii) If the form of security in the trust described in Subsection (2)(a)(iii) is a letter of
12468 credit, the letter of credit [~~must~~] shall be established, issued, or confirmed by a bank that is:

- 12469 (A) chartered in this state;
- 12470 (B) a member of the federal reserve system; or
- 12471 (C) chartered by another state if that state-chartered bank is acceptable to the
12472 commissioner.

12473 (iv) A trust and trust instrument maintained pursuant to this Subsection (2) shall be in a
12474 form and upon terms approved by the commissioner.

12475 (3) A risk retention group may not be either a sponsor or a participant of a sponsored
12476 captive insurance company.

12477 Section 297. Section **31A-37-601** is amended to read:

12478 **31A-37-601. Incorporation of a captive reinsurance company.**

12479 (1) A captive reinsurance company shall be incorporated as a stock insurer with its
12480 capital:

- 12481 (a) divided into shares; and
- 12482 (b) held by the captive reinsurance company's shareholders.

12483 (2) (a) A captive reinsurance company may not have fewer than three incorporators.

12484 (b) At least two of the incorporators of a captive reinsurance company [~~must~~] shall be
12485 residents of this state.

12486 (3) (a) Before the articles of incorporation are filed with the Division of Corporations

12487 and Commercial Code, the incorporators shall obtain from the commissioner a certificate of
12488 finding that the establishment and maintenance of the proposed corporation promotes the
12489 general good of this state.

12490 (b) In considering a request for a certificate under Subsection (3)(a), the commissioner
12491 shall consider:

12492 (i) the character, reputation, financial standing, and purposes of the incorporators;

12493 (ii) the character, reputation, financial responsibility, insurance experience, and
12494 business qualifications of the officers and directors; and

12495 (iii) other factors the commissioner considers advisable.

12496 (4) The capital stock of a captive reinsurance company [~~must~~] shall be issued at par
12497 value or greater.

12498 (5) At least one of the members of the board of directors of a captive reinsurance
12499 company incorporated in this state [~~must~~] shall be a resident of this state.

12500 Section 298. Section **31A-37a-205** is amended to read:

12501 **31A-37a-205. Sponsored captives.**

12502 In addition to the other provisions of this chapter, this section applies to a sponsored
12503 captive insurance company under Chapter 37, Captive Insurance Companies Act, that has a
12504 certificate of authority as a special purpose financial captive insurance company pursuant to
12505 this chapter.

12506 (1) A sponsored captive insurance company may have a certificate of authority as a
12507 special purpose financial captive insurance company under this chapter.

12508 (2) (a) For purposes of a sponsored captive insurance company having a certificate of
12509 authority as a special purpose financial captive insurance company, "general account" means
12510 the assets and liabilities of the sponsored captive insurance company not attributable to a
12511 protected cell.

12512 (b) For purposes of applying Chapter 27a, Insurer Receivership Act, to a sponsored
12513 captive insurance company having a certificate of authority as a special purpose financial
12514 captive insurance company, the definition of "insolvency" and "insolvent" in Section

12515 31A-37a-102 shall be applied separately to:

12516 (i) each protected cell; and

12517 (ii) the special purpose financial captive insurance company's general account.

12518 (3) (a) A participant in a sponsored captive insurance company having a certificate of
12519 authority as a special purpose financial captive insurance company [~~must~~] shall be a ceding
12520 insurer, unless approved by the commissioner before a person becomes a participant.

12521 (b) A change in a participant in a sponsored captive insurance company having a
12522 certificate of authority as a special purpose financial captive insurance company is subject to
12523 prior approval by the commissioner.

12524 (4) Notwithstanding Section 31A-37-401, a special purpose financial captive insurance
12525 company that is a sponsored captive insurance company may issue a security to a person not
12526 described in Section 31A-37-401 if the issuance to that person is approved by the
12527 commissioner before the issuance of the security.

12528 (5) Notwithstanding Section 31A-37a-302, a sponsored captive insurance company
12529 having a certificate of authority as a special purpose financial captive insurance company shall:

12530 (a) at the time of initial application for a certificate of authority as a special purpose
12531 financial captive insurance company, possess unimpaired paid-in capital and surplus of not less
12532 than \$500,000; and

12533 (b) maintain at least \$500,000 of unimpaired paid-in capital and surplus of not less
12534 than \$500,000 during the time that it holds a certificate of authority under this chapter.

12535 (6) (a) For purposes of a sponsored captive insurance company having a certificate of
12536 authority as a special purpose financial captive insurance company, this Subsection (6) applies
12537 to:

12538 (i) a security issued by the special purpose financial captive insurance company with
12539 respect to a protected cell; or

12540 (ii) a contract or obligation of the special purpose financial captive insurance company
12541 with respect to a protected cell.

12542 (b) A sponsored captive insurance company having a certificate of authority as a

12543 special purpose financial captive insurance company shall include with a security, contract, or
12544 obligation described in Subsection (6)(a):

12545 (i) the designation of the protected cell; and

12546 (ii) a disclosure in a form and content satisfactory to the commissioner to the effect that
12547 the holder of the security or a counterparty to the contract or obligation has no right or recourse
12548 against the special purpose financial captive insurance company and its assets other than
12549 against an asset properly attributable to the protected cell.

12550 (c) Notwithstanding the requirements of this Subsection (6) and subject to other
12551 statutes or rules including this chapter and Chapter 37, Captive Insurance Companies Act, a
12552 creditor, ceding insurer, or another person may not use a failure to include a disclosure
12553 described in Subsection (6)(b), in whole or part, as the sole basis to have recourse against:

12554 (i) the general account of the special purpose financial captive insurance company; or

12555 (ii) the assets of another protected cell of the special financial captive insurance
12556 company.

12557 (7) In addition to Section 31A-37-401, a sponsored captive insurance company having
12558 a certificate of authority as a special purpose financial captive insurance company is subject to
12559 the following with respect to a protected cell:

12560 (a) (i) A sponsored captive insurance company having a certificate of authority as a
12561 special purpose financial captive insurance company shall establish a protected cell only for the
12562 purpose of insuring or reinsuring risks of one or more reinsurance contracts with a ceding
12563 insurer with the intent of facilitating an insurance securitization.

12564 (ii) Subject to Subsection (7)(a)(iii), a sponsored captive insurance company having a
12565 certificate of authority as a special purpose financial captive insurance company shall establish
12566 a separate protected cell with respect to a ceding insurer described in Subsection (7)(a)(i).

12567 (iii) A sponsored captive insurance company having a certificate of authority as a
12568 special purpose financial captive insurance company shall establish a separate protected cell
12569 with respect to each reinsurance contract that is funded in whole or in part by a separate
12570 insurance securitization transaction.

12571 (b) A sponsored captive insurance company having a certificate of authority as a
12572 special purpose financial captive insurance company may not sale, exchange, or transfer an
12573 asset by, between, or among any of its protected cells without the prior approval of the
12574 commissioner.

12575 (8) (a) A sponsored captive insurance company having a certificate of authority as a
12576 special purpose financial captive insurance company shall attribute an asset or liability to a
12577 protected cell and to the general account in accordance with the plan of operation approved by
12578 the commissioner.

12579 (b) Except as provided by Subsection (8)(a), a sponsored captive insurance company
12580 having a certificate of authority as a special purpose financial captive insurance company may
12581 not attribute an asset or liability between:

12582 (i) its general account and a protected cell; or

12583 (ii) its protected cells.

12584 (c) A sponsored captive insurance company having a certificate of authority as a
12585 special purpose financial captive insurance company shall attribute:

12586 (i) an insurance obligation, asset, or liability relating to a reinsurance contract entered
12587 into with respect to a protected cell; and

12588 (ii) an insurance securitization transaction related to the obligation, asset, or liability
12589 described in Subsection (8)(c)(i), including a security issued by the special purpose financial
12590 captive insurance company as part of the insurance securitization, to the protected cell.

12591 (d) The following shall reflect an insurance obligation, asset, or liability relating to a
12592 reinsurance contract and the insurance securitization transaction that are attributed to a
12593 protected cell:

12594 (i) a right, benefit, obligation, or a liability of a security attributable to a protected cell
12595 described in Subsection (8)(c);

12596 (ii) the performance under a reinsurance contract and the related insurance
12597 securitization transaction; and

12598 (iii) a tax benefit, loss, refund, or credit allocated pursuant to a tax allocation

12599 agreement to which the special purpose financial captive insurance company is a party,
12600 including a payment made by or due to be made to the special purpose financial captive
12601 insurance company pursuant to the terms of the tax allocation agreement.

12602 (9) In addition to Section 31A-37a-502:

12603 (a) Chapter 27a, Insurer Receivership Act, applies to each protected cell of a sponsored
12604 captive insurance company having a certificate of authority as a special purpose financial
12605 captive insurance company.

12606 (b) A proceeding or action taken by the commissioner pursuant to Chapter 27a, Insurer
12607 Receivership Act, with respect to a protected cell of a sponsored captive insurance company
12608 having a certificate of authority as a special purpose financial captive insurance company may
12609 not be the sole basis for a proceeding pursuant to Chapter 27a, Insurer Receivership Act, with
12610 respect to:

12611 (i) another protected cell of the special purpose financial captive insurance company;

12612 or

12613 (ii) the special purpose financial captive insurance company's general account.

12614 (c) (i) Except as provided in Subsection (9)(c)(ii), the receiver of a special purpose
12615 financial captive insurance company shall ensure that the assets attributable to one protected
12616 cell are not applied to the liabilities attributable to:

12617 (A) another protected cell; or

12618 (B) the special purpose financial captive insurance company's general account.

12619 (ii) Notwithstanding Subsection (9)(c)(i), if an asset or liability is attributable to more
12620 than one protected cell, the receiver shall deal with the asset or liability in accordance with the
12621 terms of a relevant governing instrument or contract.

12622 (d) The insolvency of a protected cell of a sponsored captive insurance company
12623 having a certificate of authority as a special purpose financial captive insurance company may
12624 not be the sole basis for the commissioner to prohibit:

12625 (i) a payment by the special purpose financial captive insurance company made
12626 pursuant to a special purpose financial captive insurance company security or reinsurance

12627 contract with respect to another protected cell; or

12628 (ii) an action required to make a payment described in Subsection (9)(d)(i).

12629 Section 299. Section **32B-1-407 (Effective 07/01/11)** is amended to read:

12630 **32B-1-407 (Effective 07/01/11). Verification of proof of age by applicable**

12631 **licensees.**

12632 (1) Notwithstanding any other provision of this part, an applicable licensee shall
12633 require that an authorized person under the applicable licensee verify proof of age as provided
12634 in this section.

12635 (2) An authorized person is required to verify proof of age under this section before an
12636 individual who appears to be 35 years of age or younger:

12637 (a) gains admittance to the premises of a social club licensee; or

12638 (b) procures an alcoholic product on the premises of a dining club licensee.

12639 (3) To comply with Subsection (2), an authorized person shall:

12640 (a) request the individual present proof of age; and

12641 (b) (i) verify the validity of the proof of age electronically under the verification
12642 program created in Subsection (4); or

12643 (ii) if the proof of age cannot be electronically verified as provided in Subsection
12644 (3)(b)(i), request that the individual comply with a process established by the commission by
12645 rule.

12646 (4) The commission shall establish by rule an electronic verification program that
12647 includes the following:

12648 (a) the specifications for the technology used by the applicable licensee to
12649 electronically verify proof of age, including that the technology display to the person described
12650 in Subsection (1) no more than the following for the individual who presents the proof of age:

12651 (i) the name;

12652 (ii) the age;

12653 (iii) the number assigned to the individual's proof of age by the issuing authority;

12654 (iv) the birth date;

- 12655 (v) the gender; and
- 12656 (vi) the status and expiration date of the individual's proof of age; and
- 12657 (b) the security measures that [~~must~~] shall be used by an applicable licensee to ensure
- 12658 that information obtained under this section is:
 - 12659 (i) used by the applicable licensee only for purposes of verifying proof of age in
 - 12660 accordance with this section; and
 - 12661 (ii) retained by the applicable licensee for seven days after the day on which the
 - 12662 applicable licensee obtains the information.
- 12663 (5) (a) An applicable licensee may not disclose information obtained under this section
- 12664 except as provided under this title.
- 12665 (b) Information obtained under this section is considered a record for any purpose
- 12666 under Chapter 5, Part 3, Retail Licensee Operational Requirements.
- 12667 Section 300. Section **32B-1-505 (Effective 07/01/11)** is amended to read:
- 12668 **32B-1-505 (Effective 07/01/11). Sexually oriented entertainer.**
- 12669 (1) Subject to the requirements of this part, live entertainment is permitted on premises
- 12670 or at an event regulated by the commission.
- 12671 (2) Notwithstanding Subsection (1), a retail licensee or permittee may not permit a
- 12672 person to:
 - 12673 (a) appear or perform in a state of nudity;
 - 12674 (b) perform or simulate an act of:
 - 12675 (i) sexual intercourse;
 - 12676 (ii) masturbation;
 - 12677 (iii) sodomy;
 - 12678 (iv) bestiality;
 - 12679 (v) oral copulation;
 - 12680 (vi) flagellation; or
 - 12681 (vii) a sexual act that is prohibited by Utah law; or
 - 12682 (c) touch, caress, or fondle the breast, buttocks, anus, or genitals.

- 12683 (3) A sexually oriented entertainer may perform in a state of seminudity:
- 12684 (a) only in:
- 12685 (i) a tavern; or
- 12686 (ii) a social club license premises; and
- 12687 (b) only if:
- 12688 (i) the windows, doors, and other apertures to the premises are darkened or otherwise
- 12689 constructed to prevent anyone outside the premises from seeing the performance; and
- 12690 (ii) the outside entrance doors of the premises remain unlocked.
- 12691 (4) A sexually oriented entertainer may perform only upon a stage or in a designated
- 12692 performance area that is:
- 12693 (a) approved by the commission in accordance with rules made by the commission;
- 12694 (b) configured so as to preclude a patron from:
- 12695 (i) touching the sexually oriented entertainer; or
- 12696 (ii) placing any money or object on or within the performance attire or the person of the
- 12697 sexually oriented entertainer; and
- 12698 (c) configured so as to preclude the sexually oriented entertainer from touching a
- 12699 patron.
- 12700 (5) A sexually oriented entertainer may not touch a patron:
- 12701 (a) during the sexually oriented entertainer's performance; or
- 12702 (b) while the sexually oriented entertainer is dressed in performance attire.
- 12703 (6) A sexually oriented entertainer, while in the portion of the premises used by
- 12704 patrons, [~~must~~] shall be dressed in opaque clothing which covers and conceals the sexually
- 12705 oriented entertainer's performance attire from the top of the breast to the knee.
- 12706 (7) A patron may not be on the stage or in the performance area while a sexually
- 12707 oriented entertainer is appearing or performing on the stage or in the performance area.
- 12708 (8) A patron may not:
- 12709 (a) touch a sexually oriented entertainer:
- 12710 (i) during the sexually oriented entertainer's performance; or

- 12711 (ii) while the sexually oriented entertainer is dressed in performance attire; or
- 12712 (b) place money or any other object on or within the performance attire or the person of
- 12713 the sexually oriented entertainer.
- 12714 (9) A minor may not be on premises described in Subsection (3).
- 12715 (10) A person who appears or performs for the entertainment of patrons on premises or
- 12716 at an event regulated by the commission that is not a tavern or social club licensee:
- 12717 (a) may not appear or perform in a state of nudity or a state of seminudity; and
- 12718 (b) may appear or perform in opaque clothing that completely covers the person's
- 12719 genitals, pubic area, and anus if the covering:
- 12720 (i) is not less than the following at its widest point:
- 12721 (A) four inches coverage width in the front of the human body; and
- 12722 (B) five inches coverage width in the back of the human body;
- 12723 (ii) does not taper to less than one inch wide at the narrowest point; and
- 12724 (iii) if covering a female, completely covers the breast below the top of the areola.
- 12725 Section 301. Section **32B-6-407 (Effective 07/01/11)** is amended to read:
- 12726 **32B-6-407 (Effective 07/01/11). Specific operational requirements for equity club**
- 12727 **license or fraternal club license.**
- 12728 (1) For purposes of this section only:
- 12729 (a) "Club licensee" means an equity club licensee or fraternal club licensee.
- 12730 (b) "Club licensee" does not include a dining club licensee or social club licensee.
- 12731 (2) (a) A club licensee shall have a governing body that:
- 12732 (i) consists of three or more members of the club; and
- 12733 (ii) holds regular meetings to:
- 12734 (A) review membership applications; and
- 12735 (B) conduct other business as required by the bylaws or house rules of the club.
- 12736 (b) (i) A club licensee shall maintain a minute book that is posted currently by the club
- 12737 licensee.
- 12738 (ii) The minute book required by this Subsection (2) shall contain the minutes of a

- 12739 regular or special meeting of the governing body.
- 12740 (3) A club licensee may admit an individual as a member only on written application
- 12741 signed by the person, subject to:
- 12742 (a) the person paying an application fee; and
- 12743 (b) investigation, vote, and approval of a quorum of the governing body.
- 12744 (4) A club licensee shall:
- 12745 (a) record an admission of a member in the official minutes of a regular meeting of the
- 12746 governing body; and
- 12747 (b) whether approved or disapproved, file an application as a part of the official records
- 12748 of the club licensee.
- 12749 (5) The spouse of a member of a club licensee has the rights and privileges of the
- 12750 member:
- 12751 (a) to the extent permitted by the bylaws or house rules of the club licensee; and
- 12752 (b) except to the extent restricted by this title.
- 12753 (6) A minor child of a member of a club licensee has the rights and privileges of the
- 12754 member:
- 12755 (a) to the extent permitted by the bylaws or house rules of the club licensee; and
- 12756 (b) except to the extent restricted by this title.
- 12757 (7) A club licensee shall maintain:
- 12758 (a) a current and complete membership record showing:
- 12759 (i) the date of application of a proposed member;
- 12760 (ii) a member's address;
- 12761 (iii) the date the governing body approved a member's admission;
- 12762 (iv) the date initiation fees and dues are assessed and paid; and
- 12763 (v) the serial number of the membership card issued to a member;
- 12764 (b) a membership list; and
- 12765 (c) a current record indicating when a member is removed as a member or resigns.
- 12766 (8) (a) A club licensee shall have bylaws or house rules that include provisions

12767 respecting the following:

12768 (i) standards of eligibility for members;

12769 (ii) limitation of members, consistent with the nature and purpose of the club;

12770 (iii) the period for which dues are paid, and the date upon which the period expires;

12771 (iv) provisions for removing a member from the club membership for the nonpayment
12772 of dues or other cause;

12773 (v) provisions for guests; and

12774 (vi) application fees and membership dues.

12775 (b) A club licensee shall maintain a current copy of the club licensee's current bylaws
12776 and current house rules.

12777 (c) A club licensee shall maintain its bylaws or house rules, and any amendments to
12778 those records, on file with the department at all times.

12779 (9) A club licensee may, in its discretion, allow an individual to be admitted to or use
12780 the club licensed premises as a guest subject to the following conditions:

12781 (a) the individual is allowed to use the club licensee premises only to the extent
12782 permitted by the club licensee's bylaws or house rules;

12783 (b) the individual ~~must~~ shall be previously authorized by a member of the club who
12784 agrees to host the individual as a guest into the club;

12785 (c) the individual has only those privileges derived from the individual's host for the
12786 duration of the individual's visit to the club licensee premises; and

12787 (d) a club licensee or staff of the club licensee may not enter into an agreement or
12788 arrangement with a club member to indiscriminately host a member of the general public into
12789 the club licensee premises as a guest.

12790 (10) Notwithstanding Subsection (9), an individual may be allowed as a guest in a club
12791 licensed premises without a host if:

12792 (a) (i) the club licensee is an equity club licensee; and

12793 (ii) the individual is a member of an equity club licensee that has reciprocal guest
12794 privileges with the equity club licensee for which the individual is a guest; or

12795 (b) (i) the club licensee is a fraternal club licensee; and
12796 (ii) the individual is a member of the same fraternal organization as the fraternal club
12797 licensee for which the individual is a guest.

12798 (11) Unless the patron is a member or guest, a club licensee may not:
12799 (a) sell, offer for sale, or furnish an alcoholic product to the patron; or
12800 (b) allow the patron to be admitted to or use the licensed premises.

12801 (12) A minor may not be a member, officer, director, or trustee of a club licensee.
12802 (13) Public advertising related to a club licensee by the following shall clearly identify
12803 a club as being "a club for members":
12804 (a) the club licensee;
12805 (b) staff of the club licensee; or
12806 (c) a person under a contract or agreement with the club licensee.

12807 Section 302. Section **32B-8-304 (Effective 07/01/11)** is amended to read:
12808 **32B-8-304 (Effective 07/01/11). Specific operational requirements for resort spa**
12809 **sublicense.**

12810 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational
12811 Requirements, a resort licensee, staff of the resort licensee, or a person otherwise related to a
12812 resort spa sublicense shall comply with this section.

12813 (b) Subject to Section 32B-8-502, failure to comply as provided in Subsection (1)(a)
12814 may result in disciplinary action in accordance with Chapter 3, Disciplinary Actions and
12815 Enforcement Act, against:
12816 (i) a retail licensee;
12817 (ii) staff of the retail licensee;
12818 (iii) a person otherwise related to a resort spa sublicense; or
12819 (iv) any combination of the persons listed in this Subsection (1)(b).

12820 (2) A person operating under a resort spa sublicense shall display in a prominent place
12821 in the resort spa a list of the types and brand names of liquor being furnished through its
12822 calibrated metered dispensing system.

12823 (3) (a) For purposes of the resort spa sublicense, the resort licensee shall ensure that a
12824 record required by this title is maintained, and a record is maintained or used for the resort spa
12825 sublicense:

- 12826 (i) as the department requires; and
- 12827 (ii) for a minimum period of three years.

12828 (b) A record is subject to inspection by an authorized representative of the commission
12829 and the department.

12830 (c) A resort licensee shall allow the department, through an auditor or examiner of the
12831 department, to audit the records for a resort spa sublicense at the times the department
12832 considers advisable.

12833 (d) The department shall audit the records for a resort spa sublicense at least once
12834 annually.

12835 (e) Section 32B-1-205 applies to a record required to be made, maintained, or used in
12836 accordance with this Subsection (3).

12837 (4) (a) A person operating under a resort spa sublicense may not sell, offer for sale, or
12838 furnish liquor at a resort spa during a period that:

- 12839 (i) begins at 1 a.m.; and
- 12840 (ii) ends at 9:59 a.m.

12841 (b) A person operating under a resort spa sublicense may sell, offer for sale, or furnish
12842 beer during the hours specified in Chapter 6, Part 7, On-premise Beer Retailer License, for an
12843 on-premise beer retailer.

12844 (c) (i) Notwithstanding Subsections (4)(a) and (b), a resort spa shall remain open for
12845 one hour after the resort spa ceases the sale and furnishing of an alcoholic product during
12846 which time a person at the resort spa may finish consuming:

- 12847 (A) a single drink containing spirituous liquor;
- 12848 (B) a single serving of wine not exceeding five ounces;
- 12849 (C) a single serving of heavy beer;
- 12850 (D) a single serving of beer not exceeding 26 ounces; or

- 12851 (E) a single serving of a flavored malt beverage.
- 12852 (ii) A resort spa is not required to remain open:
- 12853 (A) after all persons have vacated the resort spa sublicense premises; or
- 12854 (B) during an emergency.
- 12855 (d) A person operating under a resort spa sublicense may not allow a person to remain
- 12856 on the resort spa sublicense premises to consume an alcoholic product on the resort spa
- 12857 sublicense premises during a period that:
- 12858 (i) begins at 2 a.m.; and
- 12859 (ii) ends at 9:59 a.m.
- 12860 (5) A minor may not be admitted into, use, or be on:
- 12861 (a) the sublicense premises of a resort spa unless accompanied by a person 21 years of
- 12862 age or older; or
- 12863 (b) a lounge or bar area of the resort spa sublicense premises.
- 12864 (6) A resort spa shall have food available at all times when an alcoholic product is sold,
- 12865 offered for sale, furnished, or consumed on the resort spa sublicense premises.
- 12866 (7) (a) Subject to the other provisions of this Subsection (7), a patron may not have
- 12867 more than two alcoholic products of any kind at a time before the patron.
- 12868 (b) A resort spa patron may not have two spirituous liquor drinks before the resort spa
- 12869 patron if one of the spirituous liquor drinks consists only of the primary spirituous liquor for
- 12870 the other spirituous liquor drink.
- 12871 (c) An individual portion of wine is considered to be one alcoholic product under this
- 12872 Subsection (7).
- 12873 (8) (a) An alcoholic product may only be consumed at a table or counter.
- 12874 (b) An alcoholic product may not be served to or consumed by a patron at a bar.
- 12875 (9) (a) A person operating under a resort spa sublicense shall have available on the
- 12876 resort spa sublicense premises for a patron to review at the time that the patron requests it, a
- 12877 written alcoholic product price list or a menu containing the price of an alcoholic product sold
- 12878 or furnished by the resort spa including:

- 12879 (i) a set-up charge;
- 12880 (ii) a service charge; or
- 12881 (iii) a chilling fee.
- 12882 (b) A charge or fee made in connection with the sale, service, or consumption of liquor
- 12883 may be stated in food or alcoholic product menus including:
- 12884 (i) a set-up charge;
- 12885 (ii) a service charge; or
- 12886 (iii) a chilling fee.
- 12887 (10) (a) A resort licensee shall own or lease premises suitable for the resort spa's
- 12888 activities.
- 12889 (b) A resort licensee may not maintain premises in a manner that barricades or conceals
- 12890 the resort spa sublicense's operation.
- 12891 (11) Subject to the other provisions of this section, a person operating under a resort
- 12892 spa sublicense may not sell an alcoholic product to or allow a person to be admitted to or use
- 12893 the resort spa sublicense premises other than:
- 12894 (a) a resident;
- 12895 (b) a public customer who holds a valid customer card issued under Subsection (13); or
- 12896 (c) an invitee.
- 12897 (12) A person operating under a resort spa sublicense may allow an individual to be
- 12898 admitted to or use the resort spa sublicense premises as an invitee subject to the following
- 12899 conditions:
- 12900 (a) the individual [~~must~~] shall be previously authorized by one of the following who
- 12901 agrees to host the individual as an invitee into the resort spa:
- 12902 (i) a resident; or
- 12903 (ii) a public customer as described in Subsection (11);
- 12904 (b) the individual has only those privileges derived from the individual's host for the
- 12905 duration of the invitee's visit to the resort spa; and
- 12906 (c) a resort licensee, resort spa, or staff of the resort licensee or resort spa may not enter

12907 into an agreement or arrangement with a resident or public customer to indiscriminately host a
12908 member of the general public into the resort spa as an invitee.

12909 (13) A person operating under a resort spa sublicense may issue a customer card to
12910 allow an individual to enter and use the resort spa sublicense premises on a temporary basis
12911 under the following conditions:

12912 (a) the resort spa may not issue a customer card for a time period that exceeds three
12913 weeks;

12914 (b) the resort spa shall assess a fee to a public customer for a customer card;

12915 (c) the resort spa may not issue a customer card to a minor; and

12916 (d) a public customer may not host more than seven invitees at one time.

12917 Section 303. Section **34-19-1** is amended to read:

12918 **34-19-1. Declaration of policy.**

12919 In the interpretation and application of this chapter, the public policy of this state is
12920 declared as follows:

12921 (1) It [~~shall not be~~] is not unlawful for employees to organize themselves into or carry
12922 on labor unions for the purpose of lessening hours of labor, increasing wages, bettering the
12923 conditions of members, or carrying out the legitimate purposes of such organizations as freely
12924 as they could do if acting singly.

12925 (2) The labor of a human being is not a commodity or article of commerce. Nothing
12926 contained in the antitrust laws shall be construed to forbid the existence and operation of labor,
12927 agricultural or horticultural organizations, instituted for the purpose of mutual help and not
12928 having capital stock or conducted for profit, or to forbid or restrain individual members of such
12929 organizations from lawfully carrying out the legitimate object thereof; nor shall such
12930 organizations or membership in them be held to be illegal combinations or conspiracies in
12931 restraint of trade under the antitrust laws.

12932 (3) Negotiations of terms and conditions of labor should result from voluntary
12933 agreement between employer and employee. Governmental authority has permitted and
12934 encouraged employers to organize in the corporate and other forms of capital control. In

12935 dealing with such employers the individual unorganized worker is helpless to exercise actual
12936 liberty of contract and to protect [his] the individual unorganized worker's freedom of labor and
12937 thereby to obtain acceptable terms and conditions of employment. Therefore, it is necessary
12938 that the individual employee have full freedom of association, self-organization, and
12939 designation of representatives of [his] the individual employee's own choosing to negotiate the
12940 terms and conditions of [his] the individual employee's employment, and that [he] the
12941 individual employee shall be free from the interference, restraint or coercion of employers of
12942 labor, or their agents, in the designation of such representatives or in self-organization or in
12943 other concerted activities for the purpose of collective bargaining or their mutual aid or
12944 protection.

12945 Section 304. Section **34-19-9** is amended to read:

12946 **34-19-9. Injunctive relief -- Contempt -- Rights of accused.**

12947 In all cases where a person shall be charged with indirect criminal contempt for
12948 violation of a restraining order or injunction issued by a court, or judge or judges of it, the
12949 accused shall enjoy:

12950 (1) the rights as to admission to bail that are accorded to persons accused of crime;

12951 (2) the right to be notified of the accusation and a reasonable time to make a defense,
12952 provided the alleged contempt is not committed in the immediate view of or in the presence of
12953 the court;

12954 (3) upon demand, the right to a speedy and public trial by an impartial jury of the
12955 judicial district in which the contempt shall have been committed. This requirement [~~shall not~~
12956 may not] be construed to apply to contempts committed in the presence of the court or so near to
12957 it as to interfere directly with the administration of justice or to apply to the misbehavior,
12958 misconduct, or disobedience of any officer of the court in respect to the writs, orders or process
12959 of the court; and

12960 (4) the right to file with the court a demand for the retirement of the judge sitting in the
12961 proceeding, if the contempt arises from an attack upon the character or conduct of such judge
12962 and if the attack occurred otherwise than in open court. Upon the filing of any such demand the

12963 judge shall proceed no further, but another judge shall be designated by the presiding judge of
 12964 the court. The demand shall be filed prior to the hearing in the contempt proceeding.

12965 Section 305. Section **34-19-10** is amended to read:

12966 **34-19-10. Injunctive relief -- Contempt -- Penalty.**

12967 Punishment for a contempt, specified in Section 34-19-9, may be by fine, not exceeding
 12968 \$100, or by imprisonment not exceeding 15 days in the jail of the county where the court is
 12969 sitting, or both, in the discretion of the court. Where a person is committed to jail for the
 12970 nonpayment of such a fine, ~~[he must]~~ the person shall be discharged at the expiration of 15
 12971 days; but ~~[where he]~~ if the person is also committed for a definite time, the 15 days ~~[must]~~ shall
 12972 be computed from the expiration of the definite time.

12973 Section 306. Section **34-19-13** is amended to read:

12974 **34-19-13. Agreements against public policy.**

12975 ~~[Every undertaking or promise]~~ Each of the following undertakings or promises
 12976 hereafter made, whether written or oral, express or implied, between any employee or
 12977 prospective employee and ~~[his]~~ the employee's or prospective employee's employer,
 12978 prospective employer, or any other individual, firm, company, association, or corporation,
 12979 ~~[whereby:]~~ is contrary to public policy and may not be a basis for the granting of legal or
 12980 equitable relief by any court against a party to the undertaking or promise, or against any other
 12981 person who may advise, urge, or induce, without fraud, violence or threat of violence, either
 12982 party to act in disregard of the undertaking or promise:

12983 (1) ~~[either party thereto undertakes or promises]~~ an undertaking or promise by either
 12984 party to join or to remain a member of some specific labor organization or organizations or to
 12985 join or remain a member of some specific employer organization or any employer organization
 12986 or organizations; [and/or]

12987 (2) ~~[either party thereto undertakes or promises not to]~~ an undertaking or promise by
 12988 either party to not join or not [to] remain a member of some specific labor organization or any
 12989 labor organization or organizations, or of some specific employer organization or any employer
 12990 organization or organizations; [and/or] or

12991 (3) ~~[either party thereto undertakes or promises that he will]~~ an undertaking or promise
12992 by either party to withdraw from an employment relation in the event that ~~[he]~~ the party joins
12993 or remains a member of some specific labor organization or any labor organization or
12994 organizations, or of some specific employer organization or any employer organization or
12995 organizations~~;~~ ~~is hereby declared to be contrary to public policy and shall not afford any basis~~
12996 ~~for the granting of legal or equitable relief by any court against a party to such undertaking or~~
12997 ~~promise, or against any other persons who may advise, urge or induce, without fraud, violence~~
12998 ~~or threat thereof, either party thereto to act in disregard of such undertaking or promise].~~

12999 Section 307. Section **34-20-3** is amended to read:

13000 **34-20-3. Labor relations board.**

13001 (1) (a) There is created the Labor Relations Board consisting of the following:

13002 (i) the commissioner of the Labor Commission;

13003 (ii) two members appointed by the governor with the consent of the Senate consisting
13004 of:

13005 (A) a representative of employers, in making this appointment the governor shall
13006 consider nominations from employer organizations; and

13007 (B) a representative of employees, in making this appointment the governor shall
13008 consider nominations from employee organizations.

13009 (b) (i) Except as provided in Subsection (1)(b)(ii), as terms of members appointed
13010 under Subsection (1)(a)(ii) expire, the governor shall appoint each new member or reappointed
13011 member to a four-year term.

13012 (ii) Notwithstanding the requirements of Subsection (1)(b)(i), the governor shall, at the
13013 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
13014 members appointed under Subsection (1)(a)(ii) are staggered so one member is appointed every
13015 two years.

13016 (c) The commissioner shall serve as chair of the board.

13017 (d) A vacancy occurring on the board for any cause of the members appointed under
13018 Subsection (1)(a)(ii) shall be filled by the governor with the consent of the Senate pursuant to

13019 this section for the unexpired term of the vacating member.

13020 (e) The governor may at any time remove a member appointed under Subsection
13021 (1)(a)(ii) but only for inefficiency, neglect of duty, malfeasance or malfeasance in office, or for
13022 cause upon a hearing.

13023 (f) A member of the board appointed under Subsection (1)(a)(ii) may not hold any
13024 other office in the government of the United States, this state or any other state, or of any
13025 county government or municipal corporation within a state.

13026 (g) A member appointed under Subsection (1)(a)(ii) may not receive compensation or
13027 benefits for the member's service, but may receive per diem and travel expenses in accordance
13028 with:

13029 (i) Section 63A-3-106;

13030 (ii) Section 63A-3-107; and

13031 (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
13032 63A-3-107.

13033 (2) A meeting of the board may be called:

13034 (a) by the chair; or

13035 (b) jointly by the members appointed under Subsection (1)(a)(ii).

13036 (3) The chair may provide staff and administrative support as necessary from the Labor
13037 Commission.

13038 (4) A vacancy in the board [~~shall not~~] does not impair the right of the remaining
13039 members to exercise all the powers of the board, and two members of the board shall at all
13040 times constitute a quorum.

13041 (5) The board shall have an official seal which shall be judicially noticed.

13042 Section 308. Section **34-20-5** is amended to read:

13043 **34-20-5. Labor relations board -- Offices -- Jurisdiction -- Member's**
13044 **participation in case.**

13045 The principal office of the board shall be at the state capitol, but it may meet and
13046 exercise any or all of its powers at any other place. The board may, by one or more of its

13047 members or by [~~such~~] the agents or agencies [~~as~~] it may designate, prosecute any inquiry
13048 necessary to its functions in any part of the state. A member who participates in [~~such~~] the
13049 inquiry [~~shall not~~] may not be disqualified from subsequently participating in a decision of the
13050 board in the same case.

13051 Section 309. Section **34-20-8** is amended to read:

13052 **34-20-8. Unfair labor practices.**

13053 (1) It shall be an unfair labor practice for an employer, individually or in concert with
13054 others:

13055 (a) To interfere with, restrain or coerce employees in the exercise of the rights
13056 guaranteed in Section 34-20-7.

13057 (b) To dominate or interfere with the formation or administration of any labor
13058 organization or contribute financial or other support to it; provided, that subject to rules and
13059 regulations made and published by the board pursuant to Section 34-20-6, an employer [~~shall~~
13060 ~~not be~~] is not prohibited from permitting employees to confer with [~~him~~] the employer during
13061 working hours without loss of time or pay.

13062 (c) By discrimination in regard to hire or tenure of employment or any term of
13063 condition of employment to encourage or discourage membership in any labor organization;
13064 provided, that nothing in this act shall preclude an employer from making an agreement with a
13065 labor organization (not established, maintained or assisted by any action defined in this act as
13066 an unfair labor practice) to require as a condition of employment, membership therein, if such
13067 labor organization is the representative of the employees as provided in Subsection 34-20-9(1)
13068 in the appropriate collective bargaining unit covered by such agreement when made.

13069 (d) To refuse to bargain collectively with the representative of a majority of [~~his~~] the
13070 employer's employees in any collective bargaining unit; provided, that, when two or more labor
13071 organizations claim to represent a majority of the employees in the bargaining unit, the
13072 employer shall be free to file with the board a petition for investigation of certification of
13073 representatives and during the pendency of [~~such~~] the proceedings the employer [~~shall not~~] may
13074 not be [~~deemed~~] considered to have refused to bargain.

13075 (e) To bargain collectively with the representatives of less than a majority of [his] the
13076 employer's employees in a collective bargaining unit.

13077 (f) To discharge or otherwise discriminate against an employee because [he] the
13078 employee has filed charges or given testimony under this [~~act~~] chapter.

13079 (2) It shall be an unfair labor practice for an employee individually or in concert with
13080 others:

13081 (a) To coerce or intimidate an employee in the enjoyment of [his] the employee's legal
13082 rights, including those guaranteed in Section 34-20-7, or to intimidate [his] the employee's
13083 family, picket [his] the employee's domicile, or injure the person or property of [~~such~~] the
13084 employee or [his] the employee's family.

13085 (b) To coerce, intimidate or induce an employer to interfere with any of [his] the
13086 employer's employees in the enjoyment of their legal rights, including those guaranteed in
13087 Section 34-20-7, or to engage in any practice with regard to [his] the employer's employees
13088 which would constitute an unfair labor practice if undertaken by [~~him or his~~] the employer on
13089 the employer's own initiative.

13090 (c) To co-operate in engaging in, promoting, or inducing picketing (not constituting an
13091 exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant
13092 of a strike unless a majority in a collective bargaining unit of the employees of an employer
13093 against whom such acts are primarily directed have voted by secret ballot to call a strike.

13094 (d) To hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of
13095 any kind the pursuit of any lawful work or employment, or to obstruct or interfere with
13096 entrance to or egress from any place of employment, or to obstruct or interfere with free and
13097 uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel
13098 or conveyance.

13099 (e) To engage in a secondary boycott; or to hinder or prevent, by threats, intimidation,
13100 force, coercion, or sabotage, the obtaining, use or disposition of materials, equipment, or
13101 services; or to combine or conspire to hinder or prevent the obtaining, use or disposition of
13102 materials, equipment or services, provided, however, that nothing herein shall prevent

13103 sympathetic strikes in support of those in similar occupations working for other employers in
13104 the same craft.

13105 (f) To take unauthorized possession of property of the employer.

13106 (3) It shall be an unfair labor practice for any person to do or cause to be done on
13107 behalf of or in the interest of employers or employees, or in connection with or to influence the
13108 outcome of any controversy as to employment relations, any act prohibited by Subsections (1)
13109 and (2) of this section.

13110 Section 310. Section **34-23-208** is amended to read:

13111 **34-23-208. Exceptions.**

13112 The provisions of this chapter [~~shall not~~] do not apply to a person who is 16 years of
13113 age or older and for whom employment would not endanger [~~his~~] the person's health and safety
13114 if that person:

13115 (1) has received a high school diploma;

13116 (2) has received a school release certificate;

13117 (3) is legally married; or

13118 (4) is head of a household.

13119 Section 311. Section **34-25-2** is amended to read:

13120 **34-25-2. "Fellow servant" defined.**

13121 All persons who are engaged in the service of any employer and who while so engaged
13122 are in the same grade of service and are working together at the same time and place and to a
13123 common purpose, neither of such persons being entrusted by such employer with any
13124 superintendence or control over [~~his~~] the person's fellow employees, are fellow servants with
13125 each other; but nothing herein contained shall be so construed as to make the employees of
13126 such employer fellow servants with other employees engaged in any other department of
13127 service of such employer. Employees who do not come within the provisions of this section
13128 [~~shall not~~] may not be considered fellow servants.

13129 Section 312. Section **34-28-5** is amended to read:

13130 **34-28-5. Separation from payroll -- Resignation -- Cessation because of industrial**

13131 **dispute.**

13132 (1) (a) Whenever an employer separates an employee from the employer's payroll the
13133 unpaid wages of the employee become due immediately, and the employer shall pay the wages
13134 to the employee within 24 hours of the time of separation at the specified place of payment.

13135 (b) (i) In case of failure to pay wages due an employee within 24 hours of written
13136 demand, the wages of the employee shall continue from the date of demand until paid, but in
13137 no event to exceed 60 days, at the same rate that the employee received at the time of
13138 separation.

13139 (ii) The employee may recover the penalty thus accruing to the employee in a civil
13140 action. This action [~~must~~] shall be commenced within 60 days from the date of separation.

13141 (iii) An employee who has not made a written demand for payment is not entitled to
13142 any penalty under Subsection (1)(b).

13143 (2) If an employee does not have a written contract for a definite period and resigns
13144 the employee's employment, the wages earned and unpaid together with any deposit held by the
13145 employer and properly belonging to the resigned employee for the performance of the
13146 employee's employment duties become due and payable on the next regular payday.

13147 (3) If work ceases as the result of an industrial dispute, the wages earned and unpaid at
13148 the time of this cessation become due and payable at the next regular payday, as provided in
13149 Section 34-28-3, including, without abatement or reduction, all amounts due all persons whose
13150 work has been suspended as a result of the industrial dispute, together with any deposit or other
13151 guaranty held by the employer for the faithful performance of the duties of the employment.

13152 (4) This section does not apply to the earnings of a sales agent employed on a
13153 commission basis who has custody of accounts, money, or goods of the sales agent's principal
13154 if the net amount due the agent is determined only after an audit or verification of sales,
13155 accounts, funds, or stocks.

13156 Section 313. Section **34-28-6** is amended to read:

13157 **34-28-6. Dispute over wages -- Notice and payment.**

13158 (1) In case of a dispute over wages, the employer shall give written notice to the

13159 employee of the amount of wages [~~which he~~] that the employer concedes to be due and shall
13160 pay such amount without condition within the time set by this chapter[~~; but acceptance by the~~
13161 ~~employee of any such payment made shall not~~].

13162 (2) Acceptance by an employee of a payment described in Subsection (1) does not
13163 constitute a release as to the balance of [~~his~~] the employee's claim.

13164 Section 314. Section **34-28-14** is amended to read:

13165 **34-28-14. Actions by division as assignee -- Costs need not be advanced.**

13166 (1) In all actions brought by the division as assignee under Section 34-28-13, no court
13167 costs of any nature shall be required to be advanced nor shall any bond or other security be
13168 required from the division in connection with the same.

13169 (2) Any sheriff, constable, or other officer requested by the division to serve summons,
13170 writs, complaints, orders, including any garnishment papers, and all necessary and legal papers
13171 within his jurisdiction shall do so without requiring the division to advance the fees or furnish
13172 any security or bond.

13173 (3) Whenever the division shall require the sheriff, constable, or other officer whose
13174 duty it is to seize property or levy thereon in any attachment proceedings to satisfy any wage
13175 claim judgment to perform any such duty, this officer shall do so without requiring the division
13176 to furnish any security or bond in the action.

13177 (4) The officer in carrying out the provisions of this Subsection (4) [~~shall not be~~] is not
13178 responsible in damages for any wrongful seizure made in good faith.

13179 (5) Whenever anyone other than the defendant claims the right of possession or
13180 ownership to such seized property, then in such case the officer may permit such claimant to
13181 have the custody of such property pending a determination of the court as to who has right of
13182 possession or ownership of such property.

13183 (6) Any garnishee defendant shall be required to appear and make answer in any such
13184 action, as required by law, without having paid to [~~him~~] the garnishee defendant in advance
13185 witness fees, but such witness fees shall be included as part of the taxable costs of such action.
13186 Out of any recovery on a judgment in such a suit, there shall be paid the following: first, the

13187 witness fees to the garnishee defendant; second, the wage claims involved; third, the sheriff's or
13188 constable's fees; and fourth, the court costs.

13189 Section 315. Section **34-29-1** is amended to read:

13190 **34-29-1. License required -- Agencies for teachers excepted.**

13191 It shall be unlawful for any person to open and establish in any city or town, or
13192 elsewhere within the limits of this state, any intelligence or employment office for the purpose
13193 of procuring or obtaining for money or other valuable consideration, either directly or
13194 indirectly, any work or employment for persons seeking the same, or to otherwise engage in
13195 such business, or in any way to act as a broker or go-between between employers and persons
13196 seeking work, without first having obtained a license so to do from the city, town, or, if not
13197 within any city or town, from the county where such intelligence or employment office is to be
13198 opened or such business is to be carried on. Any person performing any of these services shall
13199 be deemed to be an employment agent within the meaning of this chapter, but the provisions of
13200 Section 34-29-10 [~~shall not~~] do not apply to any person operating agencies for schoolteachers;
13201 but it shall be a misdemeanor for any schoolteachers' employment agency to receive as
13202 commission for information or assistance such as is described herein any consideration in value
13203 in excess of 5% of the amount of the first year's salary of the person to whom such information
13204 is furnished.

13205 Section 316. Section **34-32-4** is amended to read:

13206 **34-32-4. Exceptions from chapter.**

13207 (1) The provisions of this chapter [~~shall not~~] do not apply to carriers as that term is
13208 defined in the Railway Labor Act passed by the Congress of the United States, June 21, 1934.
13209 48 Stat. 1189, U.S. Code, Title 45, Section 151.

13210 (2) Nothing in this chapter is intended to, or may be construed to, preempt any
13211 requirement of federal law.

13212 Section 317. Section **34-34-2** is amended to read:

13213 **34-34-2. Public policy.**

13214 It is hereby declared to be the public policy of the state [~~of Utah~~] that the right of

13215 persons to work, whether in private employment or for the state, its counties, cities, school
13216 districts, or other political subdivisions, [~~shall not~~] may not be denied or abridged on account
13217 of membership or nonmembership in any labor union, labor organization or any other type of
13218 association; and further, that the right to live includes the right to work. The exercise of the
13219 right to work [~~must~~] shall be protected and maintained free from undue restraints and coercion.

13220 Section 318. Section **34-34-15** is amended to read:

13221 **34-34-15. Existing contracts -- Chapter applicable upon renewal or extension.**

13222 The provisions of this chapter [~~shall not~~] do not apply to any lawful contract in force on
13223 the effective date of this act, but they shall apply in all respects to contracts entered into after
13224 such date and to any renewal or extension of any existing contract.

13225 Section 319. Section **34-36-3** is amended to read:

13226 **34-36-3. Carriers and vehicles of United States exempt.**

13227 This chapter [~~shall not~~] does not apply to motor carriers or to motor vehicles owned and
13228 operated by the United States.

13229 Section 320. Section **34-41-106** is amended to read:

13230 **34-41-106. Employee not disabled.**

13231 An employee, volunteer, prospective employee, or prospective volunteer whose drug
13232 test results are verified or confirmed as positive in accordance with the provisions of this
13233 chapter [~~shall not~~] may not, by virtue of those results alone, be defined as disabled for purposes
13234 of:

- 13235 (1) Title 34A, Chapter 5, Utah Antidiscrimination Act; or
- 13236 (2) the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213.

13237 Section 321. Section **34A-1-408** is amended to read:

13238 **34A-1-408. Investigations through representatives.**

13239 (1) For the purpose of making any investigation necessary for the implementation of
13240 this title with regard to any employment or place of employment, the commission may appoint,
13241 in writing, any competent person who is a resident of the state, as an agent, whose duties shall
13242 be prescribed in the written appointment.

- 13243 (2) In the discharge of the agent's duties, the agent shall have:
- 13244 (a) every power of investigation granted in this title to the commission; and
- 13245 (b) the same powers as a referee appointed by a district court with regard to taking
- 13246 evidence.
- 13247 (3) The commission may:
- 13248 (a) conduct any number of the investigations contemporaneously through different
- 13249 agents; and
- 13250 (b) delegate to the agents the taking of evidence bearing upon any investigation or
- 13251 hearing.
- 13252 (4) The recommendations made by the agents shall be advisory only and [~~shall not~~] do
- 13253 not preclude the taking of further evidence or further investigation if the commission so orders.

13254 Section 322. Section **34A-1-409** is amended to read:

13255 **34A-1-409. Partial invalidity -- Saving clause.**

13256 Should any section or provision of this title be decided by the courts to be

13257 unconstitutional or invalid the same [~~shall not~~] does not affect the validity of the title as a

13258 whole or any part of the title other than the part so decided to be unconstitutional.

13259 Section 323. Section **34A-2-413** is amended to read:

13260 **34A-2-413. Permanent total disability -- Amount of payments -- Rehabilitation.**

13261 (1) (a) In the case of a permanent total disability resulting from an industrial accident

13262 or occupational disease, the employee shall receive compensation as outlined in this section.

13263 (b) To establish entitlement to permanent total disability compensation, the employee

13264 [~~must~~] shall prove by a preponderance of evidence that:

13265 (i) the employee sustained a significant impairment or combination of impairments as a

13266 result of the industrial accident or occupational disease that gives rise to the permanent total

13267 disability entitlement;

13268 (ii) the employee is permanently totally disabled; and

13269 (iii) the industrial accident or occupational disease is the direct cause of the employee's

13270 permanent total disability.

13271 (c) To establish that an employee is permanently totally disabled the employee [~~must~~
13272 shall prove by a preponderance of the evidence that:
13273 (i) the employee is not gainfully employed;
13274 (ii) the employee has an impairment or combination of impairments that limit the
13275 employee's ability to do basic work activities;
13276 (iii) the industrial or occupationally caused impairment or combination of impairments
13277 prevent the employee from performing the essential functions of the work activities for which
13278 the employee has been qualified until the time of the industrial accident or occupational disease
13279 that is the basis for the employee's permanent total disability claim; and
13280 (iv) the employee cannot perform other work reasonably available, taking into
13281 consideration the employee's:
13282 (A) age;
13283 (B) education;
13284 (C) past work experience;
13285 (D) medical capacity; and
13286 (E) residual functional capacity.
13287 (d) Evidence of an employee's entitlement to disability benefits other than those
13288 provided under this chapter and Chapter 3, Utah Occupational Disease Act, if relevant:
13289 (i) may be presented to the commission;
13290 (ii) is not binding; and
13291 (iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah
13292 Occupational Disease Act.
13293 (e) In determining under Subsections (1)(b) and (c) whether an employee cannot
13294 perform other work reasonably available, the following may not be considered:
13295 (i) whether the employee is incarcerated in a facility operated by or contracting with a
13296 federal, state, county, or municipal government to house a criminal offender in either a secure
13297 or nonsecure setting; or
13298 (ii) whether the employee is not legally eligible to be employed because of a reason

13299 unrelated to the impairment or combination of impairments.

13300 (2) For permanent total disability compensation during the initial 312-week
13301 entitlement, compensation is 66-2/3% of the employee's average weekly wage at the time of the
13302 injury, limited as follows:

13303 (a) compensation per week may not be more than 85% of the state average weekly
13304 wage at the time of the injury;

13305 (b) (i) subject to Subsection (2)(b)(ii), compensation per week may not be less than the
13306 sum of \$45 per week and:

13307 (A) \$5 for a dependent spouse; and

13308 (B) \$5 for each dependent child under the age of 18 years, up to a maximum of four
13309 dependent minor children; and

13310 (ii) the amount calculated under Subsection (2)(b)(i) may not exceed:

13311 (A) the maximum established in Subsection (2)(a); or

13312 (B) the average weekly wage of the employee at the time of the injury; and

13313 (c) after the initial 312 weeks, the minimum weekly compensation rate under

13314 Subsection (2)(b) is 36% of the current state average weekly wage, rounded to the nearest
13315 dollar.

13316 (3) This Subsection (3) applies to claims resulting from an accident or disease arising
13317 out of and in the course of the employee's employment on or before June 30, 1994.

13318 (a) The employer or its insurance carrier is liable for the initial 312 weeks of permanent
13319 total disability compensation except as outlined in Section 34A-2-703 as in effect on the date
13320 of injury.

13321 (b) The employer or its insurance carrier may not be required to pay compensation for
13322 any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410
13323 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation
13324 payable over the initial 312 weeks at the applicable permanent total disability compensation
13325 rate under Subsection (2).

13326 (c) The Employers' Reinsurance Fund shall for an overpayment of compensation

13327 described in Subsection (3)(b), reimburse the overpayment:

13328 (i) to the employer or its insurance carrier; and

13329 (ii) out of the Employers' Reinsurance Fund's liability to the employee.

13330 (d) After an employee receives compensation from the employee's employer, its

13331 insurance carrier, or the Employers' Reinsurance Fund for any combination of disabilities

13332 amounting to 312 weeks of compensation at the applicable permanent total disability

13333 compensation rate, the Employers' Reinsurance Fund shall pay all remaining permanent total

13334 disability compensation.

13335 (e) Employers' Reinsurance Fund payments shall commence immediately after the

13336 employer or its insurance carrier satisfies its liability under this Subsection (3) or Section

13337 34A-2-703.

13338 (4) This Subsection (4) applies to claims resulting from an accident or disease arising

13339 out of and in the course of the employee's employment on or after July 1, 1994.

13340 (a) The employer or its insurance carrier is liable for permanent total disability

13341 compensation.

13342 (b) The employer or its insurance carrier may not be required to pay compensation for

13343 any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410

13344 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation

13345 payable over the initial 312 weeks at the applicable permanent total disability compensation

13346 rate under Subsection (2).

13347 (c) The employer or its insurance carrier may recoup the overpayment of compensation

13348 described in Subsection (4) by reasonably offsetting the overpayment against future liability

13349 paid before or after the initial 312 weeks.

13350 (5) (a) A finding by the commission of permanent total disability is not final, unless

13351 otherwise agreed to by the parties, until:

13352 (i) an administrative law judge reviews a summary of reemployment activities

13353 undertaken pursuant to Chapter 8a, Utah Injured Worker Reemployment Act;

13354 (ii) the employer or its insurance carrier submits to the administrative law judge:

13355 (A) a reemployment plan as prepared by a qualified rehabilitation provider reasonably
13356 designed to return the employee to gainful employment; or

13357 (B) notice that the employer or its insurance carrier will not submit a plan; and

13358 (iii) the administrative law judge, after notice to the parties, holds a hearing, unless
13359 otherwise stipulated, to:

13360 (A) consider evidence regarding rehabilitation; and

13361 (B) review any reemployment plan submitted by the employer or its insurance carrier
13362 under Subsection (5)(a)(ii).

13363 (b) Before commencing the procedure required by Subsection (5)(a), the administrative
13364 law judge shall order:

13365 (i) the initiation of permanent total disability compensation payments to provide for the
13366 employee's subsistence; and

13367 (ii) the payment of any undisputed disability or medical benefits due the employee.

13368 (c) Notwithstanding Subsection (5)(a), an order for payment of benefits described in
13369 Subsection (5)(b) is considered a final order for purposes of Section 34A-2-212.

13370 (d) The employer or its insurance carrier shall be given credit for any disability
13371 payments made under Subsection (5)(b) against its ultimate disability compensation liability
13372 under this chapter or Chapter 3, Utah Occupational Disease Act.

13373 (e) An employer or its insurance carrier may not be ordered to submit a reemployment
13374 plan. If the employer or its insurance carrier voluntarily submits a plan, the plan is subject to
13375 Subsections (5)(e)(i) through (iii).

13376 (i) The plan may include, but not require an employee to pay for:

13377 (A) retraining;

13378 (B) education;

13379 (C) medical and disability compensation benefits;

13380 (D) job placement services; or

13381 (E) incentives calculated to facilitate reemployment.

13382 (ii) The plan shall include payment of reasonable disability compensation to provide

13383 for the employee's subsistence during the rehabilitation process.

13384 (iii) The employer or its insurance carrier shall diligently pursue the reemployment
13385 plan. The employer's or insurance carrier's failure to diligently pursue the reemployment plan
13386 is cause for the administrative law judge on the administrative law judge's own motion to make
13387 a final decision of permanent total disability.

13388 (f) If a preponderance of the evidence shows that successful rehabilitation is not
13389 possible, the administrative law judge shall order that the employee be paid weekly permanent
13390 total disability compensation benefits.

13391 (g) If a preponderance of the evidence shows that pursuant to a reemployment plan, as
13392 prepared by a qualified rehabilitation provider and presented under Subsection (5)(e), an
13393 employee could immediately or without unreasonable delay return to work but for the
13394 following, an administrative law judge shall order that the employee be denied the payment of
13395 weekly permanent total disability compensation benefits:

13396 (i) incarceration in a facility operated by or contracting with a federal, state, county, or
13397 municipal government to house a criminal offender in either a secure or nonsecure setting; or

13398 (ii) not being legally eligible to be employed because of a reason unrelated to the
13399 impairment or combination of impairments.

13400 (6) (a) The period of benefits commences on the date the employee became
13401 permanently totally disabled, as determined by a final order of the commission based on the
13402 facts and evidence, and ends:

13403 (i) with the death of the employee; or

13404 (ii) when the employee is capable of returning to regular, steady work.

13405 (b) An employer or its insurance carrier may provide or locate for a permanently totally
13406 disabled employee reasonable, medically appropriate, part-time work in a job earning at least
13407 minimum wage, except that the employee may not be required to accept the work to the extent
13408 that it would disqualify the employee from Social Security disability benefits.

13409 (c) An employee shall:

13410 (i) fully cooperate in the placement and employment process; and

13411 (ii) accept the reasonable, medically appropriate, part-time work.
13412 (d) In a consecutive four-week period when an employee's gross income from the work
13413 provided under Subsection (6)(b) exceeds \$500, the employer or insurance carrier may reduce
13414 the employee's permanent total disability compensation by 50% of the employee's income in
13415 excess of \$500.
13416 (e) If a work opportunity is not provided by the employer or its insurance carrier, a
13417 permanently totally disabled employee may obtain medically appropriate, part-time work
13418 subject to the offset provisions of Subsection (6)(d).
13419 (f) (i) The commission shall establish rules regarding the part-time work and offset.
13420 (ii) The adjudication of disputes arising under this Subsection (6) is governed by Part
13421 8, Adjudication.
13422 (g) The employer or its insurance carrier has the burden of proof to show that
13423 medically appropriate part-time work is available.
13424 (h) The administrative law judge may:
13425 (i) excuse an employee from participation in any work:
13426 (A) that would require the employee to undertake work exceeding the employee's:
13427 (I) medical capacity; or
13428 (II) residual functional capacity; or
13429 (B) for good cause; or
13430 (ii) allow the employer or its insurance carrier to reduce permanent total disability
13431 benefits as provided in Subsection (6)(d) when reasonable, medically appropriate, part-time
13432 work is offered, but the employee fails to fully cooperate.
13433 (7) When an employee is rehabilitated or the employee's rehabilitation is possible but
13434 the employee has some loss of bodily function, the award shall be for permanent partial
13435 disability.
13436 (8) As determined by an administrative law judge, an employee is not entitled to
13437 disability compensation, unless the employee fully cooperates with any evaluation or
13438 reemployment plan under this chapter or Chapter 3, Utah Occupational Disease Act. The

13439 administrative law judge shall dismiss without prejudice the claim for benefits of an employee
13440 if the administrative law judge finds that the employee fails to fully cooperate, unless the
13441 administrative law judge states specific findings on the record justifying dismissal with
13442 prejudice.

13443 (9) (a) The loss or permanent and complete loss of the use of the following constitutes
13444 total and permanent disability that is compensated according to this section:

- 13445 (i) both hands;
- 13446 (ii) both arms;
- 13447 (iii) both feet;
- 13448 (iv) both legs;
- 13449 (v) both eyes; or
- 13450 (vi) any combination of two body members described in this Subsection (9)(a).

13451 (b) A finding of permanent total disability pursuant to Subsection (9)(a) is final.

13452 (10) (a) An insurer or self-insured employer may periodically reexamine a permanent
13453 total disability claim, except those based on Subsection (9), for which the insurer or
13454 self-insured employer had or has payment responsibility to determine whether the employee
13455 remains permanently totally disabled.

13456 (b) Reexamination may be conducted no more than once every three years after an
13457 award is final, unless good cause is shown by the employer or its insurance carrier to allow
13458 more frequent reexaminations.

13459 (c) The reexamination may include:

- 13460 (i) the review of medical records;
- 13461 (ii) employee submission to one or more reasonable medical evaluations;
- 13462 (iii) employee submission to one or more reasonable rehabilitation evaluations and
13463 retraining efforts;
- 13464 (iv) employee disclosure of Federal Income Tax Returns;
- 13465 (v) employee certification of compliance with Section 34A-2-110; and
- 13466 (vi) employee completion of one or more sworn affidavits or questionnaires approved

13467 by the division.

13468 (d) The insurer or self-insured employer shall pay for the cost of a reexamination with
13469 appropriate employee reimbursement pursuant to rule for reasonable travel allowance and per
13470 diem as well as reasonable expert witness fees incurred by the employee in supporting the
13471 employee's claim for permanent total disability benefits at the time of reexamination.

13472 (e) If an employee fails to fully cooperate in the reasonable reexamination of a
13473 permanent total disability finding, an administrative law judge may order the suspension of the
13474 employee's permanent total disability benefits until the employee cooperates with the
13475 reexamination.

13476 (f) (i) If the reexamination of a permanent total disability finding reveals evidence that
13477 reasonably raises the issue of an employee's continued entitlement to permanent total disability
13478 compensation benefits, an insurer or self-insured employer may petition the Division of
13479 Adjudication for a rehearing on that issue. The insurer or self-insured employer shall include
13480 with the petition, documentation supporting the insurer's or self-insured employer's belief that
13481 the employee is no longer permanently totally disabled.

13482 (ii) If the petition under Subsection (10)(f)(i) demonstrates good cause, as determined
13483 by the Division of Adjudication, an administrative law judge shall adjudicate the issue at a
13484 hearing.

13485 (iii) Evidence of an employee's participation in medically appropriate, part-time work
13486 may not be the sole basis for termination of an employee's permanent total disability
13487 entitlement, but the evidence of the employee's participation in medically appropriate, part-time
13488 work under Subsection (6) may be considered in the reexamination or hearing with other
13489 evidence relating to the employee's status and condition.

13490 (g) In accordance with Section 34A-1-309, the administrative law judge may award
13491 reasonable attorney fees to an attorney retained by an employee to represent the employee's
13492 interests with respect to reexamination of the permanent total disability finding, except if the
13493 employee does not prevail, the attorney fees shall be set at \$1,000. The attorney fees awarded
13494 shall be paid by the employer or its insurance carrier in addition to the permanent total

13495 disability compensation benefits due.

13496 (h) During the period of reexamination or adjudication, if the employee fully
13497 cooperates, each insurer, self-insured employer, or the Employers' Reinsurance Fund shall
13498 continue to pay the permanent total disability compensation benefits due the employee.

13499 (11) If any provision of this section, or the application of any provision to any person
13500 or circumstance, is held invalid, the remainder of this section is given effect without the invalid
13501 provision or application.

13502 Section 324. Section **34A-2-802** is amended to read:

13503 **34A-2-802. Rules of evidence and procedure before commission -- Admissible**
13504 **evidence.**

13505 (1) The commission, the commissioner, an administrative law judge, or the Appeals
13506 Board, is not bound by the usual common law or statutory rules of evidence, or by any
13507 technical or formal rules or procedure, other than as provided in this section or as adopted by
13508 the commission pursuant to this chapter and Chapter 3, Utah Occupational Disease Act. The
13509 commission may make its investigation in such manner as in its judgment is best calculated to
13510 ascertain the substantial rights of the parties and to carry out justly the spirit of the chapter.

13511 (2) The commission may receive as evidence and use as proof of any fact in dispute all
13512 evidence [~~deemed~~] considered material and relevant including[~~-but not limited to~~] the
13513 following:

- 13514 (a) depositions and sworn testimony presented in open hearings;
- 13515 (b) reports of attending or examining physicians, or of pathologists;
- 13516 (c) reports of investigators appointed by the commission;
- 13517 (d) reports of employers, including copies of time sheets, book accounts, or other
13518 records; or
- 13519 (e) hospital records in the case of an injured or diseased employee.

13520 Section 325. Section **34A-3-104** is amended to read:

13521 **34A-3-104. Employer liability for compensation.**

13522 (1) Every employer is liable for the payment of disability and medical benefits to every

13523 employee who becomes disabled, or death benefits to the dependents of any employee who
13524 dies, by reason of an occupational disease under the terms of this chapter.

13525 (2) Compensation [~~shall not~~] may not be paid when the last day of injurious exposure
13526 of the employee to the hazards of the occupational disease occurred prior to 1941.

13527 Section 326. Section **34A-6-108** is amended to read:

13528 **34A-6-108. Collection, compilation, and analysis of statistics.**

13529 (1) The division shall develop and maintain an effective program of collection,
13530 compilation, and analysis of occupational safety and health statistics. The program may cover
13531 all employments whether subject to this chapter but [~~shall not~~] may not cover employments
13532 excluded by Subsection 34A-6-104(2). The division shall compile accurate statistics on work
13533 injuries and occupational diseases.

13534 (2) The division may use the functions imposed by Subsection (1) to:

13535 (a) promote, encourage, or directly engage in programs of studies, information, and
13536 communication concerning occupational safety and health statistics;

13537 (b) assist agencies or political subdivisions in developing and administering programs
13538 dealing with occupational safety and health statistics; and

13539 (c) arrange, through assistance, for the conduct of research and investigations which
13540 give promise of furthering the objectives of this section.

13541 (3) The division may, with the consent of any state agency or political subdivision of
13542 the state, accept and use the services, facilities, and employees of state agencies or political
13543 subdivisions of the state, with or without reimbursement, to assist it in carrying out its
13544 functions under this section.

13545 (4) On the basis of the records made and kept under Subsection 34A-6-301(3),
13546 employers shall file reports with the division in the form and manner prescribed by the
13547 division.

13548 (5) Agreements between the United States Department of Labor and Utah pertaining to
13549 the collection of occupational safety and health statistics already in effect on July 1, 1973,
13550 remain in effect until superseded.

13551 Section 327. Section **34A-6-202** is amended to read:

13552 **34A-6-202. Standards -- Procedure for issuance, modification, or revocation by**
13553 **division -- Emergency temporary standard -- Variances from standards -- Statement of**
13554 **reasons for administrator's actions -- Judicial review -- Priority for establishing**
13555 **standards.**

13556 (1) (a) The division, as soon as practicable, shall issue as standards any national
13557 consensus standard, any adopted federal standard, or any adopted Utah standard, unless it
13558 determines that issuance of the standard would not result in improved safety or health.

13559 (b) All codes, standards, and rules adopted under Subsection (1)(a) shall take effect 30
13560 days after publication unless otherwise specified.

13561 (c) If any conflict exists between standards, the division shall issue the standard that
13562 assures the greatest protection of safety or health for affected employees.

13563 (2) The division may issue, modify, or revoke any standard as follows:

13564 (a) (i) Whenever the administrator determines upon the basis of information submitted
13565 in writing by an interested person, a representative of any organization of employers or
13566 employees, a nationally recognized standards-producing organization, the Department of
13567 Health, or a state agency or political subdivision, or on information developed by the division
13568 or otherwise available, that a rule should be promulgated to promote the objectives of this
13569 chapter, the administrator may request recommendations from the advisory council.

13570 (ii) The administrator shall provide the advisory council with proposals, together with
13571 all pertinent factual information developed by the division, or otherwise available, including
13572 the results of research, demonstrations, and experiments.

13573 (iii) The advisory council shall submit to the administrator its recommendations
13574 regarding the rule to be promulgated within a period as prescribed by the administrator.

13575 (b) The division shall publish a proposed rule issuing, modifying, or revoking an
13576 occupational safety or health standard and shall afford interested parties an opportunity to
13577 submit written data or comments as prescribed by Title 63G, Chapter 3, Utah Administrative
13578 Rulemaking Act. When the administrator determines that a rule should be issued, the division

13579 shall publish the proposed rule after the submission of the advisory council's recommendations
13580 or the expiration of the period prescribed by the administrator for submission.

13581 (c) The administrator, in issuing standards for toxic materials or harmful physical
13582 agents under this subsection, shall set the standard which most adequately assures, to the extent
13583 feasible, on the basis of the best available evidence, that no employee will suffer material
13584 impairment of health or functional capacity even if the employee has regular exposure to the
13585 hazard during an employee's working life. Development of standards under this subsection
13586 shall be based upon research, demonstrations, experiments, and other information deemed
13587 appropriate. In addition to the attainment of the highest degree of health and safety protection
13588 for the employee, other considerations shall be the latest available scientific data in the field,
13589 the feasibility of the standards, and experience under this and other health and safety laws.
13590 Whenever practicable, the standard shall be expressed in terms of objective criteria and of the
13591 performance desired.

13592 (d) (i) Any employer may apply to the administrator for a temporary order granting a
13593 variance from a standard issued under this section. Temporary orders shall be granted only if
13594 the employer:

13595 (A) files an application which meets the requirements of Subsection (2)(d)(iv);

13596 (B) establishes that the employer is unable to comply with a standard by its effective
13597 date because of unavailability of professional or technical personnel or of materials and
13598 equipment needed for compliance with the standard or because necessary construction or
13599 alteration of facilities cannot be completed by the effective date;

13600 (C) establishes that the employer is taking all available steps to safeguard the
13601 employer's employees against hazards; and

13602 (D) establishes that the employer has an effective program for compliance as quickly as
13603 practicable.

13604 (ii) Any temporary order shall prescribe the practices, means, methods, operations, and
13605 processes which the employer [~~must~~] shall adopt and use while the order is in effect and state
13606 in detail the employer's program for compliance with the standard. A temporary order may be

13607 granted only after notice to employees and an opportunity for a public hearing; provided, that
13608 the administrator may issue one interim order effective until a decision is made after public
13609 hearing.

13610 (iii) A temporary order may not be in effect longer than the period reasonably required
13611 by the employer to achieve compliance. In no case shall the period of a temporary order
13612 exceed one year.

13613 (iv) An application for a temporary order under Subsection (2)(d) shall contain:

13614 (A) a specification of the standard or part from which the employer seeks a variance;

13615 (B) a representation by the employer, supported by representations from qualified
13616 persons having first-hand knowledge of the facts represented, that the employer is unable to
13617 comply with the standard or some part of the standard;

13618 (C) a detailed statement of the reasons the employer is unable to comply;

13619 (D) a statement of the measures taken and anticipated with specific dates, to protect
13620 employees against the hazard;

13621 (E) a statement of when the employer expects to comply with the standard and what
13622 measures the employer has taken and those anticipated, giving specific dates for compliance;
13623 and

13624 (F) a certification that the employer has informed the employer's employees of the
13625 application by:

13626 (I) giving a copy to their authorized representative;

13627 (II) posting a statement giving a summary of the application and specifying where a
13628 copy may be examined at the place or places where notices to employees are normally posted;
13629 and

13630 (III) by other appropriate means.

13631 (v) The certification required under Subsection (2)(d)(iv) shall contain a description of
13632 how employees have been informed.

13633 (vi) The information to employees required under Subsection (2)(d)(v) shall inform the
13634 employees of their right to petition the division for a hearing.

13635 (vii) The administrator is authorized to grant a variance from any standard or some part
13636 of the standard when the administrator determines that it is necessary to permit an employer to
13637 participate in a research and development project approved by the administrator to demonstrate
13638 or validate new and improved techniques to safeguard the health or safety of workers.

13639 (e) (i) Any standard issued under this subsection shall prescribe the use of labels or
13640 other forms of warning necessary to ensure that employees are apprised of all hazards, relevant
13641 symptoms and emergency treatment, and proper conditions and precautions of safe use or
13642 exposure. When appropriate, a standard shall prescribe suitable protective equipment and
13643 control or technological procedures for use in connection with such hazards and provide for
13644 monitoring or measuring employee exposure at such locations and intervals, and in a manner
13645 necessary for the protection of employees. In addition, any such standard shall prescribe the
13646 type and frequency of medical examinations or other tests which shall be made available by the
13647 employer, or at the employer's cost, to employees exposed to hazards in order to most
13648 effectively determine whether the health of employees is adversely affected by exposure. If
13649 medical examinations are in the nature of research as determined by the division, the
13650 examinations may be furnished at division expense. The results of such examinations or tests
13651 shall be furnished only to the division; and, at the request of the employee, to the employee's
13652 physician.

13653 (ii) The administrator may by rule make appropriate modifications in requirements for
13654 the use of labels or other forms of warning, monitoring or measuring, and medical
13655 examinations warranted by experience, information, or medical or technological developments
13656 acquired subsequent to the promulgation of the relevant standard.

13657 (f) Whenever a rule issued by the administrator differs substantially from an existing
13658 national consensus standard, the division shall publish a statement of the reasons why the rule
13659 as adopted will better effectuate the purposes of this chapter than the national consensus
13660 standard.

13661 (g) Whenever a rule, standard, or national consensus standard is modified by the
13662 secretary so as to make less restrictive the federal Williams-Steiger Occupational Safety and

13663 Health Act of 1970, the less restrictive modification shall be immediately applicable to this
13664 chapter and shall be immediately implemented by the division.

13665 (3) (a) The administrator shall provide an emergency temporary standard to take
13666 immediate effect upon publication if the administrator determines that:

13667 (i) employees are exposed to grave danger from exposure to substances or agents
13668 determined to be toxic or physically harmful or from new hazards; and

13669 (ii) that the standard is necessary to protect employees from danger.

13670 (b) An emergency standard shall be effective until superseded by a standard issued in
13671 accordance with the procedures prescribed in Subsection (3)(c).

13672 (c) Upon publication of an emergency standard the division shall commence a
13673 proceeding in accordance with Subsection (2) and the standard as published shall serve as a
13674 proposed rule for the proceedings. The division shall issue a standard under Subsection (3) no
13675 later than 120 days after publication of the emergency standard.

13676 (4) (a) Any affected employer may apply to the division for a rule or order for a
13677 variance from a standard issued under this section. Affected employees shall be given notice of
13678 each application and may participate in a hearing. The administrator shall issue a rule or order
13679 if the administrator determines on the record, after opportunity for an inspection where
13680 appropriate and a hearing, that the proponent of the variance has demonstrated by a
13681 preponderance of the evidence that the conditions, practices, means, methods, operations, or
13682 processes used or proposed to be used by an employer will provide employment and a
13683 workplace to the employer's employees that are as safe and healthful as those which would
13684 prevail if the employer complied with the standard.

13685 (b) The rule or order issued under Subsection (4)(a) shall prescribe the conditions the
13686 employer must maintain, and the practices, means, methods, operations and processes that the
13687 employer must adopt and use to the extent they differ from the standard in question.

13688 (c) A rule or order issued under Subsection (4)(a) may be modified or revoked upon
13689 application by an employer, employees, or by the administrator on its own motion, in the
13690 manner prescribed for its issuance under Subsection (4) at any time after six months from its

13691 issuance.

13692 (5) The administrator shall include a statement of reasons for the administrator's actions
13693 when the administrator:

13694 (a) issues any code, standard, rule, or order;

13695 (b) grants any exemption or extension of time; or

13696 (c) compromises, mitigates, or settles any penalty assessed under this chapter.

13697 (6) Any person adversely affected by a standard issued under this section, at any time
13698 prior to 60 days after a standard is issued, may file a petition challenging its validity with the
13699 district court having jurisdiction for judicial review. A copy of the petition shall be served
13700 upon the division by the petitioner. The filing of a petition [~~shall not~~] may not, unless
13701 otherwise ordered by the court, operate as a stay of the standard. The determinations of the
13702 division shall be conclusive if supported by substantial evidence on the record as a whole.

13703 (7) In determining the priority for establishing standards under this section, the division
13704 shall give due regard to the urgency of the need for mandatory safety and health standards for
13705 particular industries, trades, crafts, occupations, businesses, workplaces or work environments.
13706 The administrator shall also give due regard to the recommendations of the Department of
13707 Health about the need for mandatory standards in determining the priority for establishing the
13708 standards.

13709 Section 328. Section **34A-6-301** is amended to read:

13710 **34A-6-301. Inspection and investigation of workplace, worker injury, illness, or**
13711 **complaint -- Warrants -- Attendance of witnesses -- Recordkeeping by employers --**
13712 **Employer and employee representatives -- Request for inspection -- Compilation and**
13713 **publication of reports and information -- Rules.**

13714 (1) (a) The division or its representatives, upon presenting appropriate credentials to
13715 the owner, operator, or agent in charge, may:

13716 (i) enter without delay at reasonable times any workplace where work is performed by
13717 an employee of an employer;

13718 (ii) inspect and investigate during regular working hours and at other reasonable times

13719 in a reasonable manner, any workplace, worker injury, occupational disease, or complaint and
13720 all pertinent methods, operations, processes, conditions, structures, machines, apparatus,
13721 devices, equipment, and materials in the workplace; and

13722 (iii) question privately any such employer, owner, operator, agent, or employee.

13723 (b) The division, upon an employer's refusal to permit an inspection, may seek a
13724 warrant pursuant to the Utah Rules of Criminal Procedure.

13725 (2) (a) The division or its representatives may require the attendance and testimony of
13726 witnesses and the production of evidence under oath.

13727 (b) Witnesses shall receive fees and mileage in accordance with Section 78B-1-119.

13728 (c) (i) If any person fails or refuses to obey an order of the division to appear, any
13729 district court within the jurisdiction of which such person is found, or resides or transacts
13730 business, upon the application by the division, shall have jurisdiction to issue to any person an
13731 order requiring that person to:

13732 (A) appear to produce evidence if, as, and when so ordered; and

13733 (B) give testimony relating to the matter under investigation or in question.

13734 (ii) Any failure to obey an order of the court described in this Subsection (2)(c) may be
13735 punished by the court as a contempt.

13736 (3) (a) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
13737 Administrative Rulemaking Act, requiring employers:

13738 (i) to keep records regarding activities related to this chapter considered necessary for
13739 enforcement or for the development of information about the causes and prevention of
13740 occupational accidents and diseases; and

13741 (ii) through posting of notices or other means, to inform employees of their rights and
13742 obligations under this chapter including applicable standards.

13743 (b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
13744 Administrative Rulemaking Act, requiring employers to keep records regarding any
13745 work-related death and injury and any occupational disease as provided in this Subsection
13746 (3)(b).

13747 (i) Each employer shall investigate or cause to be investigated all work-related injuries
13748 and occupational diseases and any sudden or unusual occurrence or change of conditions that
13749 pose an unsafe or unhealthful exposure to employees.

13750 (ii) Each employer shall, within eight hours of occurrence, notify the division of any:

13751 (A) work-related fatality;

13752 (B) disabling, serious, or significant injury; or

13753 (C) occupational disease incident.

13754 (iii) (A) Each employer shall file a report with the Division of Industrial Accidents
13755 within seven days after the occurrence of an injury or occupational disease, after the employer's
13756 first knowledge of the occurrence, or after the employee's notification of the same, in the form
13757 prescribed by the Division of Industrial Accidents, of any work-related fatality or any
13758 work-related injury or occupational disease resulting in:

13759 (I) medical treatment;

13760 (II) loss of consciousness;

13761 (III) loss of work;

13762 (IV) restriction of work; or

13763 (V) transfer to another job.

13764 (B) (I) Each employer shall file a subsequent report with the Division of Industrial
13765 Accidents of any previously reported injury or occupational disease that later resulted in death.

13766 (II) The subsequent report shall be filed with the Division of Industrial Accidents
13767 within seven days following the death or the employer's first knowledge or notification of the
13768 death.

13769 (iv) A report is not required for minor injuries, such as cuts or scratches that require
13770 first-aid treatment only, unless a treating physician files, or is required to file, the Physician's
13771 Initial Report of Work Injury or Occupational Disease with the Division of Industrial
13772 Accidents.

13773 (v) A report is not required:

13774 (A) for occupational diseases that manifest after the employee is no longer employed

13775 by the employer with which the exposure occurred; or

13776 (B) where the employer is not aware of an exposure occasioned by the employment
13777 which results in a compensable occupational disease as defined by Section 34A-3-103.

13778 (vi) Each employer shall provide the employee with:

13779 (A) a copy of the report submitted to the Division of Industrial Accidents; and

13780 (B) a statement, as prepared by the Division of Industrial Accidents, of the employee's
13781 rights and responsibilities related to the industrial injury or occupational disease.

13782 (vii) Each employer shall maintain a record in a manner prescribed by the commission
13783 of all work-related fatalities or work-related injuries and of all occupational diseases resulting
13784 in:

13785 (A) medical treatment;

13786 (B) loss of consciousness;

13787 (C) loss of work;

13788 (D) restriction of work; or

13789 (E) transfer to another job.

13790 (viii) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
13791 Administrative Rulemaking Act, to implement this Subsection (3)(b) consistent with nationally
13792 recognized rules or standards on the reporting and recording of work-related injuries and
13793 occupational diseases.

13794 (c) (i) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
13795 Administrative Rulemaking Act, requiring employers to keep records regarding exposures to
13796 potentially toxic materials or harmful physical agents required to be measured or monitored
13797 under Section 34A-6-202.

13798 (ii) (A) The rules made under Subsection (3)(c)(i) shall provide for employees or their
13799 representatives:

13800 (I) to observe the measuring or monitoring; and

13801 (II) to have access to the records of the measuring or monitoring, and to records that
13802 indicate their exposure to toxic materials or harmful agents.

13803 (B) Each employer shall promptly notify employees being exposed to toxic materials or
13804 harmful agents in concentrations that exceed prescribed levels and inform any such employee
13805 of the corrective action being taken.

13806 (4) Information obtained by the division shall be obtained with a minimum burden
13807 upon employers, especially those operating small businesses.

13808 (5) A representative of the employer and a representative authorized by employees
13809 shall be given an opportunity to accompany the division's authorized representative during the
13810 physical inspection of any workplace. If there is no authorized employee representative, the
13811 division's authorized representative shall consult with a reasonable number of employees
13812 concerning matters of health and safety in the workplace.

13813 (6) (a) (i) (A) Any employee or representative of employees who believes that a
13814 violation of an adopted safety or health standard exists that threatens physical harm, or that an
13815 imminent danger exists, may request an inspection by giving notice to the division's authorized
13816 representative of the violation or danger. The notice shall be:

13817 (I) in writing, setting forth with reasonable particularity the grounds for notice; and

13818 (II) signed by the employee or representative of employees.

13819 (B) A copy of the notice shall be provided the employer or the employer's agent no
13820 later than at the time of inspection.

13821 (C) Upon request of the person giving notice, the person's name and the names of
13822 individual employees referred to in the notice [~~shall not~~] may not appear in the copy or on any
13823 record published, released, or made available pursuant to Subsection (7).

13824 (ii) (A) If upon receipt of the notice the division's authorized representative determines
13825 there are reasonable grounds to believe that a violation or danger exists, the authorized
13826 representative shall make a special inspection in accordance with this section as soon as
13827 practicable to determine if a violation or danger exists.

13828 (B) If the division's authorized representative determines there are no reasonable
13829 grounds to believe that a violation or danger exists, the authorized representative shall notify
13830 the employee or representative of the employees in writing of that determination.

13831 (b) (i) Prior to or during any inspection of a workplace, any employee or representative
13832 of employees employed in the workplace may notify the division or its representative of any
13833 violation of a standard that they have reason to believe exists in the workplace.

13834 (ii) The division shall:

13835 (A) by rule, establish procedures for informal review of any refusal by a representative
13836 of the division to issue a citation with respect to any alleged violation; and

13837 (B) furnish the employees or representative of employees requesting review a written
13838 statement of the reasons for the division's final disposition of the case.

13839 (7) (a) The division may compile, analyze, and publish, either in summary or detailed
13840 form, all reports or information obtained under this section, subject to the limitations set forth
13841 in Section 34A-6-306.

13842 (b) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah
13843 Administrative Rulemaking Act, necessary to carry out its responsibilities under this chapter,
13844 including rules for information obtained under this section, subject to the limitations set forth
13845 in Section 34A-6-306.

13846 (8) Any employer who refuses or neglects to make reports, to maintain records, or to
13847 file reports with the commission as required by this section is guilty of a class C misdemeanor
13848 and subject to citation under Section 34A-6-302 and a civil assessment as provided under
13849 Section 34A-6-307, unless the commission finds that the employer has shown good cause for
13850 submitting a report later than required by this section.

13851 Section 329. Section **34A-7-102** is amended to read:

13852 **34A-7-102. Standards for construction and design -- Special approved designs --**
13853 **Maintenance requirements.**

13854 (1) For the purposes of this part, the standards for the design and construction of a new
13855 boiler and new pressure vessel shall be the latest applicable provisions of the Boiler and
13856 Pressure Vessel Code published by the American Society of Mechanical Engineers.

13857 (2) This part [~~shall not~~] may not be construed as preventing the construction and use of
13858 a boiler or pressure vessel of special design:

- 13859 (a) subject to approval of the Division of Boiler and Elevator Safety; and
- 13860 (b) if the special design provides a level of safety equivalent to that contemplated by
- 13861 the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers.
- 13862 (3) A boiler and pressure vessel, including an existing boiler and pressure vessel, shall
- 13863 be maintained in safe operating condition for the service involved.

13864 Section 330. Section **35A-3-106** is amended to read:

13865 **35A-3-106. Residency requirements.**

13866 To be eligible for public assistance under this chapter, an applicant [~~must~~] shall be

13867 living in Utah voluntarily with the intention of making this state the applicant's place of

13868 residence, and not for a temporary purpose.

13869 Section 331. Section **35A-3-108** is amended to read:

13870 **35A-3-108. Assignment of support.**

13871 (1) (a) The division shall obtain an assignment of support from each applicant or client

13872 regardless of whether the payment is court ordered.

13873 (b) Upon the receipt of assistance, any right to receive support from another person

13874 passes to the state, even if the client has not executed and delivered an assignment to the

13875 division as required by Subsection (1)(a).

13876 (c) The right to support described in Subsection (1)(b) includes a right to support in the

13877 applicant's or client's own behalf or in behalf of any family member for whom the applicant or

13878 client is applying for or receiving assistance.

13879 (2) An assignment of support or a passing of rights under Subsection (1)(b) includes

13880 payments ordered, decreed, or adjudged by any court within this state, any other state, or

13881 territory of the United States and is not in lieu of, and [~~shall not~~] does not supersede or alter,

13882 any other court order, decree, or judgment.

13883 (3) When an assignment is executed or the right to support passes to the department

13884 under Subsection (1)(b), the applicant or client is eligible to regular monthly assistance and the

13885 support paid to the division is a refund.

13886 (4) All sums refunded, except any amount which is required to be credited to the

13887 federal government, shall be deposited into the General Fund.

13888 (5) On and after the date a family stops receiving cash assistance, an assignment of
 13889 support under Subsection (1) [~~shall not~~] does not apply to any support that accrued before the
 13890 family received such assistance if the department has not collected the support by the date the
 13891 family stops receiving cash assistance, if the assignment is executed on or after October 1,
 13892 1998.

13893 (6) The department shall distribute arrearages to families in accordance with the Social
 13894 Security Act, 42 U.S.C. Sec. 657.

13895 (7) The total amount of child support assigned to the department and collected under
 13896 this section may not exceed the total amount of cash assistance received by the recipient.

13897 Section 332. Section **35A-3-304** is amended to read:

13898 **35A-3-304. Assessment -- Participation requirements and limitations -- Mentors.**

13899 (1) (a) Within 20 business days of the date of enrollment, a parent client shall:

- 13900 (i) be assigned an employment counselor; and
- 13901 (ii) complete an assessment provided by the division regarding the parent client's:
 - 13902 (A) family circumstances;
 - 13903 (B) education;
 - 13904 (C) work history;
 - 13905 (D) skills; and
 - 13906 (E) ability to become self-sufficient.

13907 (b) The assessment provided under Subsection (1)(a)(ii) shall include a survey to be
 13908 completed by the parent client with the assistance of the division.

13909 (2) (a) Within 15 business days of a parent client completing an assessment, the
 13910 division and the parent client shall enter into an employment plan.

- 13911 (b) The employment plan shall have a target date for entry into employment.
- 13912 (c) The division shall provide a copy of the employment plan to the parent client.
- 13913 (d) As to the parent client, the plan may include:
 - 13914 (i) job searching requirements;

- 13915 (ii) if the parent client does not have a high school diploma, participation in an
13916 educational program to obtain a high school diploma, or its equivalent;
- 13917 (iii) education or training necessary to obtain employment;
- 13918 (iv) a combination of work and education or training;
- 13919 (v) assisting the Office of Recovery Services in good faith to:
- 13920 (A) establish the paternity of a minor child; and
- 13921 (B) establish or enforce a child support order; and
- 13922 (vi) if the parent client is a drug dependent person as defined in Section 58-37-2,
13923 participation in available treatment for drug dependency and progress toward overcoming that
13924 dependency.
- 13925 (e) As to the division, the plan may include:
- 13926 (i) providing cash and other types of public and employment assistance, including child
13927 care;
- 13928 (ii) assisting the parent client to obtain education or training necessary for employment;
- 13929 (iii) assisting the parent client to set up and follow a household budget; and
- 13930 (iv) assisting the parent client to obtain employment.
- 13931 (f) The division may amend the employment plan to reflect new information or
13932 changed circumstances.
- 13933 (g) If immediate employment is an activity contained in the employment plan the
13934 parent client shall:
- 13935 (i) promptly commence a search for a specified number of hours each week for
13936 employment; and
- 13937 (ii) regularly submit a report to the division on:
- 13938 (A) how time was spent in search for a job;
- 13939 (B) the number of job applications completed;
- 13940 (C) the interviews attended;
- 13941 (D) the offers of employment extended; and
- 13942 (E) other related information required by the division.

13943 (h) (i) If full-time education or training to secure employment is an activity contained
13944 in an employment plan, the parent client shall promptly undertake a full-time education or
13945 training program.

13946 (ii) The employment plan may describe courses, education or training goals, and
13947 classroom hours.

13948 (i) (i) As a condition of receiving cash assistance under this part, a parent client shall
13949 agree to make a good faith effort to comply with the employment plan.

13950 (ii) If a parent client consistently fails to show good faith in complying with the
13951 employment plan, the division may seek under Subsection (2)(i)(iii) to terminate all or part of
13952 the cash assistance services provided under this part.

13953 (iii) The division shall establish a process to reconcile disputes between a client and the
13954 division as to whether:

13955 (A) the parent client has made a good faith effort to comply with the employment plan;
13956 or

13957 (B) the division has complied with the employment plan.

13958 (3) (a) Except as provided in Subsection (3)(b), a parent client's participation in
13959 education or training beyond that required to obtain a high school diploma or its equivalent is
13960 limited to the lesser of:

13961 (i) 24 months; or

13962 (ii) the completion of the education and training requirements of the employment plan.

13963 (b) A parent client may participate in education or training for up to six months beyond
13964 the 24-month limit of Subsection (3)(a)(i) if:

13965 (i) the parent client is employed for 80 or more hours a month; and

13966 (ii) the extension is for good cause shown and approved by the director.

13967 (c) A parent client who receives an extension under Subsection (3)(b) remains subject
13968 to Subsection (4).

13969 (4) (a) A parent client with a high school diploma or equivalent who has received 24
13970 months of education or training shall participate in full-time work activities.

13971 (b) The 24 months need not be continuous and the department may define "full-time
13972 work activities" by rule.

13973 (5) As a condition for receiving cash assistance on behalf of a minor child under this
13974 part, the minor child [~~must~~] shall be:

13975 (a) enrolled in and attending school in compliance with Sections 53A-11-101.5 and
13976 53A-11-101.7; or

13977 (b) exempt from school attendance under Section 53A-11-102.

13978 (6) This section does not apply to a person who has received diversion assistance under
13979 Section 35A-3-303.

13980 (7) (a) The division shall recruit and train volunteers to serve as mentors for parent
13981 clients.

13982 (b) A mentor may advocate on behalf of a parent client and help a parent client:

13983 (i) develop life skills;

13984 (ii) implement an employment plan; or

13985 (iii) obtain services and supports from:

13986 (A) the volunteer mentor;

13987 (B) the division; or

13988 (C) civic organizations.

13989 Section 333. Section **35A-3-310.5** is amended to read:

13990 **35A-3-310.5. Child care providers -- Criminal background checks -- Payment of**
13991 **costs -- Prohibitions -- Department rules.**

13992 (1) This section applies to a child care provider who:

13993 (a) is selected by an applicant for, or a recipient of, a child care assistance payment;

13994 (b) is not required to undergo a criminal background check with the Department of
13995 Health, Bureau of Child Care Licensing;

13996 (c) is not a license exempt child care center or program; and

13997 (d) is an eligible child care provider under department rules made in accordance with
13998 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

13999 (2) (a) Each child care provider identified under Subsection (1) shall submit to the
14000 department the name and other identifying information, which shall include a set of
14001 fingerprints, of:

14002 (i) existing, new, and proposed providers of child care; and

14003 (ii) individuals who are at least 18 years of age and reside in the premises where the
14004 child care is provided.

14005 (b) The department may waive the fingerprint requirement under Subsection (2)(a) for
14006 an individual who has:

14007 (i) resided in Utah for five years prior to the required submission; or

14008 (ii) (A) previously submitted a set of fingerprints under this section for a national
14009 criminal history record check; and

14010 (B) resided in Utah continuously since submitting the fingerprints.

14011 (c) The Utah Division of Criminal Investigation and Technical Services shall process
14012 and conduct background checks on all individuals as requested by the department, including
14013 submitting the fingerprints to the U.S. Federal Bureau of Investigation for a national criminal
14014 history background check of the individual.

14015 (d) If the department waives the fingerprint requirement under Subsection (2)(b), the
14016 Utah Division of Criminal Investigation and Technical Services may allow the department or
14017 its representative access to the division's data base to determine whether the individual has
14018 been convicted of a crime.

14019 (e) The child care provider shall pay the cost of the history background check provided
14020 under Subsection (2)(c).

14021 (3) (a) Each child care provider identified under Subsection (1) shall submit to the
14022 department the name and other identifying information of an individual, age 12 through 17,
14023 who resides in the premises where the child care is provided.

14024 (b) The identifying information referred to in Subsection (3)(a) does not include
14025 fingerprints.

14026 (c) The department or its representative shall access juvenile court records to determine

14027 whether an individual described in Subsection (2) or (3)(a) has been adjudicated in juvenile
14028 court of committing an act which, if committed by an adult, would be a felony or misdemeanor
14029 if:

14030 (i) the individual described in Subsection (2) is under the age of 28; or

14031 (ii) the individual described in Subsection (2):

14032 (A) is over the age of 28; and

14033 (B) has been convicted of, has pleaded no contest to, or is currently subject to a plea in
14034 abeyance or diversion agreement for a felony or misdemeanor.

14035 (4) Except as provided in Subsection (5), a child care provider under this section may
14036 not permit an individual who has been convicted of, has pleaded no contest to, or is currently
14037 subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, or if
14038 Subsection (3)(b) applies, an individual who has been adjudicated in juvenile court of
14039 committing an act which if committed by an adult would be a felony or misdemeanor to:

14040 (a) provide subsidized child care; or

14041 (b) reside at the premises where subsidized child care is provided.

14042 (5) (a) The department may make a rule in accordance with Title 63G, Chapter 3, Utah
14043 Administrative Rulemaking Act, to exempt the following from the restrictions of Subsection
14044 (4):

14045 (i) a specific misdemeanor;

14046 (ii) a specific act adjudicated in juvenile court, which if committed by an adult would
14047 be a misdemeanor; and

14048 (iii) background checks of individuals other than the provider who are residing at the
14049 premises where subsidized child care is provided if that child care is provided in the child's
14050 home.

14051 (b) In accordance with criteria established by rule, the executive director or the
14052 director's designee may consider and exempt individual cases, not otherwise exempt under
14053 Subsection (5)(a), from the restrictions of Subsection (4).

14054 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

14055 department shall establish by rule:

14056 (a) whether a child care subsidy payment should be made prior to the completion of a
14057 background check, particularly in the case of a delay in making or completing the background
14058 check; and

14059 (b) if, and how often, a child care provider [~~must~~] shall resubmit the information
14060 required under Subsections (2) and (3).

14061 Section 334. Section **35A-3-503** is amended to read:

14062 **35A-3-503. Legislative intent.**

14063 (1) The Legislature finds that public policy should promote and encourage a strong
14064 civic sector. Civic organizations have an important role that cannot be adequately addressed
14065 through either private or public sector action. Important public values such as the condition of
14066 our neighborhoods, the character of our children, and the renewal of our cities directly depend
14067 on the strength of families, neighborhoods, and grassroots community organizations, as well as
14068 the vitality of private and religious institutions that care for those in need. Civic organizations
14069 transmit values between generations, encourage cooperation between citizens, and ensure that
14070 our communities are livable and nurturing environments. The value provided to the state by
14071 civic organizations is called social capital.

14072 (2) The purpose of this part is to promote the availability of social capital. Using social
14073 capital, clients of and applicants for services under this chapter may receive a wide array of
14074 services and supports that cannot be provided by state government alone. Social capital links
14075 all parts of our society together by creating opportunities for service and giving. It facilitates
14076 trust and cooperation and enhances investments in physical and human capital.

14077 (3) In enacting this part, the Legislature recognizes the constitutional limits of state
14078 government to sustain civic institutions that provide social capital. While state government has
14079 always depended on these institutions, it does not create them nor can it replace them. This
14080 part recognizes that state government [~~must~~] shall respect, recognize, and, wherever possible,
14081 constitutionally encourage strong civic institutions that sustain a sense of community and
14082 humanize our lives.

14083 Section 335. Section **35A-4-303** is amended to read:

14084 **35A-4-303. Determination of contribution rates.**

14085 (1) (a) An employer's basic contribution rate is the same as the employer's benefit ratio,
14086 determined by dividing the total benefit costs charged back to an employer during the
14087 immediately preceding four fiscal years by the total taxable wages of the employer for the same
14088 time period, calculated to four decimal places, disregarding the remaining fraction, if any.

14089 (b) In calculating the basic contribution rate under Subsection (1)(a):

14090 (i) if four fiscal years of data are not available, the data of three fiscal years shall be
14091 divided by the total taxable wages for the same time period;

14092 (ii) if three fiscal years of data are not available, the data of two fiscal years shall be
14093 divided by the total taxable wages for the same time period; or

14094 (iii) if two fiscal years of data are not available, the data of one fiscal year shall be
14095 divided by the total taxable wages for the same time period.

14096 (2) (a) In calculating the social contribution rate under Subsection (2)(b) or (c):

14097 (i) if four fiscal years of data are not available, the data of three fiscal years shall be
14098 divided by the total taxable wages for the same time period; or

14099 (ii) if three fiscal years of data are not available, the data of two fiscal years shall be
14100 divided by the total taxable wages for the same time period.

14101 (b) Beginning January 1, 2005, the division shall calculate the social contribution rate
14102 by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding
14103 four fiscal years by the total taxable wages of all employers subject to contributions for the
14104 same period, calculated to four decimal places, disregarding any remaining fraction.

14105 (c) Beginning January 1, 2009, the division shall calculate the social contribution rate
14106 by dividing all social costs as defined in Subsection 35A-4-307(1) applicable to the preceding
14107 four fiscal years by the total taxable wages of all employers subject to contributions for the
14108 same period, calculated to four decimal places, disregarding any remaining fraction, and
14109 rounded to three decimal places, disregarding any further fraction, if the fourth decimal place is
14110 .0004 or less, or rounding up to the next higher number, if the fourth decimal place is .0005 or

14111 more.

14112 (3) (a) Beginning January 1, 2000, the division shall by administrative decision set the
14113 reserve factor at a rate that shall sustain an adequate reserve.

14114 (b) For the purpose of setting the reserve factor:

14115 (i) (A) the adequate reserve is defined as between 17 and 19 months of benefits at the
14116 average of the five highest benefit cost rates in the last 25 years;

14117 (B) beginning January 1, 2009, the adequate reserve is defined as between 18 and 24
14118 months of benefits at the average of the five highest benefit cost rates in the last 25 years;

14119 (ii) the reserve factor shall be 1.0000 if the actual reserve fund balance as of June 30
14120 preceding the computation date is determined to be an adequate reserve;

14121 (iii) the reserve factor will be set between 0.5000 and 1.0000 if the actual reserve fund
14122 balance as of June 30 preceding the computation date is greater than the adequate reserve;

14123 (iv) the reserve factor will be set between 1.0000 and 1.5000 if the actual reserve fund
14124 balance as of June 30 prior to the computation date is less than the adequate reserve;

14125 (v) if the actual reserve fund balance as of June 30 preceding the computation date is
14126 insolvent or negative or if there is an outstanding loan from the Federal Unemployment
14127 Account, the reserve factor will be set at 2.0000 until the actual reserve fund balance as of June
14128 30 preceding the computation date is determined to be an adequate reserve;

14129 (vi) the reserve factor will be set on or before January 1 of each year; and

14130 (vii) monies made available to the state under Section 903 of the Social Security Act,
14131 as amended, which are received on or after January 1, 2004, may not be considered in
14132 establishing the reserve factor under this section for the rate year 2005 or any subsequent rate
14133 year.

14134 (4) (a) On or after January 1, 2004, an employer's overall contribution rate is the
14135 employer's basic contribution rate multiplied by the reserve factor established according to
14136 Subsection (3), calculated to four decimal places, disregarding the remaining fraction, plus the
14137 social contribution rate established according to Subsection (2), and calculated to three decimal
14138 places, disregarding the remaining fraction, but not more than a maximum overall contribution

14139 rate of 9.0%, plus the applicable social contribution rate and not less than 1.1% for new
14140 employers.

14141 (b) Beginning January 1, 2009, an employer's overall contribution rate is the employer's
14142 basic contribution rate multiplied by the reserve factor established according to Subsection
14143 (3)(b), calculated to four decimal places, disregarding the remaining fraction, plus the social
14144 contribution rate established according to Subsection (2), and calculated to three decimal
14145 places, disregarding the remaining fraction, but not more than a maximum overall contribution
14146 rate of 9%, plus the applicable social contribution rate and not less than 1.1% for new
14147 employers.

14148 (c) The overall contribution rate does not include the addition of any penalty applicable
14149 to an employer as a result of delinquency in the payment of contributions as provided in
14150 Subsection (9).

14151 (d) The overall contribution rate does not include the addition of any penalty applicable
14152 to an employer assessed a penalty rate under Subsection 35A-4-304(5)(a).

14153 (5) Except as provided in Subsection (9), each new employer shall pay a contribution
14154 rate based on the average benefit cost rate experienced by employers of the major industry as
14155 defined by department rule to which the new employer belongs, the basic contribution rate to
14156 be determined as follows:

14157 (a) Except as provided in Subsection (5)(b), by January 1 of each year, the basic
14158 contribution rate to be used in computing the employer's overall contribution rate is the benefit
14159 cost rate which is the greater of:

14160 (i) the amount calculated by dividing the total benefit costs charged back to both active
14161 and inactive employers of the same major industry for the last two fiscal years by the total
14162 taxable wages paid by those employers that were paid during the same time period, computed
14163 to four decimal places, disregarding the remaining fraction, if any; or

14164 (ii) 1%.

14165 (b) If the major industrial classification assigned to a new employer is an industry for
14166 which a benefit cost rate does not exist because the industry has not operated in the state or has

14167 not been covered under this chapter, the employer's basic contribution rate shall be 5.4%. This
14168 basic contribution rate is used in computing the employer's overall contribution rate.

14169 (6) Notwithstanding any other provision of this chapter, and except as provided in
14170 Subsection (7), if an employing unit that moves into this state is declared to be a qualified
14171 employer because it has sufficient payroll and benefit cost experience under another state, a
14172 rate shall be computed on the same basis as a rate is computed for all other employers subject
14173 to this chapter if that unit furnishes adequate records on which to compute the rate.

14174 (7) An employer who begins to operate in this state after having operated in another
14175 state shall be assigned the maximum overall contribution rate until the employer acquires
14176 sufficient experience in this state to be considered a "qualified employer" if the employer is:

14177 (a) regularly engaged as a contractor in the construction, improvement, or repair of
14178 buildings, roads, or other structures on lands;

14179 (b) generally regarded as being a construction contractor or a subcontractor specialized
14180 in some aspect of construction; or

14181 (c) required to have a contractor's license or similar qualification under Title 58,
14182 Chapter 55, Utah Construction Trades Licensing Act, or the equivalent in laws of another state.

14183 (8) (a) If an employer acquires the business or all or substantially all the assets of
14184 another employer and the other employer had discontinued operations upon the acquisition or
14185 transfers its trade or business, or a portion of its trade or business, under Subsection
14186 35A-4-304(3)(a):

14187 (i) for purposes of determining and establishing the acquiring party's qualifications for
14188 an experience rating classification, the payrolls of both employers during the qualifying period
14189 shall be jointly considered in determining the period of liability with respect to:

14190 (A) the filing of contribution reports;

14191 (B) the payment of contributions; and

14192 (C) after January 1, 1985, the benefit costs of both employers;

14193 (ii) the transferring employer shall be divested of the transferring employer's
14194 unemployment experience provided the transferring employer had discontinued operations, but

14195 only to the extent as defined under Subsection 35A-4-304(3)(c); and

14196 (iii) if an employer transfers its trade or business, or a portion of its trade or business,
14197 as defined under Subsection 35A-4-304(3), the transferring employer may not be divested of its
14198 employer's unemployment experience.

14199 (b) An employing unit or prospective employing unit that acquires the unemployment
14200 experience of an employer shall, for all purposes of this chapter, be an employer as of the date
14201 of acquisition.

14202 (c) Notwithstanding Section 35A-4-310, when a transferring employer, as provided in
14203 Subsection (8)(a), is divested of the employer's unemployment experience by transferring all of
14204 the employer's business to another and by ceasing operations as of the date of the transfer, the
14205 transferring employer shall cease to be an employer, as defined by this chapter, as of the date of
14206 transfer.

14207 (9) (a) A rate of less than 8% shall be effective January 1 of any contribution year on or
14208 after January 1, 1985, but before January 1, 1988, and a rate of less than the maximum overall
14209 contribution rate on or after January 1, 1988, only with respect to new employers and to those
14210 qualified employers who, except for amounts due under division determinations that have not
14211 become final, paid all contributions prescribed by the division with respect to the four
14212 consecutive calendar quarters in the fiscal year immediately preceding the computation date on
14213 or after January 1, 1985.

14214 (b) Notwithstanding Subsections (1), (5), (6), and (8), on or after January 1, 1988, an
14215 employer who fails to pay all contributions prescribed by the division with respect to the four
14216 consecutive calendar quarters in the fiscal year immediately preceding the computation date,
14217 except for amounts due under determinations that have not become final, shall pay a
14218 contribution rate equal to the overall contribution rate determined under the experience rating
14219 provisions of this chapter, plus a surcharge of 1% of wages.

14220 (c) An employer who pays all required contributions shall, for the current contribution
14221 year, be assigned a rate based upon the employer's own experience as provided under the
14222 experience rating provisions of this chapter effective the first day of the calendar quarter in

14223 which the payment was made.

14224 (d) Delinquency in filing contribution reports [~~shall~~] may not be the basis for denial of
14225 a rate less than the maximum contribution rate.

14226 Section 336. Section **35A-4-304** is amended to read:

14227 **35A-4-304. Special provisions regarding transfers of unemployment experience**
14228 **and assignment rates.**

14229 (1) As used in this section:

14230 (a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance
14231 or reckless disregard for the prohibition involved.

14232 (b) "Person" has the meaning given that term by Section 7701(a)(1) of the Internal
14233 Revenue Code of 1986.

14234 (c) "Trade or business" includes the employer's workforce.

14235 (d) "Violate or attempt to violate" includes intent to evade, misrepresentation, or
14236 willful nondisclosure.

14237 (2) Notwithstanding any other provision of this chapter, Subsections (3) and (4) shall
14238 apply regarding assignment of rates and transfers of unemployment experience.

14239 (3) (a) If an employer transfers its trade or business, or a portion of its trade or
14240 business, to another employer and, at the time of the transfer, there is common ownership,
14241 management, or control of the employers, then the unemployment experience attributable to
14242 each employer shall be combined into a common experience rate calculation.

14243 (b) The contribution rates of the employers shall be recalculated and made effective
14244 upon the date of the transfer of trade or business as determined by division rule in accordance
14245 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

14246 (c) (i) If one or more of the employers is a qualified employer at the time of the
14247 transfer, then all employing units that are party to a transfer described in Subsection (3)(a) of
14248 this section shall be assigned an overall contribution rate under Subsection 35A-4-303(4)(d),
14249 using combined unemployment experience rating factors, for the rate year during which the
14250 transfer occurred and for the subsequent three rate years.

14251 (ii) If none of the employing units is a qualified employer at the time of the transfer,
14252 then all employing units that are party to the transfer described in Subsection (3)(a) shall be
14253 assigned the highest overall contribution rate applicable at the time of the transfer to any
14254 employer who is party to the acquisition for the rate year during which the transfer occurred
14255 and for subsequent rate years until the time when one or more of the employing units is a
14256 qualified employer.

14257 (iii) Once one or more employing units described in Subsection (3)(c)(ii) is a qualified
14258 employer, all the employing units shall be assigned an overall rate under Subsection
14259 35A-4-303(4)(d), using combined unemployment experience rating factors for subsequent rate
14260 years, not to exceed three years following the year of the transfer.

14261 (d) The transfer of some or all of an employer's workforce to another employer shall be
14262 considered a transfer of its trade or business when, as the result of the transfer, the transferring
14263 employer no longer performs trade or business with respect to the transferred workforce, and
14264 the trade or business is now performed by the employer to whom the workforce is transferred.

14265 (4) (a) Whenever a person is not an employer under this chapter at the time it acquires
14266 the trade or business of an employer, the unemployment experience of the acquired business
14267 [~~shall not~~] may not be transferred to that person if the division finds that the person acquired
14268 the business solely or primarily for the purpose of obtaining a lower rate of contributions.

14269 (b) The person shall be assigned the applicable new employer rate under Subsection
14270 35A-4-303(5).

14271 (c) In determining whether the business was acquired solely or primarily for the
14272 purpose of obtaining a lower rate of contributions, the division shall use objective factors
14273 which may include:

- 14274 (i) the cost of acquiring the business;
- 14275 (ii) whether the person continued the business enterprise of the acquired business;
- 14276 (iii) how long the business enterprise was continued; or
- 14277 (iv) whether a substantial number of new employees were hired for performance of
14278 duties unrelated to the business activity conducted prior to acquisition.

14279 (5) (a) If a person knowingly violates or attempts to violate Subsection (3) or (4) or any
14280 other provision of this chapter related to determining the assignment of a contribution rate, or if
14281 a person knowingly advises another person in a way that results in a violation of any of those
14282 subsections or provisions, the person is subject to the following penalties:

14283 (i) (A) If the person is an employer, then the employer shall be assigned an overall
14284 contribution rate of 5.4% for the rate year during which the violation or attempted violation
14285 occurred and for the subsequent rate year.

14286 (B) If the person's business is already at 5.4% for any year, or if the amount of increase
14287 in the person's rate would be less than 2% for that year, then a penalty surcharge of
14288 contributions of 2% of taxable wages shall be imposed for the rate year during which the
14289 violation or attempted violation occurred and for the subsequent rate year.

14290 (ii) (A) If the person is not an employer, the person shall be subject to a civil penalty of
14291 not more than \$5,000.

14292 (B) The fine shall be deposited in the penalty and interest account established under
14293 Section 35A-4-506.

14294 (b) (i) In addition to the penalty imposed by Subsection (5)(a), a violation of this
14295 section may be prosecuted as unemployment insurance fraud.

14296 (ii) The determination of the degree of an offense shall be measured by the total value
14297 of all contributions avoided or reduced or contributions sought to be avoided or reduced by the
14298 unlawful conduct as applied to the degrees listed under Subsection 76-8-1301(2)(a).

14299 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
14300 division shall make rules to identify the transfer or acquisition of a business for purposes of this
14301 section.

14302 (7) This section shall be interpreted and applied in a manner that meets the minimum
14303 requirements contained in any guidance or regulations issued by the United States Department
14304 of Labor.

14305 Section 337. Section **35A-4-305** is amended to read:

14306 **35A-4-305. Collection of contributions -- Unpaid contributions to bear interest.**

14307 (1) (a) Contributions unpaid on the date on which they are due and payable, as
14308 prescribed by the division, shall bear interest at the rate of 1% per month from and after that
14309 date until payment plus accrued interest is received by the division.

14310 (b) (i) Contribution reports not made and filed by the date on which they are due as
14311 prescribed by the division are subject to a penalty to be assessed and collected in the same
14312 manner as contributions due under this section equal to 5% of the contribution due if the failure
14313 to file on time was not more than 15 days, with an additional 5% for each additional 15 days or
14314 fraction thereof during which the failure continued, but not to exceed 25% in the aggregate and
14315 not less than \$25 with respect to each reporting period.

14316 (ii) If a report is filed after the required time and it is shown to the satisfaction of the
14317 division or its authorized representative that the failure to file was due to a reasonable cause
14318 and not to willful neglect, no addition shall be made to the contribution.

14319 (c) (i) If contributions are unpaid after 10 days from the date of the mailing or personal
14320 delivery by the division or its authorized representative, of a written demand for payment, there
14321 shall attach to the contribution, to be assessed and collected in the same manner as
14322 contributions due under this section, a penalty equal to 5% of the contribution due.

14323 (ii) A penalty may not attach if within 10 days after the mailing or personal delivery,
14324 arrangements for payment have been made with the division, or its authorized representative,
14325 and payment is made in accordance with those arrangements.

14326 (d) The division shall assess as a penalty a service charge, in addition to any other
14327 penalties that may apply, in an amount not to exceed the service charge imposed by Section
14328 7-15-1 for dishonored instruments if:

14329 (i) any amount due the division for contributions, interest, other penalties or benefit
14330 overpayments is paid by check, draft, order, or other instrument; and

14331 (ii) the instrument is dishonored or not paid by the institution against which it is drawn.

14332 (e) Except for benefit overpayments under Subsection 35A-4-405(5), benefit
14333 overpayments, contributions, interest, penalties, and assessed costs, uncollected three years
14334 after they become due, may be charged as uncollectible and removed from the records of the

14335 division if:

14336 (i) no assets belonging to the liable person and subject to attachment can be found; and

14337 (ii) in the opinion of the division there is no likelihood of collection at a future date.

14338 (f) Interest and penalties collected in accordance with this section shall be paid into the

14339 Special Administrative Expense Account created by Section 35A-4-506.

14340 (g) Action required for the collection of sums due under this chapter is subject to the

14341 applicable limitations of actions under Title 78B, Chapter 2, Statutes of Limitations.

14342 (2) (a) If an employer fails to file a report when prescribed by the division for the

14343 purpose of determining the amount of the employer's contribution due under this chapter, or if

14344 the report when filed is incorrect or insufficient or is not satisfactory to the division, the

14345 division may determine the amount of wages paid for employment during the period or periods

14346 with respect to which the reports were or should have been made and the amount of

14347 contribution due from the employer on the basis of any information it may be able to obtain.

14348 (b) The division shall give written notice of the determination to the employer.

14349 (c) The determination is considered correct unless:

14350 (i) the employer, within 10 days after mailing or personal delivery of notice of the

14351 determination, applies to the division for a review of the determination as provided in Section

14352 35A-4-508; or

14353 (ii) unless the division or its authorized representative of its own motion reviews the

14354 determination.

14355 (d) The amount of contribution determined under Subsection (2)(a) is subject to

14356 penalties and interest as provided in Subsection (1).

14357 (3) (a) If, after due notice, an employer defaults in the payment of contributions,

14358 interest, or penalties on the contributions, or a claimant defaults in a repayment of benefit

14359 overpayments and penalties on the overpayments, the amount due shall be collectible by civil

14360 action in the name of the division, and the employer adjudged in default shall pay the costs of

14361 the action.

14362 (b) Civil actions brought under this section to collect contributions, interest, or

14363 penalties from an employer, or benefit overpayments and penalties from a claimant shall be:

14364 (i) heard by the court at the earliest possible date; and

14365 (ii) entitled to preference upon the calendar of the court over all other civil actions

14366 except:

14367 (A) petitions for judicial review under this chapter; and

14368 (B) cases arising under the workers' compensation law of this state.

14369 (c) (i) (A) To collect contributions, interest, or penalties, or benefit overpayments and

14370 penalties due from employers or claimants located outside Utah, the division may employ

14371 private collectors providing debt collection services outside Utah.

14372 (B) Accounts may be placed with private collectors only after the employer or claimant

14373 has been given a final notice that the division intends to place the account with a private

14374 collector for further collection action.

14375 (C) The notice shall advise the employer or claimant of the employer's or claimant's

14376 rights under this chapter and the applicable rules of the department.

14377 (ii) (A) A private collector may receive as compensation up to 25% of the lesser of the

14378 amount collected or the amount due, plus the costs and fees of any civil action or postjudgment

14379 remedy instituted by the private collector with the approval of the division.

14380 (B) The employer or claimant shall be liable to pay the compensation of the collector,

14381 costs, and fees in addition to the original amount due.

14382 (iii) A private collector is subject to the federal Fair Debt Collection Practices Act, 15

14383 U.S.C. Sec. 1692 et seq.

14384 (iv) (A) A civil action may not be maintained by a private collector without specific

14385 prior written approval of the division.

14386 (B) When division approval is given for civil action against an employer or claimant,

14387 the division may cooperate with the private collector to the extent necessary to effect the civil

14388 action.

14389 (d) (i) Notwithstanding Section 35A-4-312, the division may disclose the contribution,

14390 interest, penalties or benefit overpayments and penalties, costs due, the name of the employer

14391 or claimant, and the employer's or claimant's address and telephone number when any
14392 collection matter is referred to a private collector under Subsection (3)(c).

14393 (ii) A private collector is subject to the confidentiality requirements and penalty
14394 provisions provided in Section 35A-4-312 and Subsection 76-8-1301(4), except to the extent
14395 disclosure is necessary in a civil action to enforce collection of the amounts due.

14396 (e) An action taken by the division under this section may not be construed to be an
14397 election to forego other collection procedures by the division.

14398 (4) (a) In the event of a distribution of an employer's assets under an order of a court
14399 under the laws of Utah, including a receivership, assignment for benefits of creditors,
14400 adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter
14401 due shall be paid in full prior to all other claims except taxes and claims for wages of not more
14402 than \$400 to each claimant, earned within five months of the commencement of the
14403 proceeding.

14404 (b) If an employer commences a proceeding in the Federal Bankruptcy Court under a
14405 chapter of 11 U.S.C. 101 et seq., as amended by the Bankruptcy Abuse Prevention and
14406 Consumer Protection Act of 2005, contributions, interest, and penalties then or thereafter due
14407 shall be entitled to the priority provided for taxes, interest, and penalties in the Bankruptcy
14408 Abuse Prevention and Consumer Protection Act of 2005.

14409 (5) (a) In addition and as an alternative to any other remedy provided by this chapter
14410 and provided that no appeal or other proceeding for review provided by this chapter is then
14411 pending and the time for taking it has expired, the division may issue a warrant in duplicate,
14412 under its official seal, directed to the sheriff of any county of the state, commanding the sheriff
14413 to levy upon and sell the real and personal property of a delinquent employer or claimant found
14414 within the sheriff's county for the payment of the contributions due, with the added penalties,
14415 interest, or benefit overpayment and penalties, and costs, and to return the warrant to the
14416 division and pay into the fund the money collected by virtue of the warrant by a time to be
14417 specified in the warrant, not more than 60 days from the date of the warrant.

14418 (b) (i) Immediately upon receipt of the warrant in duplicate, the sheriff shall file the

14419 duplicate with the clerk of the district court in the sheriff's county.

14420 (ii) The clerk shall enter in the judgment docket, in the column for judgment debtors,
14421 the name of the delinquent employer or claimant mentioned in the warrant, and in appropriate
14422 columns the amount of the contribution, penalties, interest, or benefit overpayment and
14423 penalties, and costs, for which the warrant is issued and the date when the duplicate is filed.

14424 (c) The amount of the docketed warrant shall:

14425 (i) have the force and effect of an execution against all personal property of the
14426 delinquent employer; and

14427 (ii) become a lien upon the real property of the delinquent employer or claimant in the
14428 same manner and to the same extent as a judgment duly rendered by a district court and
14429 docketed in the office of the clerk.

14430 (d) After docketing, the sheriff shall:

14431 (i) proceed in the same manner as is prescribed by law with respect to execution issued
14432 against property upon judgments of a court of record; and

14433 (ii) be entitled to the same fees for the sheriff's services in executing the warrant, to be
14434 collected in the same manner.

14435 (6) (a) Contributions imposed by this chapter are a lien upon the property of an
14436 employer liable for the contribution required to be collected under this section who shall sell
14437 out the employer's business or stock of goods or shall quit business, if the employer fails to
14438 make a final report and payment on the date subsequent to the date of selling or quitting
14439 business on which they are due and payable as prescribed by rule.

14440 (b) (i) An employer's successor, successors, or assigns, if any, are required to withhold
14441 sufficient of the purchase money to cover the amount of the contributions and interest or
14442 penalties due and payable until the former owner produces a receipt from the division showing
14443 that they have been paid or a certificate stating that no amount is due.

14444 (ii) If the purchaser of a business or stock of goods fails to withhold sufficient purchase
14445 money, the purchaser is personally liable for the payment of the amount of the contributions
14446 required to be paid by the former owner, interest and penalties accrued and unpaid by the

14447 former owner, owners, or assignors.

14448 (7) (a) If an employer is delinquent in the payment of a contribution, the division may
14449 give notice of the amount of the delinquency by registered mail to all persons having in their
14450 possession or under their control, any credits or other personal property belonging to the
14451 employer, or owing any debts to the employer at the time of the receipt by them of the notice.

14452 (b) A person notified under Subsection (7)(a) shall neither transfer nor make any other
14453 disposition of the credits, other personal property, or debts until:

14454 (i) the division has consented to a transfer or disposition; or

14455 (ii) 20 days after the receipt of the notice.

14456 (c) All persons notified under Subsection (7)(a) shall, within five days after receipt of
14457 the notice, advise the division of credits, other personal property, or other debts in their
14458 possession, under their control or owing by them, as the case may be.

14459 (8) (a) (i) Each employer shall furnish the division necessary information for the proper
14460 administration of this chapter and shall include wage information for each employee, for each
14461 calendar quarter.

14462 (ii) The information shall be furnished at a time, in the form, and to those individuals
14463 as the department may by rule require.

14464 (b) (i) Each employer shall furnish each individual worker who is separated that
14465 information as the department may by rule require, and shall furnish within 48 hours of the
14466 receipt of a request from the division a report of the earnings of any individual during the
14467 individual's base-period.

14468 (ii) The report shall be on a form prescribed by the division and contain all information
14469 prescribed by the division.

14470 (c) (i) For each failure by an employer to conform to this Subsection (8) the division
14471 shall, unless good cause is shown, assess a \$50 penalty if the filing was not more than 15 days
14472 late.

14473 (ii) If the filing is more than 15 days late, the division shall assess an additional penalty
14474 of \$50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed \$250

14475 per filing.

14476 (iii) The penalty is to be collected in the same manner as contributions due under this
14477 chapter.

14478 (d) (i) The division shall prescribe rules providing standards for determining which
14479 contribution reports [~~must~~] shall be filed on magnetic or electronic media or in other
14480 machine-readable form.

14481 (ii) In prescribing these rules, the division:

14482 (A) may not require an employer to file contribution reports on magnetic or electronic
14483 media unless the employer is required to file wage data on at least 250 employees during any
14484 calendar quarter or is an authorized employer representative who files quarterly tax reports on
14485 behalf of 100 or more employers during any calendar quarter;

14486 (B) shall take into account, among other relevant factors, the ability of the employer to
14487 comply at reasonable cost with the requirements of the rules; and

14488 (C) may require an employer to post a bond for failure to comply with the rules
14489 required by this Subsection (8)(d).

14490 (9) (a) (i) An employer liable for payments in lieu of contributions shall file
14491 Reimbursable Employment and Wage Reports.

14492 (ii) The reports are due on the last day of the month that follows the end of each
14493 calendar quarter unless the division, after giving notice, changes the due date.

14494 (iii) A report postmarked on or before the due date is considered timely.

14495 (b) (i) Unless the employer can show good cause, the division shall assess a \$50
14496 penalty against an employer who does not file Reimbursable Employment and Wage Reports
14497 within the time limits set out in Subsection (9)(a) if the filing was not more than 15 days late.

14498 (ii) If the filing is more than 15 days late, the division shall assess an additional penalty
14499 of \$50 for each 15 days, or a fraction of the 15 days that the filing is late, not to exceed \$250
14500 per filing.

14501 (iii) The division shall assess and collect the penalties referred to in this Subsection
14502 (9)(b) in the same manner as prescribed in Sections 35A-4-309 and 35A-4-311.

14503 (10) If a person liable to pay a contribution or benefit overpayment imposed by this
14504 chapter neglects or refuses to pay it after demand, the amount, including any interest, additional
14505 amount, addition to contributions, or assessable penalty, together with any additional accruable
14506 costs, shall be a lien in favor of the division upon all property and rights to property, whether
14507 real or personal belonging to the person.

14508 (11) (a) The lien imposed by Subsection (10) arises at the time the assessment, as
14509 defined in the department rules, is made and continues until the liability for the amount
14510 assessed, or a judgment against the taxpayer arising out of the liability, is satisfied.

14511 (b) (i) The lien imposed by Subsection (10) is not valid as against a purchaser, holder
14512 of a security interest, mechanics' lien holder, or judgment lien creditor until the division files a
14513 warrant with the clerk of the district court.

14514 (ii) For the purposes of this Subsection (11)(b):

14515 (A) "Judgment lien creditor" means a person who obtains a valid judgment of a court
14516 of record for recovery of specific property or a sum certain of money, and who in the case of a
14517 recovery of money, has a perfected lien under the judgment on the property involved. A
14518 judgment lien does not include inchoate liens such as attachment or garnishment liens until
14519 they ripen into a judgment. A judgment lien does not include the determination or assessment
14520 of a quasi-judicial authority, such as a state or federal taxing authority.

14521 (B) "Mechanics' lien holder" means any person who has a lien on real property, or on
14522 the proceeds of a contract relating to real property, for services, labor, or materials furnished in
14523 connection with the construction or improvement of the property. A person has a lien on the
14524 earliest date the lien becomes valid against subsequent purchasers without actual notice, but not
14525 before the person begins to furnish the services, labor, or materials.

14526 (C) "Person" means:

14527 (I) an individual;

14528 (II) a trust;

14529 (III) an estate;

14530 (IV) a partnership;

14531 (V) an association;

14532 (VI) a company;

14533 (VII) a limited liability company;

14534 (VIII) a limited liability partnership; or

14535 (IX) a corporation.

14536 (D) "Purchaser" means a person who, for adequate and full consideration in money or
14537 money's worth, acquires an interest, other than a lien or security interest, in property which is
14538 valid under state law against subsequent purchasers without actual notice.

14539 (E) "Security interest" means any interest in property acquired by contract for the
14540 purpose of securing payment or performance of an obligation or indemnifying against loss or
14541 liability. A security interest exists at any time:

14542 (I) the property is in existence and the interest has become protected under the law
14543 against a subsequent judgment lien arising out of an unsecured obligation; and

14544 (II) to the extent that, at that time, the holder has parted with money or money's worth.

14545 Section 338. Section **35A-4-309** is amended to read:

14546 **35A-4-309. Nonprofit organizations -- Contributions -- Payments in lieu of**
14547 **contributions.**

14548 (1) Notwithstanding any other provisions of this chapter for payments by employers,
14549 benefits paid to employees of nonprofit organizations, as described in Section 501(c)(3) of the
14550 Internal Revenue Code, 26 U.S.C. 501(c)(3), that are exempt from income tax under Section
14551 501(a), shall be financed in accordance with the following provisions:

14552 (a) Any nonprofit organization which is, or becomes, subject to this chapter shall pay
14553 contributions under Section 35A-4-303, unless it elects in accordance with this Subsection (1)
14554 to pay to the division for the unemployment fund an amount equal to the amount of regular
14555 benefits and of 1/2 of the extended benefits paid that is attributable to service in the employ of
14556 the nonprofit organization, to individuals for weeks of unemployment that begin during the
14557 effective period of this election.

14558 (b) (i) Any nonprofit organization that is, or becomes, subject to this chapter may elect

14559 to become liable for payments in lieu of contributions for a period of not less than one
14560 contribution year beginning with the date on which the organization becomes subject to this
14561 chapter.

14562 (ii) The nonprofit organization shall file a written notice of its election with the
14563 division not later than 30 days immediately following the date that the division gives notice to
14564 the organization that it is subject to this chapter.

14565 (c) Any nonprofit organization that makes an election in accordance with Subsection
14566 (1)(b)(i) shall continue to be liable for payments in lieu of contributions until it files with the
14567 division a written notice terminating its election, not later than 30 days prior to the beginning of
14568 the contribution year for which this termination shall first be effective.

14569 (d) (i) Any nonprofit organization that has been paying contributions under this chapter
14570 may change to a reimbursable basis by filing with the division, no later than 30 days prior to
14571 the beginning of any contribution year, a written notice of election to become liable for
14572 payments in lieu of contributions.

14573 (ii) This election is not terminable by the organization for that year or the next year.

14574 (e) The division may, for good cause, extend the period within which a notice of
14575 election or a notice of termination [~~must~~] shall be filed and may permit an election to be
14576 retroactive.

14577 (f) (i) The division, in accordance with department rules, shall notify each nonprofit
14578 organization of any determination that the division may make of the organization's status as an
14579 employer, of the effective date of any election that it makes, and of any termination of this
14580 election.

14581 (ii) These determinations are subject to reconsideration, appeal, and review in
14582 accordance with Section 35A-4-508.

14583 (2) Payments in lieu of contributions shall be made in accordance with this Subsection
14584 (2).

14585 (a) At the end of each calendar month, or at the end of any other period as determined
14586 by the division, the division shall bill each nonprofit organization or group of nonprofit

14587 organizations that has elected to make payments in lieu of contributions for an amount equal to
14588 the full amount of regular benefits plus [~~1/2~~] one-half of the amount of extended benefits paid
14589 during this month or other prescribed period that is attributable to service in the employ of the
14590 organization.

14591 (b) Payment of any bill rendered under Subsection (2)(a) shall be made no later than 30
14592 days after the bill was mailed to the last-known address of the nonprofit organization or was
14593 otherwise delivered to it, unless there has been an application for review and redetermination in
14594 accordance with Subsection (2)(d).

14595 (c) Payments made by any nonprofit organization under this Subsection (2) may not be
14596 deducted or deductible, in whole or in part, from the remuneration of individuals in the employ
14597 of the organization.

14598 (d) (i) The amount due specified in any bill from the division shall be conclusive on
14599 the organization unless, not later than 15 days after the bill was mailed to its last-known
14600 address or otherwise delivered to it, the organization files an application for redetermination by
14601 the division or an appeal to the Division of Adjudication, setting forth the grounds for the
14602 application or appeal in accordance with Section 35A-4-508.

14603 (ii) The division shall promptly review and reconsider the amount due specified in the
14604 bill and shall thereafter issue a redetermination in any case in which the application for
14605 redetermination has been filed.

14606 (iii) Any redetermination is conclusive on the organization unless, no later than 15
14607 days after the redetermination was mailed to its last known address or otherwise delivered to it,
14608 the organization files an appeal to the Division of Adjudication in accordance with Section
14609 35A-4-508 and Chapter 1, Part 3, Adjudicative Proceedings, setting forth the grounds for the
14610 appeal.

14611 (iv) Proceedings on appeal to the Division of Adjudication from the amount of a bill
14612 rendered under this Subsection (2) or a redetermination of the amount shall be in accordance
14613 with Section 35A-4-508.

14614 (e) Past due payments of amounts in lieu of contributions are subject to the same

14615 interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.

14616 (3) If any nonprofit organization is delinquent in making payments in lieu of
14617 contributions as required under Subsection (2), the division may terminate the organization's
14618 election to make payment in lieu of contributions as of the beginning of the next contribution
14619 year, and the termination is effective for that and the next contribution year.

14620 (4) (a) In the discretion of the division, any nonprofit organization that elects to
14621 become liable for payments in lieu of contributions shall be required, within 30 days after the
14622 effective date of its election, to deposit money with the division.

14623 (b) The amount of the deposit shall be determined in accordance with this Subsection
14624 (4).

14625 (c) (i) The amount of the deposit required by this Subsection (4) shall be equal to 1%
14626 of the organization's total wages paid for employment as defined in Section 35A-4-204 for the
14627 four calendar quarters immediately preceding the effective date of the election, or the biennial
14628 anniversary of the effective date of election, whichever date shall be most recent and
14629 applicable.

14630 (ii) If the nonprofit organization did not pay wages in each of these four calendar
14631 quarters, the amount of the deposit is as determined by the division.

14632 (d) (i) Any deposit of money in accordance with this Subsection (4) shall be retained
14633 by the division in an escrow account until liability under the election is terminated, at which
14634 time it shall be returned to the organization, less any deductions as provided in this Subsection
14635 (4).

14636 (ii) The division may deduct from the money deposited under this Subsection (4) by a
14637 nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of
14638 contributions and any applicable interest and penalties provided for in Subsection (2)(e).

14639 (iii) The division shall require the organization within 30 days following any
14640 deduction from a money deposit under this Subsection (4) to deposit sufficient additional
14641 money to make whole the organization's deposit at the prior level.

14642 (iv) (A) The division may, at any time, review the adequacy of the deposit made by any

14643 organization.

14644 (B) If, as a result of this review, the division determines that an adjustment is
14645 necessary, it shall require the organization to make an additional deposit within 30 days of
14646 written notice of the division's determination or shall return to it any portion of the deposit the
14647 division no longer considers necessary, as considered appropriate.

14648 (e) If any nonprofit organization fails to make a deposit, or to increase or make whole
14649 the amount of a previously made deposit, as provided under this Subsection (4), the division
14650 may terminate the organization's election to make payments in lieu of contributions.

14651 (f) (i) Termination under Subsection (4)(e) shall continue for not less than the
14652 four-consecutive-calendar-quarter period beginning with the quarter in which the termination
14653 becomes effective.

14654 (ii) The division may extend for good cause the applicable filing, deposit, or
14655 adjustment period by not more than 60 days.

14656 (5) (a) Each employer liable for payments in lieu of contributions shall pay to the
14657 division for the fund the amount of regular benefits plus the amount of [~~1/2~~] one-half of
14658 extended benefits paid that are attributable to service in the employ of the employer.

14659 (b) If benefits paid to an individual are based on wages paid by more than one
14660 employer and one or more of these employers are liable for payments in lieu of contributions,
14661 the amount payable to the fund by each employer liable for the payments shall be determined in
14662 accordance with Subsection (5)(c) or (d).

14663 (c) If benefits paid to an individual are based on wages paid by one or more employers
14664 who are liable for payments in lieu of contributions and on wages paid by one or more
14665 employers who are liable for contributions, the amount of benefits payable by each employer
14666 that is liable for payments in lieu of contributions shall be an amount that bears the same ratio
14667 to the total benefits paid to the individual as the total base-period wages paid to the individual
14668 by that employer bear to the total base-period wages paid to the individual by all of the
14669 individual's base-period employers.

14670 (d) If benefits paid to an individual are based on wages paid by two or more employers

14671 who are liable for payments in lieu of contributions, the amount of benefits payable by each of
14672 those employers shall be an amount which bears the same ratio to the total benefits paid to the
14673 individual as the total base-period wages paid to the individual by the employer bear to the total
14674 base-period wages paid to the individual by all of the individual's base-period employers.

14675 (6) (a) (i) Two or more employers who have become liable for payments in lieu of
14676 contributions, in accordance with this section and Subsection 35A-4-204(2)(d), may file a joint
14677 application to the division for the establishment of a group account for the purpose of sharing
14678 the cost of benefits paid that are attributable to service in the employ of these employers.

14679 (ii) Each application shall identify and authorize a group representative to act as the
14680 group's agent for the purpose of this Subsection (6).

14681 (b) (i) Upon approval of the application, the division shall establish a group account for
14682 these employers effective as of the beginning of the calendar quarter in which it receives the
14683 application and shall notify the group's representative of the effective date of the account.

14684 (ii) This account shall remain in effect for not less than two contribution years and
14685 thereafter until terminated at the discretion of the division or upon application by the group.

14686 (c) Upon establishment of the account, each member of the group is liable for
14687 payments in lieu of contributions with respect to each calendar quarter in the amount that bears
14688 the same ratio to the total benefits paid in the quarter attributable to service performed in the
14689 employ of all members of the group as the total wages paid for service in employment by the
14690 member in the quarter bear to the total wages paid during the quarter for service performed in
14691 the employ of all members of the group.

14692 (d) The department shall prescribe rules, with respect to applications for establishment,
14693 maintenance, and termination of group accounts authorized by this Subsection (6), for addition
14694 of new members to, and withdrawal of active members from, these accounts, for the
14695 determination of the amounts that are payable under this Subsection (6) by members of the
14696 group, and the time and manner of these payments.

14697 (7) (a) An employing unit that acquires a nonprofit organization or substantially all the
14698 assets of a nonprofit organization that has elected reimbursable coverage as defined in

14699 Subsection (1), in accordance with rules made by the commission, shall be given the subject
14700 date of the transferring nonprofit organization, provided the transferring nonprofit organization
14701 ceases to operate as an employing unit at the point of acquisition.

14702 (b) The acquiring entity shall reimburse the Unemployment Compensation Fund for the
14703 transferring nonprofit organization's share of any unreimbursed benefits paid to former
14704 employees of the transferring nonprofit organization.

14705 Section 339. Section **35A-4-311** is amended to read:

14706 **35A-4-311. Coverage and liability of governmental units or Indian tribal units --**
14707 **Payments in lieu of contributions -- Delinquencies -- Payments to division.**

14708 (1) Notwithstanding any other provisions of this chapter, benefits paid to employees of
14709 counties, cities, towns, school districts, political subdivisions, or their instrumentalities or
14710 Indian tribes or tribal units shall be financed in accordance with the following provisions:

14711 (a) Any county, city, town, school district, political subdivision, or instrumentality
14712 thereof or Indian tribes or tribal units that is or becomes subject to this chapter may pay
14713 contributions under the provisions of Section 35A-4-302, or may elect to pay to the division
14714 for the unemployment fund an amount equal to the amount of regular benefits and, as provided
14715 in Subsection (4), the extended benefits attributable to service in the employ of such
14716 organization, and paid to individuals for weeks of unemployment that begin during the
14717 effective period of such election.

14718 (b) Any county, city, town, school district, political subdivision, or instrumentality
14719 thereof or Indian tribes or tribal units of the state, or combination of the foregoing, that is or
14720 becomes subject to this chapter may elect to become liable for payments in lieu of
14721 contributions for a period of not less than one contribution year beginning with the date on
14722 which the organization becomes subject to this chapter by filing a written notice of its election
14723 with the division not later than 30 days immediately following the date that the division gives
14724 notice to the organization that it is subject to this chapter.

14725 (c) Any county, city, town, school district, political subdivision, or instrumentality
14726 thereof, or Indian tribes or tribal units, or combination of the foregoing, that makes an election

14727 in accordance with Subsections (1)(a) and (b) shall continue to be liable for payments in lieu of
14728 contributions until it files with the division a written notice terminating its election. A notice
14729 terminating such election [~~must~~] shall be filed by January 31 of the year in which the
14730 termination is to be effective.

14731 (d) Any county, city, town, school district, political subdivision, or instrumentality
14732 thereof of the state, or Indian tribes or tribal units, or combination of the foregoing which have
14733 been paying contributions under this chapter may change to a reimbursable basis by filing with
14734 the division, no later than 30 days prior to the beginning of any contribution year, a written
14735 notice of election to become liable for payments in lieu of contributions; the organization may
14736 not terminate such election for a period of two contribution years.

14737 (e) The division may, for good cause, extend the period within which a notice of
14738 election or a notice of termination [~~must~~] shall be filed and may permit an election to be
14739 retroactive.

14740 (f) The division, in accordance with department rules, shall notify each county, city,
14741 town, school district, political subdivision, or Indian tribes or tribal units, or their
14742 instrumentalities of any determination that it may make of its status as an employer, or the
14743 effective date of any election which it makes, and of any termination of such election. The
14744 determinations shall be subject to reconsideration, appeal, and review in accordance with the
14745 provisions of Section 35A-4-508.

14746 (2) Payments in lieu of contributions shall be made in accordance with the provisions
14747 of this Subsection (2).

14748 (a) At the end of each calendar month, or at the end of any other period as determined
14749 by the division, the division shall bill each county, city, town, school district, political
14750 subdivision, or instrumentality thereof, or combination of the foregoing, that has elected to
14751 make payments in lieu of contributions for an amount equal to the full amount of regular
14752 benefits and, as provided in Subsection (4), the amount of extended benefits paid during such
14753 month or other prescribed period that is attributable to service in the employ of such county,
14754 city, town, school district, political subdivision, or instrumentality thereof.

14755 (b) Payment of any bill rendered under Subsection (2)(a) shall be made not later than
14756 30 days after such bill was mailed to the governmental unit or tribal unit or was otherwise
14757 delivered to it, unless there has been an application for review and redetermination in
14758 accordance with Subsection (2)(c).

14759 (c) (i) The amount due specified in any bill from the division shall be conclusive on the
14760 governmental unit or tribal unit unless, no later than 15 days after the bill was mailed or
14761 otherwise delivered to it, the governmental unit or tribal unit files an application for
14762 redetermination by the division or an appeal, setting forth the grounds for such application or
14763 appeal.

14764 (ii) Upon an application for redetermination the division shall promptly review and
14765 reconsider the amount due specified in the bill and shall thereafter issue a redetermination.

14766 (iii) Any such redetermination shall be conclusive on the governmental unit or tribal
14767 unit unless, no later than 15 days after the redetermination was mailed to its last known address
14768 or otherwise delivered to it, the governmental unit or tribal unit files an appeal, setting forth the
14769 grounds for the appeal.

14770 (iv) Proceedings on appeal from the amount of a bill rendered under this Subsection (2)
14771 or a redetermination of the amount shall be in accordance with the provisions of Section
14772 35A-4-508.

14773 (d) Past due payments of amounts in lieu of contributions shall be subject to the same
14774 interest and penalties that, under Subsection 35A-4-305(1), attach to past due contributions.

14775 (3) (a) If any governmental unit or tribal unit is delinquent in making payments in lieu
14776 of contributions as required under Subsection (2), the division may terminate the governmental
14777 unit's or tribal unit's election to make payment in lieu of contributions as of the beginning of
14778 the next contribution year, and the termination shall be effective for that and the next
14779 contribution year.

14780 (b) (i) Failure of the Indian tribe or tribal unit to make required payments, including
14781 assessments of interest and penalty, within 90 days of receipt of a billing notice will cause the
14782 Indian tribe to lose the option to make payments in lieu of contributions, as described in

14783 Subsection 35A-4-311(1), for the following tax year unless payment in full is received before
14784 contribution rates for the next tax year are computed.

14785 (ii) Any Indian tribe that loses the option to make payments in lieu of contributions due
14786 to late payment or nonpayment, as described in Subsection (3)(b)(i), shall have the option
14787 reinstated if, after a period of one year:

14788 (A) all contributions have been made timely; and

14789 (B) no contributions, payments in lieu of contributions for benefits paid, penalties, or
14790 interest remain outstanding.

14791 (iii) Notices of payment and reporting delinquency to Indian tribes or their tribal units
14792 shall include information that failure to make full payment within the prescribed time frame:

14793 (A) will cause the Indian tribe to be liable for taxes under the Federal Unemployment
14794 Tax Act; and

14795 (B) will cause the Indian tribe to lose the option to make payments in lieu of
14796 contributions.

14797 (4) Each governmental unit or tribal unit liable for payments in lieu of contributions
14798 shall pay to the division for the fund the amount of regular benefits plus the amount of
14799 extended benefits paid that are attributable to service in the employ of such governmental unit
14800 or tribal unit. Provided, that governmental units or tribal units electing payments in lieu of
14801 contributions shall, with respect to extended benefit costs for weeks of unemployment
14802 beginning prior to January 1, 1979, pay an amount equal to 50% of such costs and with respect
14803 to extended benefit costs for weeks of unemployment beginning on or after January 1, 1979,
14804 shall pay 100% of such costs. If benefits paid to an individual are based on wages paid by
14805 more than one employer and one or more of such employers are liable for payments in lieu of
14806 contributions, the amount payable to the fund by each employer liable for the payments shall be
14807 determined in accordance with Subsection (4)(a) or (4)(b).

14808 (a) If benefits paid to an individual are based on wages paid by one or more employers
14809 who are liable for payments in lieu of contributions and on wages paid by one or more
14810 employers who are liable for contributions, the amount of benefits payable by each employer

14811 that is liable for payments in lieu of contributions shall be an amount that bears the same ratio
14812 to the total benefits paid to the individual as the total base-period wages paid to the individual
14813 by such employer bear to the total base-period wages paid to the individual by all of his
14814 base-period employers.

14815 (b) If benefits paid to an individual are based on wages paid by two or more employers
14816 who are liable for payments in lieu of contributions, the amount of benefits payable by each
14817 such employer shall be an amount that bears the same ratio to the total benefits paid to the
14818 individual as the total base-period wages paid to the individual by such employer bear to the
14819 total base-period wages paid to the individual by all of his base-period employers.

14820 (5) (a) Two or more Indian tribe or tribal unit employers who have become liable for
14821 payments in lieu of contributions, in accordance with the provisions of this section and
14822 Subsection 35A-4-204(2)(d), may file a joint application to the division for the establishment
14823 of a group account for the purpose of sharing the cost of benefits paid that are attributable to
14824 service in the employ of these employers. Each application shall identify and authorize a group
14825 representative to act as the group's agent for the purpose of this Subsection (5).

14826 (b) Upon approval of the application, the division shall establish a group account for
14827 these employers effective as of the beginning of the calendar quarter in which it receives the
14828 application and shall notify the group's representative of the effective date of the account. This
14829 account shall remain in effect for not less than one contribution year and thereafter until
14830 terminated at the discretion of the division or upon application by the group.

14831 (c) Upon establishment of the account, each member of the group shall be liable for
14832 payments in lieu of contributions with respect to each calendar quarter in the amount that bears
14833 the same ratio to the total benefits paid in the quarter attributable to service performed in the
14834 employ of all members of the group as the total wages paid for service in employment by such
14835 member in the quarter bear to the total wages paid during the quarter for service performed in
14836 the employ of all members of the group.

14837 Section 340. Section **35A-4-404** is amended to read:

14838 **35A-4-404. Eligibility for benefits after receiving workers' compensation or**

14839 **occupational disease compensation.**

14840 (1) Notwithstanding any requirements involving base periods or other benefit
 14841 compensational factors provided for under this chapter a person who has had a continuous
 14842 period of sickness or injury for which [~~he~~] the person was compensated under the workers'
 14843 compensation or the occupational disease laws of this state or under federal law shall, if [~~he~~]
 14844 the person is otherwise eligible, thereafter be entitled to receive the unemployment
 14845 compensation benefits [~~he~~] the person would have been entitled to receive under the law and
 14846 regulations based on [~~his~~] the person's potential eligibility at the time of [~~his~~] the person's last
 14847 employment.

14848 (2) Benefit rights [~~shall not be~~] are not preserved under this section unless the
 14849 individual:

14850 (a) files a claim for benefits with respect to a week no later than 90 days after the end
 14851 of the continuous period of sickness or injury; and

14852 (b) files the claim with respect to a week within the 36-month period immediately
 14853 following the commencement of such period of sickness or injury.

14854 Section 341. Section **35A-4-501** is amended to read:

14855 **35A-4-501. Unemployment Compensation Fund -- Administration -- Contents --**
 14856 **Treasurer and custodian -- Separate accounts -- Use of money requisitioned -- Advances**
 14857 **under Social Security Act.**

14858 (1) (a) There is established the Unemployment Compensation Fund, separate and apart
 14859 from all public money or funds of this state, that shall be administered by the department
 14860 exclusively for the purposes of this chapter.

14861 (b) This fund shall consist of the following money, all of which shall be mingled and
 14862 undivided:

14863 (i) all contributions collected under this chapter, less refunds of contributions made
 14864 from the clearing account under Subsection 35A-4-306(5);

14865 (ii) interest earned upon any money in the fund;

14866 (iii) any property or securities acquired through the use of money belonging to the

- 14867 fund;
- 14868 (iv) all earnings of the property or securities;
- 14869 (v) all money credited to this state's account in the unemployment trust fund under
- 14870 Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended; and
- 14871 (vi) all other money received for the fund from any other source.
- 14872 (2) (a) The state treasurer shall:
- 14873 (i) be the treasurer and custodian of the fund;
- 14874 (ii) administer the fund in accordance with the directions of the division; and
- 14875 (iii) pay all warrants drawn upon it by the division or its duly authorized agent in
- 14876 accordance with rules made by the department.
- 14877 (b) The division shall maintain within the fund three separate accounts:
- 14878 (i) a clearing account;
- 14879 (ii) an unemployment trust fund account; and
- 14880 (iii) a benefit account.
- 14881 (c) All money payable to the fund, upon receipt by the division, shall be immediately
- 14882 deposited in the clearing account.
- 14883 (d) (i) All money in the clearing account after clearance shall, except as otherwise
- 14884 provided in this section, be deposited immediately with the secretary of the treasury of the
- 14885 United States of America to the credit of the account of this state in the unemployment trust
- 14886 fund, established and maintained under Section 904 of the Social Security Act, 42 U.S.C. 1104,
- 14887 as amended, any provisions of law in this state relating to the deposit, administration, release,
- 14888 or disbursement of money in the possession or custody of this state to the contrary
- 14889 notwithstanding.
- 14890 (ii) Refunds of contributions payable under Subsections 35A-4-205(1)(a) and
- 14891 35A-4-306(5) may be paid from the clearing account or the benefit account.
- 14892 (e) The benefit account shall consist of all money requisitioned from this state's
- 14893 account in the unemployment trust fund in the United States treasury.
- 14894 (f) Money in the clearing and benefit accounts may be deposited in any depository bank

14895 in which general funds of this state may be deposited, but no public deposit insurance charge or
14896 premium may be paid out of the fund.

14897 (g) (i) Money in the clearing and benefit accounts may not be commingled with other
14898 state funds, but shall be maintained in separate accounts on the books of the depository bank.

14899 (ii) The money shall be secured by the depository bank to the same extent and in the
14900 same manner as required by the general depository law of this state.

14901 (iii) Collateral pledged for this purpose shall be kept separate and distinct from any
14902 collateral pledged to secure other funds of the state.

14903 (h) (i) The state treasurer is liable on the state treasurer's official bond for the faithful
14904 performance of the state treasurer's duties in connection with the unemployment compensation
14905 fund provided for under this chapter.

14906 (ii) The liability on the official bond shall be effective immediately upon the enactment
14907 of this provision, and that liability shall exist in addition to the liability upon any separate bond
14908 existent on the effective date of this provision, or which may be given in the future.

14909 (iii) All sums recovered for losses sustained by the fund shall be deposited in the fund.

14910 (3) (a) (i) Money requisitioned from the state's account in the unemployment trust fund
14911 shall, except as set forth in this section, be used exclusively for the payment of benefits and for
14912 refunds of contributions under Subsections 35A-4-205(1)(a) and 35A-4-306(5).

14913 (ii) The department shall from time to time requisition from the unemployment trust
14914 fund amounts, not exceeding the amounts standing to this state's account in the fund, as it
14915 considers necessary for the payment of those benefits and refunds for a reasonable future
14916 period.

14917 (iii) (A) Upon receipt the treasurer shall deposit the money in the benefit account and
14918 shall pay benefits and refunds from the account by means of warrants issued by the division in
14919 accordance with rules prescribed by the department.

14920 (B) Expenditures of these money in the benefit account and refunds from the clearing
14921 account are not subject to any provisions of law requiring specific appropriations or other
14922 formal release by state officers of money in their custody.

14923 (b) Money in the state's account in the unemployment trust fund that were collected
14924 under the Federal Unemployment Tax Act, 26 U.S.C. 3301 et seq., and credited to the state
14925 under Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended may be
14926 requisitioned from the state's account and used in the payment of expenses incurred by the
14927 department for the administration of the state's unemployment law and public employment
14928 offices, if the expenses are incurred and the withdrawals are made only after and under a
14929 specific appropriation of the Legislature that specifies:

14930 (i) the purposes and amounts;

14931 (ii) that the money may not be obligated after the two-year period that began on the
14932 date of the enactment of the appropriation law; and

14933 (iii) that the total amount which may be used during a fiscal year [~~shall not~~] may not
14934 exceed the amount by which the aggregate of the amounts credited to this state's account under
14935 Section 903 of the Social Security Act, 42 U.S.C. 1101 et seq., as amended, during the fiscal
14936 year and the 34 preceding fiscal years, exceeds the aggregate of the amounts used by this state
14937 for administration during the same 35 fiscal years.

14938 (A) For the purpose of Subsection (3)(b)(iii), amounts used during any fiscal year shall
14939 be charged against equivalent amounts that were first credited and that have not previously
14940 been so charged. An amount used during any fiscal year may not be charged against any
14941 amount credited during a fiscal year earlier than the 34th preceding fiscal year.

14942 (B) Except as appropriated and used for administrative expenses, as provided in this
14943 section, money transferred to this state under Section 903 of the Social Security Act as
14944 amended, may be used only for the payment of benefits.

14945 (C) Any money used for the payment of benefits may be restored for appropriation and
14946 use for administrative expenses, upon request of the governor, under Section 903(c) of the
14947 Social Security Act.

14948 (D) The division shall maintain a separate record of the deposit, obligation,
14949 expenditure, and return of funds deposited.

14950 (E) Money deposited shall, until expended, remain a part of the unemployment fund

14951 and, if not expended, shall be returned promptly to the account of this state in the
14952 unemployment trust fund.

14953 (F) The money available by reason of this legislative appropriation [~~shall not~~] may not
14954 be expended or available for expenditure in any manner that would permit their substitution
14955 for, or a corresponding reduction in, federal funds that would in the absence of the money be
14956 available to finance expenditures for the administration of this chapter.

14957 (c) Any balance of money requisitioned from the unemployment trust fund that remains
14958 unclaimed or unpaid in the benefit account after the expiration of the period for which the sums
14959 were requisitioned shall either be deducted from estimates for, and may be utilized for the
14960 payment of, benefits and refunds during succeeding periods, or in the discretion of the division,
14961 shall be redeposited with the secretary of the treasury of the United States of America to the
14962 credit of the state's account in the unemployment trust fund, as provided in Subsection (2).

14963 (4) (a) The provisions of Subsections (1), (2), and (3), to the extent that they relate to
14964 the unemployment trust fund, shall be operative only so long as the unemployment trust fund
14965 continues to exist and so long as the secretary of the treasury of the United States of America
14966 continues to maintain for the state a separate book account of all money deposited in the fund
14967 by the state for benefit purposes, together with the state's proportionate share of the earnings of
14968 the unemployment trust fund, from which no other state is permitted to make withdrawals.

14969 (b) (i) When the unemployment trust fund ceases to exist, or the separate book account
14970 is no longer maintained, all money belonging to the unemployment compensation fund of the
14971 state shall be administered by the division as a trust fund for the purpose of paying benefits
14972 under this chapter, and the division shall have authority to hold, invest, transfer, sell, deposit,
14973 and release the money, and any properties, securities, or earnings acquired as an incident to the
14974 administration.

14975 (ii) The money shall be invested in readily marketable bonds or other interest-bearing
14976 obligations of the United States of America, of the state, or of any county, city, town, or school
14977 district of the state, at current market prices for the bonds.

14978 (iii) The investment shall be made so that all the assets of the fund shall always be

14979 readily convertible into cash when needed for the payment of benefits.

14980 Section 342. Section **35A-4-506** is amended to read:

14981 **35A-4-506. Special Administrative Account.**

14982 (1) There is created a restricted account within the General Fund known as the "Special
14983 Administrative Expense Account."

14984 (2) (a) Interest and penalties collected under this chapter, less refunds made under
14985 Subsection 35A-4-306(5), shall be paid into the restricted account from the clearing account of
14986 the restricted account at the end of each calendar month.

14987 (b) A contribution to the restricted account and any other money received for that
14988 purpose shall be paid into the restricted account.

14989 (c) The money may not be expended in any manner that would permit their substitution
14990 for, or a corresponding reduction in, federal funds that would in the absence of the money be
14991 available to finance expenditures for the administration of this chapter.

14992 (3) Nothing in this section shall prevent the money from being used as a revolving fund
14993 to cover expenditures, necessary and proper under this chapter, for which federal funds have
14994 been duly requested but not yet received subject to the charging of those expenditures against
14995 the funds when received.

14996 (4) Money in the restricted account shall be deposited, administered, and dispersed in
14997 accordance with the directions of the Legislature.

14998 (5) Money in the restricted account is made available to replace, within a reasonable
14999 time, any money received by this state under Section 302 of the Federal Social Security Act, 42
15000 U.S.C. 502, as amended, that because of any action of contingency have been lost or have been
15001 expended for purposes other than or in amounts in excess of those necessary for the proper
15002 administration of this chapter.

15003 (6) Money in the restricted account shall be available to the division for expenditure in
15004 accordance with this section and ~~shall not~~ may not lapse at any time or be transferred to any
15005 other fund or account except as directed by the Legislature.

15006 (7) The state treasurer shall pay all warrants drawn upon it by the division or its duly

15007 authorized agent in accordance with such rules as the department shall prescribe.

15008 (8) (a) The state treasurer shall be liable on the state treasurer's official bond for the
 15009 faithful performance of the treasurer's duties in connection with the Special Administrative
 15010 Expense Account provided for under this chapter.

15011 (b) Liability on the official bond shall exist in addition to any liability upon any
 15012 separate bond existent on the effective date of this provision or that may be given in the future.

15013 (c) Any money recovered on any surety bond losses sustained by the Special
 15014 Administrative Expense Account shall be deposited in the restricted account or in the General
 15015 Fund if so directed by the Legislature.

15016 Section 343. Section **55-5-2** is amended to read:

15017 **55-5-2. Licensing agency -- Duties of Utah State Office of Rehabilitation.**

15018 (1) The ~~[Division of Vocational Rehabilitation, Office of Public Instruction,]~~ Division
 15019 of Services for the Blind and Visually Impaired, Utah State Office of Rehabilitation is
 15020 designated as the licensing agency for the purpose of carrying out ~~[the provisions of this act,~~
 15021 ~~and shall]~~ this chapter.

15022 ~~[(1) Take such steps as are necessary and proper]~~

15023 (2) The Division of Services for the Blind and Visually Impaired, shall:

15024 (a) take necessary steps to carry out the provisions of this ~~[act:]~~ chapter;

15025 ~~[(2) With]~~ (b) with the approval of the custodian having charge of the building, park or
 15026 other property in which the vending stand or other enterprise is to be located, select a location
 15027 for such stand or enterprise and the type of equipment to be provided~~[-];~~

15028 ~~[(3) Construct]~~ (c) construct and equip stands ~~[at such place as may be deemed~~
 15029 ~~advisable]~~ where blind persons may be trained under the supervision of the ~~[Division of~~
 15030 ~~Vocational Rehabilitation]~~ Division of Services for the Blind and Visually Impaired to carry on
 15031 a business as a vending stand operator~~[-];~~

15032 ~~[(4) Provide]~~ (d) provide adequate supervision of ~~[such persons]~~ each person licensed
 15033 to operate vending stands or other enterprises to ensure efficient and orderly management
 15034 [thereof.]; and

15035 [~~(5) Prescribe such rules and regulations as are]~~
15036 (e) make rules necessary for the proper operation of [~~such~~] vending stands or other
15037 enterprises.
15038 Section 344. **Effective date.**
15039 (1) Except as provided in Subsections (2) and (3), this bill takes effect on May 10,
15040 2011.
15041 (2) The amendments to the following sections take effect on July 1, 2011:
15042 (a) Section 32B-1-407 (Effective 07/01/11);
15043 (b) Section 32B-1-505 (Effective 07/01/11);
15044 (c) Section 32B-6-407 (Effective 07/01/11); and
15045 (d) Section 32B-8-304 (Effective 07/01/11).
15046 (3) The amendments to Section 20A-7-702 (Effective 01/01/12) take effect on January
15047 1, 2012.